

12-1-1986

Recent South African Labor Legislation: Assessing the New Rights of Black Workers

Mark Wiseman

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/iclr>

 Part of the [Labor and Employment Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Mark Wiseman, *Recent South African Labor Legislation: Assessing the New Rights of Black Workers*, 9 B.C. Int'l & Comp. L. Rev. 163 (1986), <http://lawdigitalcommons.bc.edu/iclr/vol9/iss1/7>

This Notes is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College International and Comparative Law Review by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

Recent South African Labor Legislation: Assessing the New Rights of Black Workers

I. INTRODUCTION

In early November of 1984, 800,000 black workers in South Africa joined in a two day political strike to protest rent increases and poor educational opportunities.¹ The strike, organized by political groups, student organizations, and black trade unions, was the largest in South African history, and shut down much of the industry in parts of the nation.² The work stoppage shut down fifty percent of the factories in Pretoria, Johannesburg, and in industrial towns east of Johannesburg; it was ninety percent effective in certain areas south of Johannesburg.³ Violent clashes with police led to sixteen deaths.⁴ The government responded by detaining a number of union leaders without charges, including Chris Dlamini, the General-Secretary of the Federation of South African Trade Unions, and Phiroshaw Camay, the General-Secretary of the Council of Unions of South Africa.⁵

This incident illustrates the difficulties faced by the black union movement in South Africa. Although recently enacted legislation endows blacks and their labor unions with more legal rights than ever before, it nonetheless prescribes confines within which the union movement must operate.⁶ However, the leverage gained by these unions subsequent to the passage of the legislation may make it difficult, if not impossible, for such legislation to be repealed. The legislation, which was born out of a desire to control the black labor force, has proved to be a springboard from which the blacks can potentially gain even greater power.

This Comment, while concentrating primarily upon the legal development of black unionism through recent legislation, will place this movement in the larger context of the general South African labor environment. Specifically, this Comment will first present an overview of the history of black labor in this century.

¹ Russell, *Railing Against Racism*, TIME, Dec. 24, 1984, at 23; Boesak: "I Refuse to Give Up Hope", AFRICA NEWS, Nov. 19, 1984, at 7.

² AFRICA NEWS, *supra* note 1, at 7.

³ Boston Globe, Nov. 7, 1984, at 42, col. 4.

⁴ *Id.*

⁵ Christian Science Monitor, Nov. 16, 1984, at 14, col. 1. South Africa's three major national business organizations, the Federated Chamber of Industries, the Afrikaanese Handelsinstitute, and the South African Chambers of Commerce, took the unusual step of criticizing the government for the detentions. *Id.* Chris Dlamini has subsequently been released. Boston Globe, Jan. 21, 1985, at 19, col. 1.

⁶ See *infra* notes 140-339 and accompanying text (discussing this recent legislation).

The Comment will then examine current black labor conditions in South Africa as affected by U.S. policies and other international actions. Within this broad context, the author will discuss the recent legislative changes affecting the black labor unions. Finally, this Comment will assess the effects of this legislation on the scope of political activism, the recent growth of the union movement, the special case of the mining industry, and the factors affecting the potential success of black unions in South Africa.

II. HISTORY OF THE BLACK TRADE UNION MOVEMENT

Although South Africa abolished slavery as early as 1834,⁷ much of the nation's early industrial growth was spurred by the employment of large numbers of unskilled black workers at relatively low wages.⁸ This economic oppression, coupled with pervasive state regulation, has historically relegated black labor unions to a position of instability and weakness.⁹

Although there had been unions and ineffective general strikes previously,¹⁰ the first black union of any significance, the Industrial and Commercial Workers Union (ICU), was formed in 1918.¹¹ The ICU had some recruiting success and boasted over 100,000 members in the late 1920s.¹² Like other early unions, however, the ICU soon dissolved as a result of disorganization, employer hostility, and internal division.¹³

These early unions gained no real power, and the Rand Revolt of 1922 further undermined the position of black labor. The Rand Revolt occurred when white workers in the Rand area became concerned as mine operators began to fill available jobs with cheaper black labor.¹⁴ As tensions mounted, a white coal

⁷ Lansing, *The Divestment of United States Companies in South Africa and Apartheid*, 60 NEB. L. REV. 304 (1981). For a summary of the emancipation movement in South Africa, see 2 M. WILSON & L. THOMPSON, *THE OXFORD HISTORY OF SOUTH AFRICA* 305-09 (1971).

⁸ Gould, *Black Unions in South Africa: Labor Law Reform and Apartheid*, 17 STAN. J. INT'L L. 99, 100-01 (1981).

⁹ See G. CARTER, *WHICH WAY IS SOUTH AFRICA GOING?* 95-96 (1980). White labor unions have also been relatively weak in South Africa. South African labor law has always been very restrictive as compared to that of the United States or Great Britain. This is evidenced by South Africa's compulsory conciliation, lengthy cooling-off periods, and common law provisions permitting employers to dismiss workers for obstructionism even if they are engaged in a legal strike. *Id.* at 96. There has never been any legislation in South Africa, however, banning black trade unions. See H. RINGROSE, *THE LAW AND PRACTICE OF EMPLOYMENT* 6 (2d ed. 1983).

¹⁰ Gould, *supra* note 8, at 101. General strikes occurred in 1911, 1913, 1914, and 1919. *Id.*

¹¹ *Id.* at 102; Gould, *Are Black Unions the Key?*, COMMONWEAL, Nov. 10, 1978, at 718.

¹² Gould, *supra* note 8, at 102.

¹³ *Id.* at 102-03. The South African Federation of Non-European Trade Unions met a similar fate in the early 1930s. *Id.* at 103. See also Lacob, *The Rising Tide of Black Unionism*, THE NATION, Dec. 25, 1982, at 684.

¹⁴ Bonacich, *Capitalism and Race Relations in South Africa: A Split Labor Market Analysis*, POLITICAL POWER AND SOCIAL THEORY, 1981, at 239, 254.

miners' strike spread to the gold mines; soon the entire Rand area was involved.¹⁵ The government responded by invoking martial law.¹⁶ Ensuing violence led to 247 deaths and 591 injuries.¹⁷ Eighteen strikers were convicted of murder and sentenced to death.¹⁸ After the Rand Revolt, the government passed a series of new laws to protect white labor.¹⁹

In the 1940s, the Laundry Workers Union and the Native Clothing Workers Union became the centers of two separate confederations of black labor.²⁰ A series of mixed unions²¹ subsequently emerged. In this period, the black workforce increased substantially. In 1934, for example, the manufacturing workforce was evenly divided between whites and blacks; by the end of World War II, two-thirds of the labor force was black.²² Whites and blacks, however, were not integrated; the Factory Act²³ effectively divided the workplace.²⁴

Despite this division, black labor did make some advances during the 1940s. The African Mineworkers Union was formed in 1941 by the Transvaal Branch of the African National Congress (ANC).²⁵ The union grew rapidly and staged walkouts and strikes throughout the decade.²⁶ These culminated in 1946 when 100,000 black miners went on strike over wage demands.²⁷ Along with the growth of union activities in mines, industrial unions in certain areas of the country occasionally accepted black members,²⁸ and parallel unions were created

¹⁵ *Id.* The "Rand," short for Witwatersrand, is the name given to the gold-rich high ridges of the Transvaal province. J. HOAGLAND, *SOUTH AFRICA: CIVILIZATIONS IN CONFLICT* 26 (1972).

¹⁶ Bonacich, *supra* note 14, at 254.

¹⁷ *Id.*

¹⁸ Gould, *supra* note 8, at 101.

¹⁹ Bonacich, *supra* note 14, at 254.

²⁰ Gould, *supra* note 8, at 103.

²¹ *Id.* Mixed unions are here defined as those having both black and white members. Two primary examples of such mixed unions include the Garment Workers Union and the Food Canning Workers Union. *Id.*

²² Marsh, *Labor Reform and Security Repression in South Africa*, 12 *ISSUE: JOURNAL OF AFRICANIST OPINION* 46, 49 (1982).

²³ Factories, Machinery and Building Work Act, 1941 *STAT. S. AFR.* No. 22.

²⁴ Gould, *supra* note 8, at 110.

²⁵ G. CARTER, *supra* note 9, at 50. The ANC is the most powerful of the underground political movements in South Africa, and has been banned since 1960. Founded in 1925 and supported primarily by communist sources, the ANC has initiated a campaign of sabotage and guerilla attacks which have recently increased in sophistication and frequency. ANC support has been strong in those areas where legitimate black unions appear ineffective. See generally Davis, Cason & Hovey, *Economic Disengagement and South Africa*, 15 *L. & POL'Y IN INT'L BUS.* 529, 541 (1983); Karis, *A Revolution in the Making: Black Politics in South Africa*, 62 *FOREIGN AFFAIRS* 375 (1984); O'Meara, *South Africa: No New Political Dispensation*, *CURRENT HIST.*, March, 1984, at 105, 107.

²⁶ Gould, *supra* note 8, at 103. An African Mineworkers Union strike in 1943 involved 73,557 workers, nine of whom were killed in clashes with police. *SOUTH AFRICAN WORKING PARTY OF THE AMERICAN FRIENDS SERVICE COMMITTEE*, *SOUTH AFRICA: CHALLENGE AND HOPE* 135 (1982).

²⁷ *South Africa: The Miner's Cauldron*, *AFRICAN CONFIDENTIAL*, July 4, 1984, at 1. The strike turned violent, ending when police drove miners back to work with bayonets. *Id.*

²⁸ Gould, *supra* note 8, at 103.

for blacks.²⁹ Notwithstanding these changes, there were signs that conditions in industry would not improve rapidly.

In 1948, the Nationalist Party gained control of the government, partly through the backing of a right wing labor movement hostile to black workers.³⁰ This Party initiated the rapid development of the apartheid policies of South Africa.³¹ In the labor context, the role of apartheid was to exclude blacks from the white labor market, or, failing that, to use the blacks as a source of cheap migratory labor.³² In order to accomplish this social segregation, the government passed the Population Registration Act of 1950,³³ which sorted the population into various racial groups.³⁴ The Group Areas Acts of 1966³⁵ divided the country into areas of occupation solely on the basis of race.³⁶ Within the labor context specifically, the 1953 Black Labour Relations Regulation Act³⁷ retained the wartime ban on strikes by blacks, and established a separate system for the negotiation of wages and labor conditions for blacks.³⁸

None of the foregoing legislative provisions affected the entire labor situation as sweepingly as did the 1956 Industrial Conciliation Act.³⁹ Not only did this Act exclude blacks from the legal definition of employee,⁴⁰ but it also forestalled the registration of mixed unions.⁴¹ Blacks were thus formally removed from

²⁹ Gould, *supra* note 8, at 121. A parallel union is one designed to shadow a pre-existing white union. These unions can negotiate collective bargaining agreements, but often their leverage is weak. *Id.* at 121-22. Parallel unions share the same facilities with the parent white union, and are run by the same general secretary. *Id.* at 121. The parent union collects dues and recruits members for the parallel union. *Id.* In the past, the parallel unions have clearly been in a subordinate position. *See id.* at 122.

³⁰ Gould, *supra* note 8, at 103. *See also* Lansing, *supra* note 7, at 305.

³¹ Lansing, *supra* note 7, at 305. Apartheid is defined as the exclusion and separation of non-whites from institutional bases of power. *See* L.J. BOULLE, CONSTITUTIONAL REFORM AND APARTHEID 82 (1984).

³² Bonacich, *supra* note 14, at 259. The system of migrant labor and its relationship with the Bantustan policy will be examined *infra* notes 77-93 and accompanying text.

³³ Population Registration Act, 1950 STAT. S. AFR. No. 30.

³⁴ *See* Lansing, *supra* note 7, at 306 n.14. The Act provides for the Secretary of the Interior to register the entire South African population according to race. *Id.*

³⁵ Group Areas Act, 1966 STAT. S. AFR. No. 36.

³⁶ *See, e.g.*, KAHN & RUDOLPH, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: SOUTH AFRICA, 6 (1984). The city centers are exclusively set aside for whites, and black trade unions are not permitted to have offices in these areas. White landowners have been threatened for allowing black trade unions to use their buildings. *See* Gould, *supra* note 8, at 109.

³⁷ Black Labour Relations Regulation Act, 1953 STAT. S. AFR. No. 48.

³⁸ G. CARTER, *supra* note 9, at 24. For a discussion of this Act, see *infra* text accompanying notes 149-54.

³⁹ Industrial Conciliation Act, 1956 STAT. S. AFR. No. 28.

⁴⁰ Marsh, *supra* note 22, at 50.

⁴¹ Gould, *supra* note 8, at 125. The Act permitted mixed unions which had previously registered to maintain their status. *Id.* These unions, however, were required to hold segregated meetings, and the leadership had to be white. *Id.* Section 66 of the Act did extend protection to white workers desiring unionization. *Id.* A worker could not be fired for belonging to a union or engaging in union activity outside working hours. This provision is important for blacks because its protection was automatically extended through recent legislative reforms. *See infra* text accompanying notes 165-69.

the collective bargaining process.⁴² Throughout the 1950s and 1960s, other legislation was passed further restraining black labor.⁴³

The measures promulgated by the government in this period increasingly frustrated the black population. On March 21, 1960, a crowd of 200,000 blacks gathered to protest at the police station in Sharpsville.⁴⁴ Violence left sixty-seven blacks dead.⁴⁵ Subsequently, the South African Congress of Trade Unions (SACTU) gained strength.⁴⁶ SACTU, initially composed of eight unregistered black unions and four mixed unions, became politically involved in resisting apartheid.⁴⁷ The government tolerated this activism for a short period, before responding with restrictions and bans upon SACTU leaders.⁴⁸ It was also during this period that the Trade Union Council of South Africa (TUCSA) first admitted black members, but subsequent reversals on this policy led to distrust within the black labor community.⁴⁹ This labor activism seemed to subside until the early 1970s.⁵⁰ In 1973, spontaneous strikes broke out in Durban, the third largest city in South Africa.⁵¹ The blacks demanded higher wages, and they elected *ad hoc* committees to represent them in discussions with management. Although the strikes were illegal and accordingly met with police response, many businessmen realized that negotiation with authorized representatives would stabilize the situation.⁵² Thus, negotiations were held, and, to the surprise of many, certain black demands were granted, particularly in the area of wages.⁵³

⁴² *Id.* at 102. See discussion *infra* text accompanying notes 196–208.

⁴³ The Wages Act, 1957 STAT. S. AFR. No. 5, for example, provides that the government establish wage guidelines in those industries where industrial councils are ineffective. Since the Act applies to all races, it was considered the major statutory protection for black workers. Decisions, however, would be exclusively under government control. See Gould, *supra* note 8, at 142.

⁴⁴ F. PARKER, SOUTH AFRICA: LOST OPPORTUNITIES 61 (1983).

⁴⁵ *Id.*

⁴⁶ Gould, *supra* note 8, at 104.

⁴⁷ *Id.* SACTU was aligned with the banned South African Communist Party. See Barrell, *Black Unions Feel the Squeeze*, NEW STATESMAN, June 27, 1980, at 953.

⁴⁸ Gould, *supra* note 8, at 104. A banned person is not permitted to discuss politics or policy with others, cannot be quoted in the press, and is often forced to live in virtual internal exile. DAVIS, CASON, & HOVEY, *supra* note 25, at 543 n.41. See also *Black Unions Start Winning*, NEW STATESMAN, Jan. 15, 1982, at 10.

⁴⁹ Gould, *supra* note 8, at 104. TUSCA is one of South Africa's largest trade union federations, and was formed in 1954. See DEPT. OF FOREIGN AFFAIRS AND INFORMATION, SOUTH AFRICA 1984: OFFICIAL YEARBOOK OF THE REPUBLIC OF SOUTH AFRICA 471 (1984) [hereinafter cited as SOUTH AFRICA 1984]. TUSCA originally barred black unions from affiliation, but allowed them to enter in 1962. *Id.* In 1969, they reversed their policy, but in 1974, TUSCA again allowed black unions to be members. *Id.*

⁵⁰ Gould, *supra* note 8, at 111.

⁵¹ *Id.*

⁵² NEW REPUBLIC, Aug. 1, 1983, at 11, 12.

⁵³ *Id.* The Trade Union Advisory Committee, for example, negotiated a collective bargaining agreement in 1974 between the National Union of Textiles and the British corporation Smith and Nephew. See Gould, *supra* note 8, at 119.

After this moderate success, new black unions quickly formed in Durban and Johannesburg.⁵⁴ The government response was to amend the Black Labour Relations Regulation Act⁵⁵ to revitalize the system of black representation through the introduction of liaison committees.⁵⁶ It was clearly the government's policy to encourage this controlled black participation in lieu of unions. Prime Minister Volster also engineered legislation allowing black workers a limited participation in Wage Board proceedings, if the issues discussed were deemed by the Labour Department to affect black workers.⁵⁷

While this legislation seemed to give black unions a degree of leverage, the government attempted to confine the union movement to the strict contours of legally permissible activity. Detentions and bannings of labor leaders continued and had a chilling effect on the black union movement in the mid-1970s.⁵⁸ Volster's government also created the Bureau of State Security (BOSS) to spy upon and to intimidate labor activists and student labor organizers.⁵⁹ Despite these efforts, unions were formed in the 1970s in a variety of industries.⁶⁰

The reformist thrust emerging in 1973 also became evident in the wake of the Soweto Riots in 1976.⁶¹ The police were again called to stop the violence, which soon spread to other urban areas.⁶² Soon thereafter, the government appointed the Wiehahn Commission⁶³ to investigate South Africa's labor legislation, and the Riekert Commission to explore manpower utilization and influx control measures.⁶⁴ The recommendations of the Wiehahn Commission, which came out in six parts ending in September 1981,⁶⁵ proved to be immediately relevant to black unions. The legislation enacted according to the recommendations of the Wiehahn Commission constitutes the primary focus of this article,

⁵⁴ See Gould, *supra* note 8, at 111.

⁵⁵ Black Labour Relations Regulation Amendment Act, 1973 STAT. S. AFR. NO. 70.

⁵⁶ Gould, *supra* note 7, at 111. See note 152 and accompanying text.

⁵⁷ Marsh, *supra* note 22, at 51.

⁵⁸ Gould, *Unions*, *supra* note 11, at 719.

⁵⁹ Marsh, *supra* note 22, at 51. In the early 1970's, university students often helped advise and train workers regarding union activities. BOSS, seeing this as a revolutionary communist conspiracy, banned student labor organizers and destroyed offices and records. *Id.*

⁶⁰ Marsh, *supra* note 22, at 50. For example, unions were formed by auto workers, textile workers, caterers, metal workers, transport workers, food and canning workers, stevedores, and clothing workers. *Id.*

⁶¹ Spence, *Reform in South Africa—A Tangled Web*, CONTEMP. REV., Jan. 1984, at 6.

⁶² Hanf, *Lessons Which are Never Learnt: Minority Rule in Comparative Perspective*, 18 J. ASIAN & AFRICAN STUD., Jan. 1983, at 22, 24. On June 16, 1976, a thirteen year old boy protesting in front of a high school in Soweto was shot by the police. F. PARKER, *supra* note 44, at 61. The ensuing violence left 575 dead. *Id.*

⁶³ The Wiehahn Commission was composed of fourteen representatives of management and labor, and was headed by industrial relations professor Nicholas Wiehahn. F. PARKER, *supra* note 44, at 41.

⁶⁴ DAVIS, CASON & HOVEY, *supra* note 25, at 544 n.43. For a discussion of the system of influx control, see *infra* text accompanying notes 77-91.

⁶⁵ *A Fast Rise for South Africa's Black Unions*, BUS. WK., Oct. 19, 1981, at 113.

and will be examined after a discussion of the general labor conditions in South Africa.

III. BLACK LABOR CONDITIONS

In a nation ruled by whites,⁶⁶ black workers constitute seventy-two percent of the workforce.⁶⁷ Nevertheless, despite the overwhelming number of blacks, it has been the longstanding desire of the white government to confine the blacks by creating separate nations within South Africa. These homelands, or bantustans, are traditionally rural black areas constituting thirteen percent of the land area of South Africa.⁶⁸ The goal of the apartheid policy has been to force these areas to become independent black states, thus permanently denying blacks citizenship rights in South Africa.⁶⁹ This policy was given force by the passage of the Black Authorities Act of 1951,⁷⁰ which helped to advance the self-governing powers of these areas,⁷¹ and by the National States Constitution Act of 1971.⁷² The ultimate plan of the white regime is to create a confederation of independent states.⁷³

The bantustan policy has two functions. First, the government hopes to remove physically blacks from the white areas so that whites can maintain their political power.⁷⁴ Secondly, the creation of homelands serves to control a black

⁶⁶ South Africa recently enacted a new Constitution creating a tricameral parliament, with houses for whites, Asians, and mixed races. See generally L.J. BOULLE, *CONSTITUTIONAL REFORM AND APARTHEID* (1984). The white chamber, however, has the largest number of members, dominates the election of the president, and effectively controls all real power. *Id.* at 217. The blacks remain totally excluded. *Id.*

⁶⁷ See J. NATTRASS, *THE SOUTH AFRICAN ECONOMY* 35 (1981); DAVIS, CASON & HOVEY, *supra* note 25, at 536 n.17. According to the 1980 census, South Africa was composed of 4.5 million whites, 2.6 million mixed-race, 0.8 million Asians, and 17 million blacks. See KAHN & RUDOLPH, *supra* note 36, at 17.

⁶⁸ Lansing, *supra* note 7, at 306.

⁶⁹ See *id.* Most blacks, however, would continue to live and work within South Africa. *Id.* According to the 1980 census, of the 17 million blacks, only 6.5 million live within the homeland areas. KAHN & RUDOLPH, *supra* note 36, at 18.

⁷⁰ Black Authorities Act, 1951 STAT. S. AFR. No. 68.

⁷¹ See, e.g., KAHN & RUDOLPH, *supra* note 36, at 18.

⁷² National States Constitution Act, 1971 STAT. S. AFR. No. 21. By 1972, legislative bodies had been established in seven of the homelands. See KAHN & RUDOLPH, *supra* note 36, at 21. To date, four black homelands have been granted independence: Transkie (1976), Bophuthatswana (1977), Venda (1979), and Ciskei (1981). *Id.* at 12. Kwandebele is the next homeland scheduled for independence. See *Wrestling the Tiger*, TIME, Dec. 24, 1984, at 34, 36.

⁷³ Slabbert, *Sham Reform and Conflict Regulation in a Divided Society*, 18 J. ASIAN & AFRICAN STUD., 34, 40 (1983). Kwandebele stands as a typical example of the viability of the homelands. Located in an impoverished farming district north of Pretoria, Kwandebele has one paved road, no resident doctors, a water shortage, and can employ only two percent of its people. See *Wrestling the Tiger*, TIME, *supra* note 72, at 34, 36.

⁷⁴ See, e.g., Slabbert, *supra* note 73, at 34, 40. This first goal is proving not to be feasible, as rapid industrialization has caused a migration of blacks toward urban areas. See *id.* at 36. The policy has

labor force which is the economic foundation of South Africa.⁷⁵ Because of the poverty of the bantustans, blacks must seek work in the white areas, but their presence is a revocable privilege granted and regulated by the white government.⁷⁶

In order to accomplish the second function, controlling the black labor force, South Africa has instituted numerous laws designed to regulate migrant workers. The foremost of these influx control measures is the Black [Urban Areas] Consolidation Act.⁷⁷ Section 10 of this statute mandates that a black may remain in an urban area for more than seventy-two consecutive hours only if that individual: 1) has resided in the area continuously since birth; 2) has worked for the same employer continuously for ten years; 3) has lawfully resided in the area for at least fifteen years; 4) is a dependent of someone who falls under 1, 2, or 3 above; or 5) receives a special work permit.⁷⁸ Typically, the workers falling under exception five have been registered for only an eleven month contract period,⁷⁹ and have had to return for one month each year to the homelands. Before 1983, this meant that the blacks could not establish permanent residence under exception two above. In May 1983, however, the South African Appeals Court ruled in *Rikhoto v. East Rand Administration Board*⁸⁰ that authorities can no longer deny permanent residency to migrant workers merely because they are required to renew their job contracts annually.⁸¹ The result of this decision is that those blacks who have worked for one employer for ten years or various employers for fifteen years are not subject to deportation if they lose their jobs.⁸² Thus, the *Rikhoto* decision affects the rights of 1.2 million blacks.

Initially, the South African government attempted to pass legislation counteracting the *Rikhoto* ruling, but under international pressure, the Minister for Cooperation and Development, Pieter G. Koornhof, agreed that the government would accept the court's decision.⁸³ The government, however, did enact a law stating that anyone obtaining urban rights must demonstrate that he has legal housing in the black township. Since there is a housing shortage, the legislation undercuts the *Rikhoto* ruling.⁸⁴

also been expensive: in 1983 the bantustan programs cost South Africa \$1.5 billion, or nine percent of the national budget. See *Wrestling the Tiger*, *supra* note 72, at 34, 36.

⁷⁵ Davis, Cason & Hovey, *supra* note 25, at 536.

⁷⁶ *Id.* at 536-37.

⁷⁷ Black [Urban Areas] Consolidation Act, 1945 STAT. S. AFR. NO. 25.

⁷⁸ *Id.* § 10(1).

⁷⁹ Gould, *supra* note 8, at 105 n.2B.

⁸⁰ *Rikhoto v. East Rand Administration Board*, (4)278(W) (1983).

⁸¹ *Id.* at 285.

⁸² N.Y. Times, June 1, 1983, at 9, col. 1.

⁸³ O'Meara, *supra* note 25, at 107-08.

⁸⁴ Lewis, *Apartheid Justice*, NEW REPUBLIC, Sept. 20, 1984, at 11.

The Riekert Commission⁸⁵ had earlier refused to consider the abolition of Section 10 restrictions⁸⁶ on black workers.⁸⁷ Thus, despite the court ruling, every black is still required to carry a pass indicating his status. A significant number of blacks are, however, illegally present in urban areas.⁸⁸

In September, 1984, the courts administered by the Department of Justice assumed jurisdiction over pass law violations.⁸⁹ Courts administered by the Department of Coordination and Development had previously held jurisdiction over this area.⁹⁰ This action reversed the policy of a separate court system for blacks, and hearings have consequently been more just.⁹¹

Influx control measures are only the most obvious of the regulations affecting the free mobility of blacks. Other legislation equally dictates and monitors black movement. The Black Administration Act 38 of 1927⁹² is one of the more sweeping of such laws. It authorizes the state president to order a group or an individual to move from one place to another in what he sees as the general public interest.⁹³ The potential of this legislation to chill any labor activism is apparent.

Apart from the specific restraints of the bantustan policy and the migratory labor system, there are numerous other obstacles, both statutory and customary, that stand in the way of black labor advancement. One of the most deeply ingrained of these restrictions is the practice that no white employee may be subordinate to a black.⁹⁴ Although this code has been broken in a few isolated instances,⁹⁵ the general prohibition remains intact.⁹⁶

⁸⁵ See *supra* note 64 and accompanying text.

⁸⁶ See *supra* notes 77-79 and accompanying text.

⁸⁷ Gould, *supra* note 8, at 106. The Commission characterized the issue as political, and thus outside its purview. *Id.* On September 12, 1985, however, a government-sponsored President's Council recommended the abolition of all influx control measures. N.Y. Times, September 13, 1985, at 1, col. 5.

⁸⁸ Gould, *supra* note 8, at 106. In 1983, 260,000 blacks were arrested for pass law violations. Christian Science Monitor, Nov. 15, 1984, at 21, col. 1. Two common offenses are 1) remaining in an urban area without exemption for more than 72 hours, and 2) failure to produce an identifying document on demand. *Id.*

⁸⁹ Christian Science Monitor, Nov. 15, 1984, at 21, col. 1.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Black Administration Act, 1927 STAT. S. AFR. NO. 38.

⁹³ *Id.* § 5. The president need not provide advance notice before making such an order, nor must he give any reasons to support his belief that the removal is in the public interest. *Id.*

⁹⁴ Note, *U.D. Labor Practices in South Africa*, 7 FORDHAM L. REV. 358, 375 (1984).

⁹⁵ In 1983, there were 500 white employees who took orders from blacks and non-whites in U.S. firms in South Africa. Sullivan, *Agents for Change*, 15 L. & POL'Y IN INT'L BUS. 433 (1983). See also *infra* text accompanying notes 122-32.

⁹⁶ The Minister of Labor at one time was empowered to bar anyone from a job in order to avoid interracial competition. Industrial Conciliation Act, 1956 STAT. S. AFR. NO. 28 § 77. Thus, although the prohibition against black supervision is not directly mandated, it has had the obvious support of the government in the past.

Another problem faced by black workers is the wage gap. Although the average monthly wage for blacks has increased at a higher percentage than the wage of the average white worker, in absolute cash terms the gap in wages has continued to increase.⁹⁷ Many United States firms in South Africa now offer equal pay for equal work,⁹⁸ but this has not had a profound impact because most blacks do not share equal work with whites. Until very recently, blacks were virtually excluded from skilled labor and managerial positions.⁹⁹ Furthermore, any increase in black wages has been minimized by the inflation rate in South Africa, where prices have increased 400% since the late 1970's.¹⁰⁰

Certain factors indicate, though, that the plight of the black in South Africa may be becoming gradually ameliorated. The bantustan policy, for example, is proving to be unrealistic.¹⁰¹ The policy of development of separate black nations did not correctly predict the extent of urbanization and industrialization in South Africa, and the resulting urban migration by blacks.¹⁰² In 1968, the government attempted to reverse this trend through industrial decentralization policies, but the measures proved futile.¹⁰³ Subsequently, the government has given to black suburbs of South African cities a certain degree of autonomy, including, in certain cases, the authority to collect taxes.¹⁰⁴ The permanency of the black presence in white areas of South Africa has also been acknowledged through the granting of ninety-nine year leaseholds in homes and business

⁹⁷ Davis, Cason & Hovey, *supra* note 25, at 538 n.23. From 1970 to 1980, black wages grew 400%; from 1979 to 1982, the wage increase was 214%. In contrast, the wages for whites increased 250% from 1970 to 1980, and 175% between 1979 and 1982. However, the difference in actual wages between the average white and average black worker grew from \$321 in 1970 to \$698 in 1980, and was \$773 in 1982. *Id.*

⁹⁸ *Wrestling the Tiger*, *supra* note 72, at 34, 36. This is one of the legacies of the Sullivan Principles. See *infra* text accompanying notes 122-32.

⁹⁹ Gould, *supra* note 8, at 125. One reason for this problem is the lack of educational opportunities that has plagued blacks in South Africa. The nation spends 90% less on the education of a black child than it does on that of a white child. *South Africa's Need for More Black Managers*, BUS. WK., June 8, 1981, at 78. Only 0.3% of black urban workers have a college education and 40% have no education at all. *Id.* Certain corporations have offered remedial English and math courses on company time, but the overall effect on the literacy rate has been minimal. *Id.*

¹⁰⁰ Davis, Cason & Hovey, *supra* note 25, at 539 n.23.

¹⁰¹ The government has promised a complete reevaluation and reconsideration of its policy of resettling blacks. Christian Science Monitor, Feb. 4, 1985, at 13, col. 3. Prime Minister Botha announced in a recent speech that blacks were invited to take part in informal talks aimed at developing mutually acceptable political institutions for blacks not living in the homelands. Christian Science Monitor, Jan. 28, 1985, at 9, col. 1. In addition, a pamphlet distributed by the National Party rejected a central tenet of apartheid, that blacks and whites should live in separate, adjoining states. *An Afrikaner Turnabout?*, NEWSWEEK, May 20, 1985, at 41.

¹⁰² Slabbert, *supra* note 73, at 40. Urban areas now contain 48% of South Africa's residents, but this will rise to 80% in the year 2000. F. PARKER, *supra* note 44, at 40. Of the projected 22 million living in cities in 2000, 15 million will be black. *Id.*

¹⁰³ Marsh, *supra* note 22, at 50. In addition, the government has recently indicated that blacks may soon be permitted to own land outright. Boston Globe, December 5, 1985, at 23, col. 3.

¹⁰⁴ Dedial, *Contours of a New Order in South Africa*, 34 SWISS REV. OF WORLD AFF. 8, 10 (July 1984).

premises.¹⁰⁵ Finally, the government has recently announced that it will suspend forced resettlement into the bantustans, or black homelands.¹⁰⁶

IV. INTERNATIONAL PRESSURES

The internal labor conditions have prompted black protest, which has led to the legislation which will be discussed in Section V. Certain international pressures, as well, have influenced the development of the recent legislation. An overview of these pressures is necessary to a full understanding of the legal changes.

A. U.S. Policies

The United States has the potential to exert substantial influence upon black labor in South Africa. In 1983, U.S. investments in South Africa totalled \$13.3 billion.¹⁰⁷ This includes \$2.3 billion in direct investment, \$4.6 billion in bank loans, and \$6.4 billion in shareholdings.¹⁰⁸ U.S. companies control 70 percent of South Africa's computer industry, 50 percent of its oil industry and 30 percent of its automobile industry.¹⁰⁹ Thus, U.S. influence could be exercised on South African labor indirectly through divestment of these holdings, or directly through the labor policies employed by U.S. firms doing business in South Africa.

The divestment question is beyond the scope of this article, but a brief overview will serve to highlight the complexity of the problem. In basic terms, state and federal legislatures must balance any desire for change in the South African laws with the need to protect what are considered vital national interests.¹¹⁰ The official stance of the U.S. government at this time balances these competing interests in a policy of constructive engagement.¹¹¹ This policy favors

¹⁰⁵ Chettle, *The Law and Policy of Divestment of South African Stock*, 15 L. & POL'Y IN INT'L BUS. 445, 451 (1983). Banks will now issue loans to blacks since they can put up their leaseholds as security. See *Wall Street Journal*, June 19, 1984, at 1, col. 1.

¹⁰⁶ North, *Divestment Imperative*, THE NEW REPUBLIC, March 25, 1985, at 10.

¹⁰⁷ *Strategic Sales to South Africa Reach New High*, AFRICA NEWS, Oct. 22, 1984, at 2.

¹⁰⁸ *Id.* In 1984, the amount of direct investment dropped to \$1.8 billion, and bank loans went to \$3.9 billion. *U.S. Measures Gains, Losses in South Africa*, U.S. NEWS & WORLD REPORT, August 12, 1985, at 22.

¹⁰⁹ *Now It's Congress vs. South Africa*, U.S. NEWS & WORLD REPORT, June 17, 1985, at 10.

¹¹⁰ In terms of national interest, South Africa controls the shipping routes around the Cape of Good Hope that are used to transport oil from the Persian Gulf. Moreover, South Africa supplies 50 percent of the platinum used by the United States, 44 percent of the vanadium, 31 percent of the manganese, and 55 percent of the chromium. *U.S. Measures Gains, Losses in South Africa*, U.S. NEWS & WORLD REPORT, August 12, 1985, at 22. See also Lansing, *supra* note 7, at 309-10; Fatton, *The Reagan Foreign Policy Toward South Africa: The Ideology of the New Cold War*, 27 AFRICAN STUD. REV. 57, 65 (March 1984).

¹¹¹ See Fatton, *supra* note 110, at 57.

continued support for the South African government tempered with private encouragement toward liberalization of the racial laws of the nation.¹¹² After a meeting in December, 1984, with the winner of the Nobel Peace Prize, Bishop Desmond M. Tutu, President Reagan seemingly abandoned his policy of quiet diplomacy to call upon South Africa to initiate a dialogue with the black majority.¹¹³ In September, 1985, President Reagan reversed his prior opposition to economic sanctions against South Africa.¹¹⁴ Through an executive order, the President adopted many of the anti-apartheid measures that had previously been sought by Congress.¹¹⁵ The President insisted, however, that he still favored a policy of active constructive engagement.¹¹⁶

Despite the stance of the federal government, many states and municipalities have passed divestment legislation on their own.¹¹⁷ Support for divestment has come in large part from universities, church groups, and labor unions.¹¹⁸ Aside from domestic considerations,¹¹⁹ there is debate regarding the desirability of divestment in terms of the black worker in South Africa. Some commentators have speculated that divestment would result in black unemployment, but that whites would be unaffected because of the shortage of skilled workers in the Republic.¹²⁰ Other commentators envision unemployment as a possible result, but feel that it is a fair price to pay for real political change in South Africa.¹²¹

¹¹² *Id.*

¹¹³ Boston Globe, Dec. 11, 1984, at 1, col. 4.

¹¹⁴ N.Y. Times, September 10, 1985, at 1, col. 5.

¹¹⁵ *Id.* The executive order included: 1) a ban on loans to South Africa, except those loans designed to improve economic opportunities, or educational, housing and health facilities that are open to all races, 2) a proposal to ban the importation of the krugerrand to the United States, 3) a ban on all computer exports to military, police and security forces and agencies involved in the enforcement of apartheid, 4) a prohibition of all exports of nuclear technology, except those required to carry out international agreements on the spread of nuclear arms, or those deemed necessary to protect public health and safety, and 5) the importation of any arms or military vehicles produced in South Africa. *Id.*

¹¹⁶ N.Y. Times, September 10, 1985, at 1, col. 5.

¹¹⁷ See, e.g., MASS. GEN. LAWS ANN. ch. 32, § 23(1)(d)(ii) (West Supp. 1983):

After January first, nineteen hundred and eighty-three, no public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through its subsidiaries has outstanding loans to the Republic of South Africa or its instrumentalities, and no assets shall remain invested in the stocks, securities or other obligations of any company doing business in or with the Republic of South Africa.

¹¹⁸ Lansing, *supra* note 7, at 312. The AFL-CIO has called for complete divestment. *Id.* In addition, the United Auto Workers has announced that it would withdraw funds from institutions making loans to South Africa. *Id.*

¹¹⁹ Divestment raises the question of the fiduciary duties of investors, as well as constitutional questions regarding the commerce clause and the supremacy clause. For a good cross-section of opinion on the divestment question, see generally Davis, Cason & Hovey, *supra* note 25; Chettle, *supra* note 105; Lansing, *supra* note 7; Note, *University Investments with a South African Connection: Is Prudent Divestiture Possible?*, 11 N.Y.U. J. INT'L L. & POL. 543 (1979).

¹²⁰ Chettle, *supra* note 105, at 485.

¹²¹ *South Africa: Black Union Power*, NATION, Jan. 31, 1981, at 103. The newly-formed Congress of

Statutory change in South Africa may also be prompted by U.S. corporations directly influencing the working conditions of the blacks. Improved labor conditions in one sector of the economy might well prompt blacks in other sectors to seek the same benefits through labor legislation. Certain U.S. corporations are currently attempting to accomplish this goal through the Sullivan Principles. The Principles, devised by the Reverend Leon Sullivan, a member of the board of directors of Ford Motor Company, consist of a six point code of conduct for U.S. corporations employing blacks in South Africa.¹²² Participation in the program is voluntary, and there are currently 128 signatories.¹²³ Recently, a group of executives representing the signatory corporations unanimously endorsed additions to the code.¹²⁴ The additions commit the companies to support freedom of mobility for black workers, the unrestricted right of black businesses to locate in South African urban areas, and the eventual end of all apartheid laws.¹²⁵

Despite these resolutions, the results of the Sullivan Principles are unclear. Signatory companies have to some degree improved the conditions of employment within their organizations. Most signatories report that they have complied with the first three of the six principles: non-segregation of the workplace, equal and fair employment practices, and equal pay for equal work.¹²⁶ There have also been improvements under the other principles. In 1983, signatories spent \$6 million on training programs for 27,277 nonwhite employees.¹²⁷ In addition, \$7 million was contributed toward the education of non-employees.¹²⁸ Certain signatories have been among the leaders in South Africa in recognizing and promoting the black labor movement.¹²⁹

South African Trade Unions has stated that it supports divestment by American and British companies of their South African holdings. N.Y. Times, December 2, 1985, at 1, col. 3. See *infra* note 322.

¹²² The Sullivan Principles call for: 1) non-segregation of the races in all eating, comfort, and work facilities; 2) equal and fair employment practices for all employees; 3) equal pay for all employees doing equal or comparable work for the same period of time; 4) initiation of and development of training programs that will prepare, in substantial numbers, blacks and other non-whites for supervisory, administrative, clerical, and technical jobs; 5) increasing the number of blacks and other non-whites in management and supervisory positions; and 6) improving the quality of employees' lives outside the work environment in such areas as housing, transportation, schooling, recreation, and health facilities. Supplementing these measures are guidelines calling for recognition of black unions. See generally, Sullivan, *supra* note 95, at 427. In December, 1984, four new principles were adopted, asking American firms to: 1) give black businesses freedom to locate in urban areas of their choice; 2) encourage South African firms to adhere to the Sullivan Principles; 3) give blacks freedom to move to areas where jobs are available; and 4) seek the end of legal apartheid. Christian Science Monitor, October 2, 1985, at 3.

¹²³ Christian Science Monitor, October 2, 1985, at 7, col. 3.

¹²⁴ Russell, *supra* note 1, at 23.

¹²⁵ *Id.*

¹²⁶ See Note, *supra* note 96, at 363.

¹²⁷ *Id.* at 364.

¹²⁸ *Id.*

¹²⁹ The Ford Motor Company, for example, was the first corporation in South Africa to permit full-

Nevertheless, critics of the Sullivan Principles assert that the guidelines do not extend far enough. They claim that the Principles fail by attacking effects, such as working conditions, rather than the causes of the conditions, the apartheid policies themselves.¹³⁰ Critics emphasize that most U.S. corporations in South Africa are not signatories, and that, in fact, the number is declining.¹³¹ Other criticism points to the fact that a very small percentage of the workforce in South Africa is affected by the Principles.¹³²

B. *Other Foreign Actions*

Other nations and international organizations have brought pressure on South African labor policies. For example, the Organization of African Unity, formed in 1963,¹³³ has imposed a total economic boycott against South Africa. These sanctions have proven ineffective, however, as many of the member nations are dependent upon South African trade.¹³⁴ The United Nations has also passed numerous resolutions condemning South African policies, but most economic sanctions have been vetoed in the Security Council.¹³⁵ The United Nations, however, has passed arms embargoes, most recently through Resolution 418 in 1977.¹³⁶ Finally, various bodies have instituted codes of conduct similar to the Sullivan Principles, such as the European Code, the Canadian Code, the Urban Foundation Code, the Cape Code, and the Barlow Rand

time black shop stewards in its factories; Kellogg Company was the second to sign an agreement recognizing a black trade union; Borg-Warner Corporation was among the first to directly negotiate wages with black workers. Note, *supra* note 96, at 364-65; see G. CARTER, *supra* note 9, at 92. Ford and General Motors both started training programs for black artisans and apprentices in the late 1970's. *Id.* Gillette's South African subsidiary has recently opened a legal-aid clinic to serve blacks. Christian Science Monitor, Feb. 13, 1985, at 1, col. 1. The clinic, the first of its kind in South Africa, is designed to assist blacks in understanding their rights within the influx control system. *Id.* In addition, a number of companies have adopted the policy of recognizing unregistered black unions, if such unions represent the wishes of the workers. Chettle, *supra* note 105, at 465.

¹³⁰ Christian Science Monitor, Dec. 13, 1984, at 28, col. 1.

¹³¹ For criticism of the Sullivan Principles, see, for example, Davis, Cason, and Hovey, *supra* note 25, at 550; Lansing, *supra* note 7, at 307; Note, *supra* note 96, at 366. Only two of the seven U.S. companies employing over 5000 workers in South Africa have signed the Principles. Note, *supra* note 122, at 366.

¹³² See Davis, Cason & Hovey, *supra* note 25, at 551 n.77. The U.S. firms adhering to the Sullivan Principles employ 66,000 workers. This number represents only 1.1 percent of South Africa's total labor force. Christian Science Monitor, October 2, 1985, at 7, col. 3.

¹³³ R. LEONARD, *SOUTH AFRICA AT WAR* 46 (1983).

¹³⁴ Maddrey, *Economic Sanctions and Human Rights*, 22 VA. J. OF INT'L L. 345, 376 (1981).

¹³⁵ For discussions regarding the United Nations in this context, see Davis, Cason & Hovey, *supra* note 25, at 530 n.5; Maddrey, *supra* note 134, at 372; Chettle, *supra* note 105, at 495 n.234; Johnson, *Sanctions and South Africa*, 19 HARV. INT'L L. J. 887, 904 (1978).

¹³⁶ S.C. Res. 418, 32 U.N. SCOR (2046th mtg.) 5, U.N. Doc. S/INF/32 (1977).

Code.¹³⁷ Although certain of these codes are more restrictive than the Sullivan Code,¹³⁸ they have met with many of the same difficulties.¹³⁹

V. RECENT LEGISLATION

A. Background

The history of the labor movement, current labor conditions, and international pressures are all factors that presage the recent labor legislation. Essential to an analysis of this legislation is an examination of the original Industrial Conciliation Act of 1956,¹⁴⁰ which, in amended form, is still the law. The Act was passed after a rapid expansion of industry following World War II,¹⁴¹ and governed dispute resolution between employers and employees by creating machinery for collective bargaining.¹⁴² To this end, the Act provided for the registration of trade unions and employers' associations, and for the creation of industrial councils. Through these councils, disputes were to be resolved by negotiations toward industrial agreements.¹⁴³

The Act, however, excluded blacks from the legal definition of employee,¹⁴⁴ thus formally removing them from the officially sanctioned collective bargaining process.¹⁴⁵ Registration is not a prerequisite for a union to function, to be recognized by an employer, or to conclude an agreement through collective bargaining.¹⁴⁶ Only agreements concluded through the machinery of the 1956 Act, however, are protected by criminal sanctions.¹⁴⁷ Thus, while excluded black unions could negotiate, any resulting agreements could be enforced only through civil contract law.¹⁴⁸

The government enacted the Black Labour Relations Regulation Act of 1953¹⁴⁹ and the Black Labour Relations Amendment Act of 1973¹⁵⁰ to provide

¹³⁷ Sullivan, *supra* note 95, at 430.

¹³⁸ The code of the European Economic Community, for example, obliges management to provide union access to company property, to take steps toward engaging in collective bargaining, and to conclude such bargaining agreements. See Gould, *supra* note 8, at 156.

¹³⁹ *Id.* at 153.

¹⁴⁰ Industrial Conciliation Act, 1956 STAT. S. AFR. No. 28. This legislation is also known as the Labour Relations Act, 1956 STAT. S. AFR. No. 28.

¹⁴¹ 2 M. WILSON & L. THOMPSON, THE OXFORD HISTORY OF SOUTH AFRICA 36 (1971).

¹⁴² SOUTH AFRICA 1984, *supra* note 49, at 449.

¹⁴³ *Id.* The Act applied to all industrial trades and occupations, with the exception of agricultural workers, domestic servants, state employees, and charitable institutions. *Id.*

¹⁴⁴ See note 40 and accompanying text.

¹⁴⁵ See *infra* text accompanying notes 196-208.

¹⁴⁶ SOUTH AFRICA 1984, *supra* note 49, at 450.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Black Labour Relations Regulation Act, 1953 STAT. S. AFR. No. 48.

¹⁵⁰ Black Labour Relations Amendment Act, 1973 STAT. S. AFR. No. 70.

blacks with parallel legislation.¹⁵¹ These Acts provided for a degree of collective bargaining between blacks and their employers, through liaison and works committees.¹⁵² Since these bodies were relatively impotent,¹⁵³ black grievances were generally unattended, and industry-wide decisions were made by the registered unions.¹⁵⁴

The provisions of the Black Labour Relations Regulation Act did not effectively address the problems of industrial relations with blacks. This was evidenced by the limited use of the works and liaison committees, and by the 1976 general strikes. In response to this problem, the government appointed the Wiehahn Commission in 1977¹⁵⁵ to investigate and make recommendations concerning South Africa's labor legislation.¹⁵⁶ Even prior to the recommendations of the Commission, the Associated Chambers of Commerce, representing businessmen throughout South Africa, had recommended that black unions be recognized and that job reservations — provisions for reserving certain employment positions for whites — be abolished.¹⁵⁷ The final recommendations of the Commission led directly to the various amendments to the Industrial Conciliation Act of 1956,¹⁵⁸ to be discussed shortly.

B. *Reasons for Change*

The government and business leaders sought registration of black trade unions for reasons having more to do with pragmatism than with humanitari-

¹⁵¹ H. RINGROSE, *supra* note 9, at 8.

¹⁵² The Black Labour Relations Regulation Act, 1953 STAT. S. AFR. No. 48, provided for works committees consisting of employees' representatives, to consult and negotiate with management regarding working conditions. The works committees could be formed if workers requested them in an industrial segment employing more than 20 workers, provided that the committee registered with the Department of Labour. See SOUTH AFRICA 1984, *supra* note 49, at 454. After the 1973 strikes, the Act was amended through the Black Labour Relations Amendment Act, 1973 STAT. S. AFR. No. 70, to provide for liaison committees in addition to works committees. The liaison committees were established at the request of management, with the membership split equally between employers and employees. See SOUTH AFRICA 1984, *supra* note 49, at 454. They permitted blacks to discuss grievances on a plant-by-plant basis. *Id.* In 1977, the Black Labour Relations Act, 1977 STAT. S. AFR. No. 84, permitted works committees to negotiate enforceable collective bargaining agreements.

¹⁵³ In general, the committees were rejected because they were controlled by management and consulted only on relatively unimportant matters. See Gould, *Are Black Unions the Key?*, COMMONWEAL, Nov. 10, 1978, at 718; *Black Unions Start Winning*, NEW STATESMAN, Jan. 15, 1982, at 10; Note, *supra* note 96, at 375.

¹⁵⁴ See Gould, *supra* note 8, at 135.

¹⁵⁵ H. RINGROSE, *supra* note 9, at 10.

¹⁵⁶ See *supra* note 63 and accompanying text.

¹⁵⁷ G. CARTER, *supra* note 9, at 90. This is one example of how business interests have been on the forefront of black labor development. *Id.*

¹⁵⁸ Labour Relations Act, 1956 STAT. S. AFR. No. 28.

anism.¹⁵⁹ Even before the riots of the 1970s,¹⁶⁰ the government had feared the revolutionary potential of the black workers.¹⁶¹ One effective way to minimize the possibility of revolution is to permit the existence of black unions, albeit under strictly guarded circumstances. Registered unions can provide a stable workplace and limit the exercise of violence.¹⁶²

Part of the impetus for such changes came from the businessmen themselves, who saw that unions could create channels of communication that would help to alleviate conflict. Through the union system, a rational dialogue with a structured union would give black workers a stake in the existing South African system.¹⁶³ Although businessmen face the problem of resentment on the part of white workers,¹⁶⁴ the need for change was strong enough to prompt legislative reform.

C. *Legislative Reforms*

The Industrial Conciliation Amendment Acts of 1979¹⁶⁵ and 1980,¹⁶⁶ and the Labour Relations Amendment Acts of 1981¹⁶⁷ and 1982,¹⁶⁸ did not change the essential character of the 1956 legislation. They merely extended the 1956 legislation to blacks and thereby removed the necessity for a system of parallel legislation that existed via the 1953 and 1973 Black Labour Relations Regulation Act.¹⁶⁹ The more important specific changes and their results will now be discussed in turn.

1. Freedom of Association and Registration

The Wiehahn Commission recommended that trade unions be allowed freedom of association, regardless of an individual's race or status as a migrant commuter.¹⁷⁰ In 1979, the government responded by including blacks under

¹⁵⁹ See Davis, Cason & Hovey, *supra* note 25, at 544. The South African government minister responsible for unions has stated that "we are registering black trade unions in order to control their activities." *Id.* International ostracism may also have played some role in the labor law reforms. Black trade unions have been receiving both moral and financial support from abroad. See Gould, *Labour Pains*, NATION, Feb. 23, 1980, at 196; Gould, *supra* note 8, at 129.

¹⁶⁰ See *supra* notes 61-62 and accompanying text.

¹⁶¹ St. Joire, *South Africa: Is Change Coming?*, 60 FOREIGN AFF. 106, 109 (1981).

¹⁶² St. Joire, *supra* note 161, at 109. See also Christian Science Monitor, Sept. 20, 1984, at 13, col. 1.

¹⁶³ NEW REPUBLIC, Aug. 1, 1983, at 12.

¹⁶⁴ G. CARTER, *supra* note 9, at 92.

¹⁶⁵ Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. No. 94.

¹⁶⁶ Industrial Conciliation Amendment Act, 1980 STAT. S. AFR. No. 95.

¹⁶⁷ Labour Relations Amendment Act, 1981 STAT. S. AFR. No. 57. This Act changed the name of the Industrial Conciliation Act of 1956 to the Labour Relations Act of 1956. § 87.

¹⁶⁸ Labour Relations Amendment Act, 1982 STAT. S. AFR. No. 51.

¹⁶⁹ See SOUTH AFRICA 1984, *supra* note 49, at 464.

¹⁷⁰ SOUTH AFRICA 1984, *supra* note 49, at 457.

the definition of employee.¹⁷¹ The Industrial Conciliation Act of 1979, however, provided that only blacks with Section 10 rights¹⁷² qualified as employees entitled to belong to registered unions, thus excluding migrant workers. Subsequently, black unions vowed a boycott on the registration process unless the government changed its policy.¹⁷³ On September 28, 1979, therefore, the Minister of Manpower extended trade union rights to all citizens of South Africa, including migrant workers commuting from the independent bantustans.¹⁷⁴ The 1981 amendment formalized this extension and redefined employees to include foreign workers from neighboring countries.¹⁷⁵

Through these provisions, black unions were permitted to register for the first time and thus avail themselves of the collective bargaining permitted by the 1956 Labour Relations Act.¹⁷⁶ The legislation also permits black unions to use a check-off clause, whereby union dues are deducted directly from an employee's paycheck.¹⁷⁷ This registration, however, is not automatic, and signifies the required submission of a union to governmental controls.¹⁷⁸ A union seeking registration must demonstrate that its constitution is acceptable to the registrar,¹⁷⁹ and that it has been viable for more than three months.¹⁸⁰ A registered union must also be apolitical.¹⁸¹

The 1979 Act, responding to the recommendations of the Wiehahn Commission, set up a system of provisional registration for newly formed unions, which would exist until the unions demonstrated sufficient ability to entitle them to full registration.¹⁸² Provisional registration, however, did not permit

¹⁷¹ Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. No. 94, § 1(1).

¹⁷² See *supra* text accompanying notes 77–88. The Black [Urban Areas] Consolidation Act, 1945 STAT. S. AFR. No. 25, § 10 severely limits the circumstances in which blacks are allowed to reside in urban areas.

¹⁷³ See Gould, *supra* note 8, at 131–32.

¹⁷⁴ SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, SURVEY OF RACE RELATIONS IN SOUTH AFRICA: 1979 285 (1980). This reversal was in the form of an administrative proclamation. Government Gazette No. 6679 of 28 Sept. (Notice R2167).

¹⁷⁵ Labour Relations Amendment Act, 1981 STAT. S. AFR. No. 57, § 1.

¹⁷⁶ See *infra* discussion accompanying notes 196–208.

¹⁷⁷ Labour Relations Act, 1956 STAT. S. AFR. No. 28, § 78(1B). A check-off clause provides a stable source of money for a union, eliminating typical collection problems. See Gould, *supra* note 8, at 137. The 1981 Act prohibits deduction of membership dues for an unregistered union, unless there is ministerial approval. Labour Relations Amendment Act, 1981 STAT. S. AFR. No. 57, § 78(1C).

¹⁷⁸ NEW REPUBLIC, August 1, 1983, at 11, 12. There is a division among unions as to whether registration is desirable. See *infra* text accompanying notes 259–61.

¹⁷⁹ The constitution of the union must specify qualifications relating to membership, property control, procedures for meetings, and methods for voting, among other things. Labour Relations Act, 1956 STAT. S. AFR. No. 28, § 8.9. Gould, *supra* note 8, at 137.

¹⁸⁰ Labour Relations Act, 1956 STAT. S. AFR. No. 28, § 4(1)(a).

¹⁸¹ See *infra* text accompanying notes 253–56.

¹⁸² Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. No. 94, § 4(A). See Gould, *supra* note 8, at 138.

the union to be admitted into an industrial council.¹⁸³ Furthermore, under the Act the registrar was entitled to withdraw registration without explanation.¹⁸⁴ The government cancelled the system of provisional registration through the Labour Relations Amendment Act of 1981, because these restrictions were fought so strongly by black unions.¹⁸⁵

Section four of the Act denied registration to those unions composed of both black and white members,¹⁸⁶ the so-called mixed unions. The Labour Relations Act of 1956 provided that no new mixed unions could be registered, and the Industrial Conciliation Amendment Act of 1979 merely granted the Minister broader powers to grant exceptions to the general rule.¹⁸⁷ The 1981 Labour Relations Amendment Act, however, cancelled the requirement for ministerial approval of the registration of mixed unions.¹⁸⁸ One procedural effect of these measures is that certain white unions are more likely to recruit blacks for the first time, since black membership will not deny any benefits of registration.

Another effect of the recent legislation is that contests for registration in a particular sector are often held between parallel unions¹⁸⁹ and independent black unions.¹⁹⁰ The union that is registered first can often deny representation to other unions.¹⁹¹ Employers have on occasion encouraged the more moderate parallel unions by granting them special facilities not enjoyed by independent unions.¹⁹² However, in January, 1980, the African Transport Workers' Union (ATWU) became the first independent black trade union to receive full registration.¹⁹³

Initially, despite the legislation, most black unions met with difficulties in their attempts to negotiate recognition agreements with industries.¹⁹⁴ By June, 1984, however, there were 600 recognition agreements, far more than in 1980.¹⁹⁵

¹⁸³ SOUTH AFRICA 1984, *supra* note 49, at 459. See discussion regarding industrial councils *infra* notes 199–204 and accompanying text.

¹⁸⁴ SOUTH AFRICA 1984, *supra* note 49, at 459.

¹⁸⁵ This was accomplished through the repeal of § 4(A).

¹⁸⁶ Labour Relations Act, 1956 STAT. S. AFR. No. 28, § 4. Registration was denied to unions containing members of more than one race.

¹⁸⁷ SOUTH AFRICA 1984, *supra* note 49, at 465.

¹⁸⁸ *Id.* This was done through the deletion of §§ 4(3)(c) and 4(3)(d). If, however, one racial group is already adequately represented by another group, that racial group will be excluded from the registration extended to its union. *Id.*

¹⁸⁹ See *supra* note 29 and accompanying text.

¹⁹⁰ G. CARTER, *supra* note 9, at 94.

¹⁹¹ See *infra* note 206 and accompanying text.

¹⁹² G. CARTER, *supra* note 9, at 94.

¹⁹³ SOUTH AFRICA 1984, *supra* note 49, at 460.

¹⁹⁴ Wall St. J., June 20, 1984, at 35, col. 2.

¹⁹⁵ *Id.*

2. Collective Bargaining

The recent legislation is particularly important in that it abandons the liaison and works committee system set up by the 1953 Black Labour Relations Act and the 1973 Black Labour Relations Amendment Act,¹⁹⁶ and opens up other avenues for collective bargaining for black unions. As noted, the works and liaison committees were not thought by blacks to wield any real power.¹⁹⁷ Essentially, the 1979 Act permitted black unions to take advantage of the mechanism for dispute resolution created by the Labour Relations Act of 1956.¹⁹⁸ Specifically, collective bargaining is conducted through industrial councils.¹⁹⁹ These councils are permanent bodies with jurisdiction over a particular industry or area, and are equally representative of labor and management.²⁰⁰ The agreements negotiated by these bodies are binding upon the parties, and the Minister is empowered to extend their provisions to certain non-parties.²⁰¹

Where no industrial council was statutorily created, the Labour Relations Act of 1956 provided that registered unions or employers could apply for a conciliation board to settle a dispute.²⁰² Because the 1979 Act permitted the registration of black trade unions, this machinery became available to all races.²⁰³ In addition, the 1979 Act specifically repealed the prohibition against black representatives.²⁰⁴

In order to enable more workers to take part in the industrial conciliation process, the 1981 Act widened the definition of trade unions to cover virtually any organization involved in industrial relations.²⁰⁵ Admission to industrial councils, however, is not automatic. Under the 1979 Act, the members of an existing council are given the power to veto a new applicant on the grounds that the workers are already adequately represented on the council.²⁰⁶ Thus, even if a black union is registered, it may be shut out of the collective bargaining

¹⁹⁶ See SOUTH AFRICA 1984, *supra* note 49, at 463. Although the Black Labour Relations Regulation Act of 1953 was repealed, the Industrial Conciliation Amendment Act of 1980 provided for the formation of workers councils. §§ 34(A) and 34(B). Their role, however, remains virtually undefined. SOUTH AFRICA 1984, *supra* note 49, at 463.

¹⁹⁷ See *supra* note 153 and accompanying text.

¹⁹⁸ See SOUTH AFRICA 1984, *supra* note 49, at 464.

¹⁹⁹ Gould, *supra* note 8, at 140.

²⁰⁰ Labour Relations Act, 1956 STAT. S. AFR. No. 28, §§ 18–34.

²⁰¹ The agreements may be made binding upon employers and employees within the same industry, even if outside the specified area of the industrial council. *Id.* § 48(1)(c).

²⁰² *Id.* §§ 35–42.

²⁰³ See SOUTH AFRICA 1984, *supra* note 49, at 468.

²⁰⁴ *Id.* This was accomplished through the repeal of § 21(5).

²⁰⁵ Labour Relations Amendment Act, 1981 STAT. S. AFR. No. 57, § 1.

²⁰⁶ Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. No. 94, § 21(A). Adequate representation means that a union already on the council has more than 50% of the membership of the workers in the same area of jurisdiction. *Id.*

process.²⁰⁷ The severity of this measure is tempered by the 1979 Act, though, which permits an unsuccessful applicant to bring a claim of unfair labor practice in the Industrial Court within thirty days of a veto.²⁰⁸

3. The Closed Shop

The recent legislation has also had an impact on the long-standing practice of using closed shop agreements to deny blacks access to certain jobs.

The 1956 Labour Relations Act permitted closed shop agreements between trade unions and employers, whereby the employer agreed not to hire any worker who was not a member of the negotiating union.²⁰⁹ Prior to 1979, this practice was exercised to exclude blacks from certain industries or skilled positions, because blacks were not permitted to negotiate through registered trade unions.²¹⁰ In 1979, the legislature suspended the formation of any further closed shop provisions subject to an investigation by the Manpower Commission.²¹¹ The Commission found that such agreements could be generally useful.²¹² Because references to race, sex, or color were removed from the Labour Relations Act by the 1981 Act,²¹³ some of the occasions for misuse were eliminated. In 1982, the government further protected against abuse by permitting a newly hired, non-union worker a ninety day grace period within which to join the appropriate union.²¹⁴

4. The Option of the Strike

One effect of the recent labor legislation is to create a legitimate strike option for black workers. There are a variety of demands by South African blacks that prompt the desire to strike: poor working conditions, unresponsive management, limited job mobility, and an inability to negotiate recognition agreements.²¹⁵ Most strikes, however, are prompted solely by economic concerns.²¹⁶

²⁰⁷ *Id.* § 21(A).

²⁰⁸ SOUTH AFRICA 1984, *supra* note 49, at 467.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 452.

²¹¹ *Id.* at 468.

²¹² *Id.* at 462. Closed shop provisions are thought to help promote industrial peace and stable industrial relations, by assuring that union gains are not undercut by the employment of outsiders. *Id.*

²¹³ *Id.* at 468.

²¹⁴ Labour Relations Amendment Act, 1982 STAT. S. AFR. No. 51, § 24(1)(x).

²¹⁵ Marsh, *supra* note 22, at 50.

²¹⁶ Wall St. J., July 29, 1982, at 23, col. 2. See also Schlemmer, *Build-up to Revolution or Impasse*, 18 J. ASIAN & AFRICAN STUD. 60, 73-74 (1983). A wave of strikes in 1982 was prompted by the government's policy in handling workers' pension contributions and benefits. *Id.*

In fact, partly because of the high inflation rate, one-half of all strikes are a result of dissatisfaction with wages.²¹⁷

Whatever the specific reasons that prompt strikes, it is clear that they are becoming more common. In 1979, blacks participated in 101 strikes and work stoppages.²¹⁸ The number more than doubled the next year, when there were 207 strikes.²¹⁹ In 1981 the number rose to 342;²²⁰ in 1982 there were 394 strikes.²²¹ Along with rapid rate of growth, the success of such strikes has improved as well. Collective bargaining agreements have been reached in all industrial sectors, often outside the machinery established by the government.²²² Unions are also winning recognition agreements and wage increases with more frequency.²²³

Until 1973, blacks were prevented from striking by the Black Labour Relations Regulation Act of 1953.²²⁴ After the Durban strikes, however, the government passed the Black Labour Relations Amendment Act of 1973,²²⁵ thereby making strikes by blacks legal as long as rigid guidelines are followed.²²⁶

The 1979 Act eliminates the requirements of the 1973 legislation by bringing blacks under the restrictions of the 1956 Industrial Conciliation Act.²²⁷ Before any strike is allowed, the dispute must be referred to the Industrial Council.²²⁸ If there has been a thirty day cooling-off period, certain strikes may become permissible.²²⁹ If there has been a Wage Act determination, the cooling-off period becomes one year.²³⁰

If there is no Industrial Council, the union must request a conciliation board determination,²³¹ and report the dispute to the Minister.²³² If such a board is not set up by the Minister within thirty days of the request, or the board has existed for a thirty day cooling-off period, then the strike is permissible.²³³ If

²¹⁷ Wall St. J., July 29, 1982, at 23, col. 2.

²¹⁸ Wall St. J., Dec. 10, 1981, at 35, col. 2.

²¹⁹ Wall St. J., Aug. 17, 1981, at 18, col. 1.

²²⁰ Christian Science Monitor, July 21, 1982, at 9, col. 1.

²²¹ Christian Science Monitor, April 19, 1983, at 3, col. 1. FOSATU affiliates were involved in over 60% of the strikes occurring in 1982. SOUTH AFRICA 1984, *supra* note 49, at 471.

²²² Marsh, *supra* note 22, at 51.

²²³ *Id.* It should be noted, however, that three-quarters of all strikes by new unions are lost through mass firings and selective rehiring. *See* N.Y. Times, Aug. 1, 1982, at 1, col. 3.

²²⁴ Black Labour Relations Regulation Act, 1953 STAT. S. AFR. No. 48.

²²⁵ Black Labour Relations Regulation Amendment Act, 1973 STAT. S. AFR. No. 70.

²²⁶ *Id.* *See generally* Gould, *Unions*, *supra* note 11, at 719.

²²⁷ Industrial Conciliation Act, 1979 STAT. S. AFR. No. 94.

²²⁸ Labour Relations Act, 1956 STAT. S. AFR. No. 28, § 65(1)(d)(i).

²²⁹ *Id.*

²³⁰ *Id.* § 65(1)(b).

²³¹ *Id.* 65(1)(d)(ii).

²³² *Id.*

²³³ *Id.*

the constitution of the Industrial Council provides for compulsory arbitration, however, a strike may never be legal.²³⁴

If a board is successfully implemented, there are still a variety of prerequisites to the right to strike. Sympathy strikes and political strikes are illegal, for example.²³⁵ A strike is also impermissible unless there is a majority decision of all union members by ballot.²³⁶ A strike is prohibited during the term of an existing industrial council agreement if the strike is related to the matters provided for in the agreement.²³⁷ Finally, strikes are entirely illegal in the essential services.²³⁸

These restrictions are made even more rigid by the Labour Relations Amendment Act of 1981.²³⁹ Trade unions are prohibited by the Act from granting strike assistance to workers involved in illegal strikes.²⁴⁰ Moreover, the fine for participation in such a strike is raised to R1000 or one year in prison.²⁴¹ The 1981 legislation also requires that any discontinuance of work must be reported to the Department of Manpower by the employer.²⁴² Few of the strikes within the past five years have met the requirements of South African law.²⁴³ From a practical standpoint, however, the differences between legal and illegal strikes have become almost academic. Most strikes since 1979 have been illegal, but the large numbers of strikers involved has made prosecution impractical.²⁴⁴

5. Job Reservation

Section 77 of the Labour Relations Act of 1956 mandated that certain categories of work be open only to whites.²⁴⁵ South African firms, however, have recently experienced a shortage of skilled white labor.²⁴⁶ There is not a sufficient pool of skilled black workers and managers from which to fill the vacancies,

²³⁴ SOUTH AFRICA 1984, *supra* note 49, at 452.

²³⁵ Labour Relations Act, 1956 STAT. S. AFR. No.28, §§ 65(1A).

²³⁶ *Id.* § 65(2).

²³⁷ *Id.* § 65(1)(a).

²³⁸ *Id.* § 65(1)(c). Essential services include power, water, sanitation, passenger transportation, and fire protection.

²³⁹ Labour Relations Amendment Act, 1981 STAT. S. AFR. No. 57.

²⁴⁰ *Id.* § 65(3A). Strike assistance in this context includes both financial assistance and general aid toward the commission of an illegal strike. *Id.*

²⁴¹ *Id.* § 82(1)(b).

²⁴² *Id.* § 65A.

²⁴³ SOUTH AFRICA 1984, *supra* note 49, at 473. *But see infra* note 359 and accompanying text.

²⁴⁴ SOUTH AFRICA 1984, *supra* note 49, at 473. The government has also avoided prosecution for fear that such action would increase labor tension. Wall St. J., July 29, 1982, at 23, col. 2.

²⁴⁵ Labour Relations Act, 1956 STAT. S. AFR. No. 28, § 77.

²⁴⁶ BUS. WK., June 18, 1979, at 130. There has been an exodus of skilled and professional whites from South Africa. *See* Gould, *Unions*, *supra* note 11, at 718.

because blacks have been forced into the unskilled and semi-skilled classes.²⁴⁷ Accordingly, productivity has suffered.²⁴⁸ Responding to the recommendations of the Wiehahn Commission, therefore, the 1979 Industrial Conciliation Amendment Act repealed section 77.²⁴⁹ Those reservations already in existence were permitted to be retained.²⁵⁰ However, on December 1, 1979, three of the remaining five reservations were cancelled by the Minister.²⁵¹ One more was cancelled in February, 1982, leaving only the reservation concerning certain mining occupations.²⁵²

6. Political Prohibitions

Another change brought about by the recent legislation is a tightening of the requirement that registered unions be apolitical. Originally, the Labour Relations Act of 1956 prohibited the registration of unions that affiliated with any political party or gave financial or other assistance to a political party or its candidates.²⁵³ Political party is defined as "any association or group" which has as one objective "1) the nomination of candidates for election to Parliament or to any provincial council or local authority, or 2) the influencing of public opinion to support or to oppose any such association or group."²⁵⁴ The 1979 Act extends the definition of political party to include any association with one of its objects being the nomination of candidates for election to "any legislative body established by any law."²⁵⁵ The 1981 Act further restricted the political aspirations of registered unions by extending the definition of political activity to include giving any assistance or "carrying on activities or influence or endeavour to influence its members" with the object of assisting a political party or a candidate for election.²⁵⁶

Some commentators have indicated that one reason for the passage of the recent changes is to submit black unions to direct governmental control.²⁵⁷ The

²⁴⁷ In 1981, it was estimated that only 0.2% of black workers are in management positions. Projections showed that by the year 2000, if South Africa continued to rely solely on white managers, 50% of whites would have to qualify for these positions. Since two-thirds of whites now work in the public sector, this appears highly unrealistic. See *South Africa's Need for More Black Managers*, BUS. WK., June 8, 1981, at 78.

²⁴⁸ *South Africa's Need for More Black Managers*, *supra* note 247, at 78.

²⁴⁹ Industrial Conciliation Act, 1979 STAT. S. AFR. No. 94, § 17.

²⁵⁰ See SOUTH AFRICA 1984, *supra* note 49, at 461.

²⁵¹ *Id.*

²⁵² *Id.* See *infra* notes 346-50 and accompanying text.

²⁵³ Labour Relations Act, 1956 STAT. S. AFR. No. 28, § 8(6).

²⁵⁴ *Id.* § 8(7).

²⁵⁵ Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. No. 94, § 8(7).

²⁵⁶ Labour Relations Amendment Act, 1981 STAT. S. AFR. No. 57, § 8(6)(d).

²⁵⁷ See, e.g., NEW REPUBLIC, Aug. 1, 1983, at 11, 12.

government desires to prevent black unions from increasing their affiliation with the black political underground.²⁵⁸

The question of whether to register poses a dilemma for black unions because of the requirements of apoliticism. If they choose to register and avoid political activism, there is a danger that the rank-and-file workers will not be satisfied.²⁵⁹ Political unions, on the other hand, can refuse to register, but are then closely monitored by the state police.²⁶⁰ These political unions include SAAWU, MACWUSA, and the African Food and Canning Workers Union.²⁶¹

Despite the possibility of state repression, certain unions have engaged in overt political actions. Certain black unions lobbied successfully against proposed legislation that would have increased restrictions on black migration.²⁶² Another example of political activity by black unions was the campaign in 1982 against government efforts to lock in pension benefits until retirement.²⁶³ Black workers wanted funds available in the event of unemployment.²⁶⁴

When Dr. Neil Aggett, a white union leader, was found dead in prison in February, 1982, a nationwide half hour work stoppage was held by 100,000 black workers to protest the detention system.²⁶⁵ Recently, black trade unions unanimously opposed the introduction of the new South African Constitution.²⁶⁶ Moreover, the November 1984 general strike, discussed earlier, had certain political overtones.²⁶⁷ Such political activism may raise the consciousness of the black worker, but also increases the likelihood of further government intervention into the trade union process.

7. New Bodies

The recent legislation also created two major bodies to deal with the newly reorganized labor system: the National Manpower Commission and the Industrial Court.

²⁵⁸ See, e.g., Washington Post, Nov. 27, 1982, at 23, col. 1.

²⁵⁹ See generally Lacob, *supra* note 13.

²⁶⁰ N.Y. Times, Aug. 10, 1981, at 3, col. 3. The statutory prohibition against political activities embodied in the 1979 legislation does not apply to unions choosing not to register. G. CARTER, *supra* note 9, at 95. Political unions are subject to the surveillance of the Department of National Security. See *supra* note 59 and accompanying text.

²⁶¹ N.Y. Times, June 28, 1981, at 3, col. 2. See *infra* notes 334–39 and accompanying text.

²⁶² The defeated legislation was the Orderly Movement of Black Persons Bill; one of the so-called Koornhoff Amendments. See Wall St. J., June 20, 1984, at 35, col. 2.

²⁶³ Wall St. J., July 29, 1982, at 23, col. 2.

²⁶⁴ *Id.*

²⁶⁵ See NEW REPUBLIC, Aug. 1, 1983, at 11, 13.

²⁶⁶ O'Meara, *supra* note 25, at 107. See also *supra* note 66.

²⁶⁷ See *supra* text accompanying notes 1–5.

a. *National Manpower Commission*

The 1979 legislation created a National Manpower Commission to act as a watchdog over the newly enacted trade union system.²⁶⁸ The Commission, established on November 1, 1979,²⁶⁹ consists of members representing employers, unionists, and the government.²⁷⁰ The Commission has four primary functions: 1) giving advice to the Minister of Manpower; 2) monitoring and evaluating developments in the labor field; 3) researching a variety of labor matters; and 4) reporting on labor matters on an annual and *ad hoc* basis.²⁷¹

b. *Industrial Court*

Section 17 of the 1979 Act also established an Industrial Court.²⁷² The Court, inaugurated on December 1, 1979,²⁷³ is empowered to hear disputes arising out of laws administered by the Department of Labour, as well as disputes between two parties regarding their interest. The Court was created to interpret labor laws and regulations, hear cases of irregular and undesirable labor practices, and generally pronounce upon legal questions arising from the industrial relations system.²⁷⁴ The Court may issue subpoenas, employ its own rules of procedure, and make law.²⁷⁵ In effect, the Industrial Court is both a court of law and an administrative tribunal.²⁷⁶

The Court has jurisdiction over non-criminal matters arising out of the labor statutes, including allegations of unfair labor practices.²⁷⁷ The 1982 Labour Relations Amendment Act also transferred the power to grant *Status Quo* orders from the Minister of Manpower to the Industrial Court.²⁷⁸ This empowered the Court to order the reinstatement of employees, the restoration of previous conditions of employment, or the abstention from an unfair labor practice, until the dispute is investigated or settled by an industrial council.²⁷⁹ The Court has heard an increasing number of allegations of unfair labor practices brought by

²⁶⁸ Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. No. 94, § 2(A).

²⁶⁹ C. HILL, CHANGE IN SOUTH AFRICA 104 (1983).

²⁷⁰ Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. No. 94, § 2(A). *See also* Gould, *supra* note 8, at 133.

²⁷¹ Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. § 2D.

²⁷² Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. No. 94, § 17. The Industrial Court was created by restructuring the Industrial Tribunal of the 1956 Labour Relations Act. *Id.*

²⁷³ SOUTH AFRICA 1984, *supra* note 49, at 461.

²⁷⁴ Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. No. 94, § 17(11).

²⁷⁵ *Id.* §§ 17(17)(a), 17(22)(c).

²⁷⁶ *See generally* C. HILL, *supra* note 269, at 104-07.

²⁷⁷ Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. No. 94, § 17(11)(b).

²⁷⁸ *Id.* § 43.

²⁷⁹ *Id.* An industrial council dispute arising over an alleged unfair labor practice must be referred to the Court if the deadlock is not broken within 30 days. *Id.* § 46(9)(a).

black unionists accompanied by applications for *Status Quo*.²⁸⁰ Most such cases deal with charges of unfair dismissals, but the Court has also ruled against employers who have reneged on promises to recognize a representative union.²⁸¹ In addition, the Court is empowered to hear appeals from a veto of admission to an industrial council.²⁸²

8. Governmental Controls

Apart from restrictions on political activities,²⁸³ registration under the recent legislation entails submission to other governmental controls. Even unregistered unions face various controls. This Comment will discuss the more prominent of these requirements, in order to portray the context in which the recent labor legislation acts, and the confines in which the union movement must operate.

The 1979 Act retained provisions from the 1956 Labour Relations Regulation Act requiring unions to submit records and financial statements, and extended them to all population groups.²⁸⁴ The 1981 Act required even unregistered unions to submit constitutions and membership lists to the Department of Manpower.²⁸⁵ In 1981, the legislature also introduced the requirement that the head office of each union be located within the Republic.²⁸⁶

Certain governmental controls and actions predate the recent legislation, but continue to be relevant. One focus of government activity has been strike-breaking. Striking workers have, on occasion, been deported to their homelands under the guise of the Group Areas Act.²⁸⁷ The government has also distributed a strike-breaking pamphlet to businesses,²⁸⁸ and has established a fund in some instances to pay workers refusing to strike.²⁸⁹ At the state-run Sasol oil-from-gas plant, 6000 strikers lost their jobs because of their involvement in the November 1984 strike.²⁹⁰

The South African police also use a variety of internal security laws to chill black union activity.²⁹¹ The government has used the Internal Security Amend-

²⁸⁰ SOUTH AFRICA 1984, *supra* note 49, at 474.

²⁸¹ *Id.*

²⁸² Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. NO. 94, § 21A.

²⁸³ See *supra* text accompanying notes 253-56.

²⁸⁴ Industrial Conciliation Amendment Act, 1979 STAT. S. AFR. NO. 94, § 4(1).

²⁸⁵ Labour Relations Amendment Act, 1981 STAT. S. AFR. NO. 57, § 4A.

²⁸⁶ *Id.* § 11(4).

²⁸⁷ Group Areas Act, 1966 STAT. S. AFR. NO. 36. See *supra* notes 262-67 and accompanying text (discussion on the political activities of unions).

²⁸⁸ N.Y. Times, Aug. 10, 1981, at 3, col. 3.

²⁸⁹ Christian Science Monitor, Sept. 9, 1982, at 2, col. 2.

²⁹⁰ Boesak, *supra* note 1, at 7.

²⁹¹ Gould, *supra* note 8, at 112. Security police searched FOSATU offices after the November, 1984 strike. See Christian Science Monitor, Nov. 13, 1984, at 15, col. 1.

ment Act²⁹² to ban union leaders on several occasions,²⁹³ and the Black [Urban Areas] Consolidation Act²⁹⁴ still prohibits any undesirable meeting of blacks.²⁹⁵

Union activity can also be repressed by the Internal Security Act.²⁹⁶ The Act, among other things, prohibits the utterance of words or the performance of any act with intent "to cause, encourage or foment feelings of hostility between different population groups."²⁹⁷ Clearly, this can be used to control the more political trade unions. This statute also empowers officials to prohibit any gathering which they feel might lead to feelings of hostility between the races.²⁹⁸ In addition, any person who advises others to "protest against any law or in support of any campaign for the repeal or modification of any law" is guilty of subversion, and is subject to imprisonment.²⁹⁹ These examples, although not exhaustive, indicate the extent of the laws which have been applied to hinder the black trade union movement.³⁰⁰

D. *Resulting Growth of Unions*

The recent legislation has provided a spark for the growth of the trade union movement. There are, of course, other reasons for the growth. The problem of depressed wages is one primary reason for the surge in black union growth in recent years. Other motivating factors include: poor working conditions, ineffective or nonresponsive management, housing shortages, increased rents and utility bills, and rising bus fares.³⁰¹ Part of the strength of the black union movement can also be attributed to intelligent planning by the unions themselves. One problem of past efforts was that unions were quickly formed on a nationwide basis, with little unification and limited funds for effective organization.³⁰² In contrast, the current policy is to gain solid membership in one factory before recruiting from the next.³⁰³ The grassroots movement has created a strong factory base and a well-developed shop steward structure.³⁰⁴

²⁹² Internal Security Amendment Act, 1979 STAT. S. AFR. No. 79.

²⁹³ See *supra* note 48 and accompanying text.

²⁹⁴ Black [Urban Areas] Consolidation Act, 1944 STAT. S. AFR. No. 25.

²⁹⁵ *Id.* § 9(7).

²⁹⁶ Internal Security Act, 1982 STAT. S. AFR. No. 74.

²⁹⁷ *Id.* § 62.

²⁹⁸ *Id.* § 47.

²⁹⁹ *Id.* § 59.

³⁰⁰ Recent examples of governmental controls that may peripherally affect trade unions include the clampdown on media coverage and the state of emergency imposed on various districts of South Africa. Christian Science Monitor, November 4, 1985, at 13, col. 12. The state of emergency was imposed by the government on July 21, 1985, in an effort to curtail unrest, and on November 2, 1985, South Africa prohibited the televising, photographing, recording or drawing of an unrest in areas affected by an emergency decree, except with the permission of the commissioner of the police. *Id.*

³⁰¹ Marsh, *supra* note 22, at 50.

³⁰² Kane-Berman, *Black Unions Start Winning*, NEW STATESMAN, Jan. 15, 1982, at 10.

³⁰³ *Id.*

³⁰⁴ See Kane-Berman, *supra* note 302, at 10; Gould, *supra* note 8, at 121, 127. Because black unions

The increase in the membership of unions over the past few years has been dramatic. In 1980, there were an estimated 80,000 members of blacks unions, comprising less than one percent of the workforce.³⁰⁵ By 1985, the black union movement had grown to over 700,000 members.³⁰⁶ This figure, which does not include members of unregistered black unions, represents five percent of the workforce.³⁰⁷ The number in the industrial sector is even higher, approaching ten percent.³⁰⁸ Blacks now comprise forty-three percent of total union strength; thirty-four percent of union members are whites, and twenty-three percent are Indian or of mixed race.³⁰⁹

Not all black trade unionists, however, share the same philosophies and desire the same goals. The question of how politically active a particular union is to be has created certain problems.³¹⁰ Although most unions have avoided overt political stands, rank-and-file members often demand a more militant policy.³¹¹ Thus, questions over whether to register, whether to strike, and whether to focus on narrow shop floor questions to the exclusion of broader labor issues have often resulted in some divisiveness. A brief survey of the major unions and confederations will highlight responses to the recent labor legislation. In particular, the actions of certain of these unions will demonstrate how black labor has used its new-found statutory legitimacy to gain leverage toward further political and social gains.

1. Non-Political Unions

Although it is difficult to document a black trade union in South Africa that does not display certain political tendencies, there is a dichotomy between those unions which are generally non-political, and those which are overtly political.³¹² Three union confederations which fall into the first category are the Federation of South African Trade Unions (FOSATU), the Council of Unions of South Africa (CUSA), and the Trade Union Council of South Africa (TUCSA).

The first of these, FOSATU, is one of the largest and most influential black organizations in South Africa.³¹³ Formed in 1979, FOSATU has grown in mem-

have long been excluded from the industrial council system, they have been compelled to organize and negotiate at the plant level. *Id.* at 127.

³⁰⁵ Gould, *supra* note 8, at 117.

³⁰⁶ *As South Africa's Whites Keep Iron Grip on Power*, U.S. NEWS & WORLD REPORT, May 13, 1985, at 40.

³⁰⁷ *New Republic*, Aug. 1, 1983, at 13.

³⁰⁸ Lacob, *supra* note 13, at 684.

³⁰⁹ Russell, *supra* note 1, at 23.

³¹⁰ See *supra* notes accompanying notes 262-67 (discussion on the political activities of unions).

³¹¹ See Lacob, *supra* note 13, at 685; *Bus. Wk.*, Feb. 25, 1980, at 160.

³¹² See generally SOUTH AFRICA 1984, *supra* note 49, at 471-73.

³¹³ See Gould, *supra* note 8, at 121.

bership from 16,000 to 150,000 trade unionists.³¹⁴ Initially, FOSATU took a militant stand, and the government responded by invoking the Fund Raising Act,³¹⁵ which prohibited the federation from receiving certain funds.³¹⁶ More recently, however, FOSATU has generally avoided overt political stands to commit itself to building strength through plant level organization and shop steward structure.³¹⁷ All FOSATU unions have registered,³¹⁸ and they espouse multiracial membership.³¹⁹ In general, FOSATU-organized strikes have focused on wages and recognition,³²⁰ even though most such strikes were technically illegal.³²¹ FOSATU's key involvement in the November 1984 strikes indicates, however, that the platform of the organization may be becoming more political.³²² The approach of FOSATU has influenced other independent trade unions, notably the General Workers Union (GWU) and the Food and Canning Workers Union (FCWU).³²³

Like FOSATU, the Council of Unions of South Africa (CUSA) has enjoyed rapid growth. Since its formation in September 1980, CUSA's membership has grown from 29,000 to 160,000.³²⁴ CUSA shares the philosophy of FOSATU regarding the desirability of registration and the necessity of avoiding political

³¹⁴ *Boesak*, *supra* note 1, at 7; Wall St. J., June 20, 1984, at 35, col. 2. *See generally* SOUTH AFRICA 1984, *supra* note 49, at 471-73.

³¹⁵ Fund Raising Act, 1978 STAT. S. AFR. NO. 107.

³¹⁶ *Id.* § 11. Only authorized uses of funds are allowed.

³¹⁷ Gould, *supra* note 8, at 121.

³¹⁸ Christian Science Monitor, Aug. 3, 1982, at 4, col. 1.

³¹⁹ SOUTH AFRICA 1984, *supra* note 49, at 471. The existence of some white leaders in FOSATU unions has resulted in some dissent among rank-and-file workers. *See* Lacob, *supra* note 13, at 685. FOSATU is committed to non-racial trade unionism, although its membership is predominantly black. *Id.*

³²⁰ Lacob, *supra* note 13, at 685.

³²¹ *See* discussion regarding the option of the strike *supra* notes 215-44 and accompanying text.

³²² *Boesak*, *supra* note 1, at 7. FOSATU is one of the largest of the 36 independent black unions that united on December 1, 1985 to form the Congress of South African Trade Unions (COSATU). Christian Science Monitor, November 29, 1985, at 1, col. 1. This new federation is composed of 500,000 members, and is led by newly-elected President Elijah Barayi. Christian Science Monitor, December 6, 1985, at 21, col. 1. COSATU is a result of a merger between those unions focusing on highly organized factories and those with more political goals. Christian Science Monitor, November 29, 1985, at 1, col. 1. The federation, however, is based on a nonracial philosophy, and has excluded those unions which do not permit white membership. N.Y. Times, December 1, 1985, at 1, col. 3. In addition, the federation is founded on the principle of one union per industry. This will result in the eventual elimination of certain general unions, including the South African Allied Workers Union and the General and Allied Workers Union. Christian Science Monitor, November 29, 1985, at 1, col. 1.

COSATU has made it clear from its inception that it will openly advocate political change in South Africa. *Declarations of Defiance*, TIME, December 16, 1985, at 36. Specifically, the federation has called for foreign divestment, nationalization of major industries, the release of Nelson Mandela, the jailed A.N.C. leader, the withdrawal of government troops from black townships, and the revocation of influx control measures. *Id.*

³²³ SOUTH AFRICA 1984, *supra* note 49, at 472.

³²⁴ Wall St. J., June 20, 1984, at 35, col. 2.

challenges to focus on the issues of wages and recognition.³²⁵ CUSA was also involved in the November 1984 general strike.³²⁶ Unlike its sister alliance, however, CUSA has all-black leadership,³²⁷ and supports the idea that unions can exist without being integrated.³²⁸

One of the largest labor federations in South Africa, the Trade Union Council of South Africa (TUCSA), is multiracial.³²⁹ However, as mentioned, TUCSA has changed its position several times regarding the membership of black unions.³³⁰ Subsequently, the federation developed a predominantly white membership.³³¹ The fact that TUCSA has historically organized closed shop agreements has further distanced most black unions.³³² The National Clothing Workers Union and the Consultative Committee of Black Trade Unions are, however, affiliated with TUCSA and enjoy some autonomy.³³³

2. Political Unions

As noted, the South African Congress of Trade Unions (SACTU) was banned in the 1960s for its links to the African National Congress and the South African Communist Party.³³⁴ The legacy of SACTU, though, has been continued by such unions as the South African Allied Workers Union (SAAWU) and the Motor Assemblers and Component Workers Union of South Africa (MACWUSA). The police have kept a close watch on SAAWU³³⁵ and have arrested the leadership of this unregistered union on several occasions.³³⁶ Nevertheless, SAAWU still openly voices political grievances.³³⁷ MACWUSA has met similar state scrutiny; its President, Dumile Makanda, spent 271 days in detention before being banned.³³⁸ MACWUSA has been particularly vocal in its

³²⁵ Lacob, *supra* note 13, at 685.

³²⁶ Christian Science Monitor, Nov. 16, 1984, at 14, col. 1. See *supra* text accompanying notes 1-5.

³²⁷ Lacob, *supra* note 13, at 685.

³²⁸ SOUTH AFRICA 1984, *supra* note 49, at 472.

³²⁹ Wall St. J., June 20, 1984, at 35, col. 2.

³³⁰ See *supra* note 49 and accompanying text.

³³¹ Wall St. J., June 20, 1984, at 35, col. 2.

³³² *Id.*

³³³ Gould, *supra* note 8, at 122.

³³⁴ See *supra* text accompanying notes 47-48. Barrell, *supra* note 47, at 953; Marsh, *supra* note 22, at 52; Gould, *supra* note 8, at 104.

³³⁵ N.Y. Times, Aug. 1, 1982, at 1, col. 3.

³³⁶ *Id.*

³³⁷ SAAWU led political opposition to the proposed independence of Ciskei. See *A Fast Rise for South Africa's Black Unions*, Bus. Wk., October 19, 1981, at 110; N.Y. Times, June 28, 1981, at 3, col. 3.

³³⁸ N.Y. Times, Aug. 1, 1982, at 1, col. 3. MACWUSA's sister organization, the General Workers Union of South Africa (GWUOSA), is another of the more militant unions. SOUTH AFRICA 1984, *supra* note 49, at 473. For a discussion of what it means to be banned, see *supra* note 48.

opposition to the Sullivan Principles, calling them "a toothless package" and a "piecemeal reform" that allows for the the perpetuation of apartheid.³³⁹

VI. THE SPECIAL CASE OF THE MINING INDUSTRY

Before concluding, this Comment will examine the special case of the mining industry. There are two reasons why this particular sector of the economy merits special consideration. First, although the labor legislation affecting the mining industry has been subjected to recent pressures and changes, it has developed separately from that of other industries. Second, the experience of black mining unions serves as a good example of how black pressure has led to legislative change, which in turn has led to further pressure.

Historically, the mining industry has been more resistant to black labor advances than any other.³⁴⁰ The legislation regarding mines has developed separately from the 1956 Industrial Conciliation Act, and derives primarily from the Mines and Works Act of 1956.³⁴¹ In both coal and gold mines, black unions in the past have been extremely weak.³⁴² The labor conditions confronting the black miner are so poor, however, that the potential power of unions has always been attractive.

Wages have been particularly low in the mining industry. Even though the pay has increased substantially over the past decade, the wage gap between black and white miners has grown wider.³⁴³

Another problem facing black miners concerns the health and safety conditions of the mines. From 1972 to 1982, 8209 miners were killed, and in 1983, the Hlobane colliery explosion took sixty-four lives and received international attention.³⁴⁴ Upon investigation, the International Mineworkers Federation determined that the explosion probably resulted from a series of neglected safety checks, and that, in general, South African collieries were six times more dangerous than those in Great Britain.³⁴⁵

Perhaps the most caustic of all issues, however, is the system of job reservations that limits blacks to inferior, lower paying positions.³⁴⁶ The Mines and Works

³³⁹ Davis, Cason & Hovey, *supra* note 25, at 552.

³⁴⁰ Christian Science Monitor, June 10, 1983, at 12, col. 1.

³⁴¹ Mines and Works Act, 1956 STAT. S. AFR. No. 27.

³⁴² See generally *South Africa: The Miner's Cauldron*, *supra* note 27. The African Mineworkers Union did gain a considerable following in the 1940s, but the state used the military to repress strike activities. See discussion *supra* notes 25-27 and accompanying text. See also Gould, *supra* note 8, at 103.

³⁴³ In the early 1970s, the average white miner made twenty times more than the average black miner. Today, the ratio has dropped to 5.5:1, but the average black wage of R286 per month is barely at the subsistence level. See *South Africa: The Miner's Cauldron*, *supra* note 27, at 1.

³⁴⁴ *Id.* at 2.

³⁴⁵ *Id.* The National Union of Mineworkers has subsequently supported any member refusing to work because of suspected unsafe conditions. *Id.*

³⁴⁶ Christian Science Monitor, June 10, 1983, at 12, col. 1.

Act reserves thirteen key occupations, including blasting and cage supervision, to whites.³⁴⁷ The number of white miners in these key positions has declined thirty-seven percent since 1960, and it is evident that production will stagnate unless blacks are admitted into skilled positions.³⁴⁸ The final report of the Wiehahn Commission, in fact, recommended that all forms of job reservations be abolished in mines.³⁴⁹ The powerful white Mineworkers Union, however, has vehemently opposed repeal of the Mines and Works Act, and has threatened to strike if the Wiehahn proposals are enacted.³⁵⁰

The Chamber of Mines granted access to unions wishing to organize black miners in 1982,³⁵¹ and the National Union of Mineworkers (NUM) was founded in October of that year.³⁵² Since that time, the NUM has become the largest and most influential of the black mining movements.³⁵³ The NUM has grown to 110,000 members in twenty-three mines,³⁵⁴ and has won recognition in eight gold mines and five collieries.³⁵⁵ Affiliated with CUSA, the NUM has been involved in unprecedented negotiations with the Chamber of Mines.³⁵⁶ The NUM, considered relatively moderate, has focused on the development of local organization through shaft stewards and the recruitment of members in company-owned living compounds.³⁵⁷ It has avoided most political issues to concentrate on wages and health and safety issues.³⁵⁸

On September 16, 1984, the NUM declared the first legal strike in mining history.³⁵⁹ The strike option was considered after negotiation with the Chamber

³⁴⁷ *Undermining the Mines*, ECONOMIST, Oct. 10, 1981, at 76.

³⁴⁸ Wall St. J., Dec. 10, 1981, at 35, col. 2.

³⁴⁹ *Id.* The government accepted, in principle, the goal of ending job reservations in the mines, but has left the matter for the mining companies to work out. Christian Science Monitor, Jan. 22, 1985, at 10, col. 4.

³⁵⁰ *Undermining the Mines*, ECONOMIST, Oct. 10, 1981, at 76.

³⁵¹ SOUTH AFRICA 1984, *supra* note 49, at 477.

³⁵² *Black Miners Drive a Wedge into Apartheid*, Bus. Wk., May 2, 1983, at 46.

³⁵³ Of 428,000 blacks working in gold mines and 56,000 working in coal mines, the NUM claims a recruitment rate of 5,000 per month. See *South Africa: The Miner's Cauldron*, *supra* note 27, at 2. As recently as two years ago, the NUM boasted only 12,000 members. See L.A. Times, June 19, 1983, sect. IV, at 2, col. 2.

³⁵⁴ Christian Science Monitor, Jan. 22, 1985, at 9, col. 4.

³⁵⁵ *South Africa: The Miner's Cauldron*, *supra* note 27, at 1.

³⁵⁶ *Id.* The Chamber of Mines is an employer organization accounting for 85% of the production and employment in the mining sector. SOUTH AFRICA 1984, *supra* note 49, at 476. One function of the Chamber is the negotiation of conditions of employment with recognized trade unions. The terms of such agreements are used as standards throughout the industry. *Id.*

³⁵⁷ *South Africa: The Miner's Cauldron*, *supra* note 27, at 1. The NUM decided at a recent conference to register with the government. Christian Science Monitor, Jan. 22, 1985, at 9, col. 4. In addition, the NUM has joined the newly-formed federation, COSATU. N.Y. Times, December 1, 1985, at 1, col. 1. See *supra* note 322 (discussion of COSATU).

³⁵⁸ *South Africa: The Miner's Cauldron*, *supra* note 27, at 1.

³⁵⁹ The disturbances began on June 21, 1984, when the white Chamber of Mines decided to forego further wage negotiations with the NUM and to declare an industry-wide pay increase. See *South Africa: The Miner's Cauldron*, *supra* note 27, at 1; Christian Science Monitor, Jan. 22, 1985, at 9, col. 4.

of Mines regarding wages proved futile.³⁶⁰ The strike, however, turned violent, and led to illegal wildcat strikes.³⁶¹ Nevertheless, the NUM won wage concessions, and emerged from the strike with renewed confidence.³⁶² The growth and power of the NUM has surprised the Chamber of Mines, and has caused a split in the ranks of white management. Some managers feel that the NUM should be checked while it is still fairly young, while others believe that the union should be allowed to carry on its recruitment unhindered.³⁶³ Since most managers feel that negotiations with a union are preferable to mob violence, the future of the NUM appears promising.³⁶⁴

VII. CONCLUSION

There can be little doubt that the black labor movement in South Africa has gained leverage. The size and number of black unions have increased proportionately with the successes of these unions on matters of wages and recognition. For the first time, the organization of blacks has been accepted by both business and government.

The recently enacted legislation can be seen as an experiment in social accommodation; benevolent reforms that can be easily repealed if unions become too unruly. Certainly the checks on the black unions are substantial, and the right to strike is severely hampered by the legislation. A registered black union can be more easily monitored for signs of political activism, and the state has an array of internal security measures available with which to punish nonconforming unions.

If the legislation were seen only in this light, any chance for true change within the labor system would be quite remote. If the reforms were simply paternalistic measures that could easily be revoked, then unions would be destined to be eternally fragile. It is clear, however, that the motivation for the recent legislation has little to do with good will.

The reason for the accommodation of black unions is not benevolence, but necessity. The government has recognized that the workplace functions far more efficiently when businesses can negotiate with organized unions rather than with violent mobs. Pragmatism has led businessmen to accept unions, and may thus act to preserve these unions.

³⁶⁰ Christian Science Monitor, Jan. 22, 1985, at 9, col. 4.

³⁶¹ *Id.*

³⁶² *Id.* Action by the National Union of Mineworkers in September 1985 was not so successful, however, as a strike was suspended when mining companies threatened to dismiss and evict the workers from their hostels. N.Y. Times, September 6, 1985, at 8, col. 1.

³⁶³ *South Africa: The Miner's Cauldron*, *supra* note 27, at 1.

³⁶⁴ *Id.*

The black unions, once recognized as economically necessary, are far more stable and, in turn, more powerful. A repeal of the legislation would not only hinder black labor in the short-term, but would be detrimental to the long-term success and growth of the South African economy.

Other business considerations make up another major reason for the growing black labor movement. It has become an economic necessity that blacks be trained and recruited for more advanced positions because of the shortage of skilled white labor. The economy would not be able to function effectively without an increase in the number of skilled black workers.

A black worker, active in a recognized union and employed in a skilled position, is in an excellent bargaining position. Any adverse government action could lead to both economic disaster and eventual mob violence.

It is likely that the newly enlightened black unions will not be satisfied with changes in industrial law; political activism is sure to follow. It is also likely that the initial government response will be one of police and military repression. The leverage gained by the black union movement, however, will eventually cause the South African regime to realize that it faces a choice: either accommodate black demands and gradually dismantle apartheid, or resist and precipitate violent revolution.

Mark Wiseman