

Legislation, registration and emasculation

In January 1980, 14 affiliates of Fosatu applied for registration. **Martin Nicol** questions the move by Fosatu affiliates to register and suggests that the independent unions should not register.

The position in which African trade unions found themselves after the Industrial Conciliation Amendment Act, came into force is unprecedented in their history. They have never before been offered the option of gaining legal recognition. Indeed, one could argue that legal recognition was never seriously a policy possibility for the state until the mid-1970s. A change in state policy towards African unions was heralded by the appointment of the Wiehahn Commission in 1977. The legislation following the Commission represents a fundamental shift in the attitude of the state to the manner in which industrial conflict should be contained. Today, the unions are given a choice. They are offered the possibility of legal recognition and participation in the structures of the Industrial Conciliation Act. This offer is, however, tied to certain conditions, which reflect a new state initiative to crush progressive tendencies in

the union movement.

Again, today there exists a greater potential for the African trade union movement to oppose the 'new dispensation'. But the tendency so far has been for African trade unions to take actions calculated more to support the state's initiative than to undermine it. The decision of the African trade unions over registration must obviously take account of the motives of the state in offering legal recognition. The aim of the state is to foster the growth of 'responsible' bureaucratised African trade unions, ideally with a membership of more-skilled workers. These will slot into the works council/industrial council system alongside the older registered unions. The state offers recognition on its own terms.

UNION REACTIONS TO THE NEW ACT

The reactions of parallel unions to the legislation have been predictable. TUCSA, which had always refused to embark on any real campaign to organise African workers, suddenly began to encourage its affiliates to form parallel African unions to take advantage of the new dispensation. Unions belonging to the Consultative Committee of Black Trade Unions have not taken a united stand on registration. Several of the unions are considering registration while expressing reservations about the continued ban on foreign members and provisional registration.

The Western Province General Workers Union, the Food and Canning Workers Union and the African Food and Canning Union took a firm stand against the report of the Wiehahn Commission at the outset. These unions have passed a resolution not to consider registration until the laws on provisional registration and the ban on racially mixed unions are lifted and they are given a clear assurance 'that none of the new controls proposed by the Wiehahn

Commission will be introduced into the law'.

Fosatu's response to Wiehahn was not at all clear-cut. It welcomed the initial report but severely criticised the government response to it. It seemed to see a great difference between the recommendations of the Commission and the Industrial Conciliation Amendment Act. This difference was pictured as being over the Commission's proposal that all black workers be permitted to belong to registered unions and the legislation's exclusion of contract workers. When this aspect of the law was changed by ministerial decree Fosatu still declared its dissatisfaction with the racial restrictions on union membership, the wide powers of the minister, the registrar, the Industrial Courts and NMC and the provisions for provisional registration. Nevertheless, Fosatu affiliates decided that they would apply together for registration on condition that their unions were exempt from certain aspects of the law of which they disapproved (racial bars, provisional registration, no right to appeal to the courts over the Industrial Courts, the possibility that the minister might split up existing unions).

Fosatu has made it clear that it was applying for registration reluctantly. Fosatu believes that registration (subject to its conditions) is a necessary defence against the parallel unions. Fosatu seems to fear that if unions stay unregistered, the bosses will refuse to meet with them as they have in the past for this reason. Fosatu believes that the most important advantage of registration is that it will remove one excuse the bosses use to refuse recognition. But this is hardly the most important excuse. Strength of organisation will always be the determinant of whether a democratic union is recognised. The question is whether unions will be able to maintain a truly democratic structure under the controls imposed by registration.



Fosatu is aware of the disadvantages of incorporation into the industrial legislation system and apparently does not intend to enter industrial councils. But the bosses are just as likely to refuse to talk to a union, which does not join the industrial council, as they are to reject an unregistered union.

Registration will tend to strip independent unions of the factors, which distinguish them from the parallel unions. The only defence against parallel unions is democratic organisation and a reliance on the organised strength of the workers. If unions look to registration, or a closed shop agreement, or a benefit fund, or membership of an industrial council for their existence, they will become indistinguishable from the bureaucratised welfare institutions, which commonly pass for trade unions in SA.

WEHAHN AND WEAKNESS OF AFRICAN UNIONS

The new Act must be seen in the first instance as a part of the state's response to the broader struggles of the popular classes. The legislation, in this context, performs two central functions. Firstly, it is framed and calculated to encourage the organisation of skilled black workers and to exclude the organisation of unskilled migrant workers. It will also attack the informal job reservation, which currently hinders the upward movement of the top ranks of black workers and supervisors. All the 'positive' aspects of the legislation are intended to benefit only this section of the working class. The legislation aims to divide the working class.

Secondly, the legislation seeks to entrench reformist political practices in the

African trade union movement. It attempts to draw them into an industrial relations system which pre-disposes unions to become bureaucratic and hence allows a petty bourgeois leadership to remove control over the union's affairs from the working class. The act of registration alone will not transform a democratic union in this manner, but the web of controls and regulations encouraging the making of major decisions by the leadership as opposed to the workers, encouraging the use of law as opposed to organisation as the first weapon of the union, surely will.

A case in point is the example of the Fosatu-affiliated United Auto Workers Union in the continuing struggles in Port Elizabeth. The black workers at the Ford Struandale plant went on strike in protest against the forced resignation of Thozamile Botha, a Ford employee who was head of the Port Elizabeth Black Civic Organisation (Pebco). As a result of this action, Botha was re-employed. In the first three weeks of November, there were three more strikes/walk-outs, in protest against the attitudes of white workers at the plant as well as other conditions in the factory. Ford eventually dismissed 700 workers, the entire African work force at the Cortina plant. The UAW, although unregistered, is recognised by Ford as the mouthpiece of the workers - it claims membership of more than half the workers at the plant. Nevertheless, the union clearly had no hand in the organisation of the walk-outs and had no power to terminate them. Several press reports have suggested that the workers turned to Pebco to lead them, because the union was not doing enough for them. After the workers were fired, a Pebco organised committee asked to negotiate with Ford for their reinstatement. Ford agreed, but insisted that the UAW be present. However, the UAW

refused to cooperate with the committee, as 'this would implicate the union in the unrest'. The union stated that it would only ask Ford to re-employ those workers who were union members. The *Sunday Tribune* reported that 'Mr George Manase, national organiser of the UAW, said yesterday that the union regarded this week's strike as political and its move to have union members re-employed was to keep politics out of the factory'.

This is exactly the stance, which the state wishes to encourage in African trade unions. These unions should steer clear of politics; resist all pressures to add their organisational strength to the political struggles led by the radical petty bourgeoisie. One should not gauge Fosatu's attitude to these questions from the actions of the UAW alone, however, this attitude to politics seems to command support within Fosatu as a whole.

Fosatu's ban on politics is not a neutral stance. To see this, we have only to contrast its attitude to compromises with reactionary white petty bourgeois unions like the Boilermakers Society with its attitude to alliances with black mass-based movements. The attitude of the metal unions affiliated to Fosatu sanctions the operation of a parallel union, which aims to get acceptance through its ability to control its members. On the other hand, Fosatu seeks to distance itself from Pebco, even when workers are raising Pebco demands in the factory itself. A willingness to compromise with the state and white workers, but not with black political movements, which command the support of the majority of a union's membership still further, follows the designs of the Wiehahn Commission.

Registration not only associates unions with the state's intentions to divide the working class and instill in their organisations reformist political practices, it gives active support to these intentions. In so doing, registration will serve to range unions against the spontaneous struggles of the popular classes.

REGISTRATION AND LEGALISM

The question, which remains to be answered,

is why have many independent unions decided to apply for registration. Can a mode of operating be read into these unions' actions which makes their application for registration no surprise? Or is it just an 'error of judgment' which will doubtless be set to rights through a withdrawal of the registration requests as soon as the full intention of the state is revealed after the next Wiehahn report?

It is appropriate here to note the implications of the tradition of 'legalism' in which Fosatu affiliates and other unions have placed themselves. The registered trade union movement in South Africa has throughout its history, placed an extreme reliance on the rights which unions and workers have had under the law. This applies not only to accepting the law as setting the limits to these rights, but more particularly to using legal procedures (and the associated means of petitions, deputations and press campaigns) to secure the enforcement of these rights.

The point I wish to make is that registered unions are not, and have generally never been, firmly based on anything, which could meaningfully be termed the organised strength of the workers. Isolated demands have been won through sudden displays of militant worker solidarity, but the unions have not organised in such a manner as to make worker unity the main and constant base of their strength. In general, workers are brought together only sporadically for banner waving meetings to show support for wage or other demands to be put before one of the councils or boards. Strikes are infused with spontaneity and are often used by unions merely to force to the attention of the Department of Labour or the industrial council, that a 'dispute' exists and that a suitable board should be appointed as soon as possible. The base of these unions is not the organised workers. They owe their existence and success rather to the legal supports of the industrial legislation.

The unregistered unions, having much less recourse to law, have had to rely to some extent on the organised strength of the workers for their successes. But frequently they have used the excuse of

inferior legal rights, in particular the lack of legally sanctioned collective bargaining structures, to explain the failure of unions to be an effective means of winning further victories. It is true that the limits to legalism placed on them by their unregistered status make the law alone an unsatisfactory means for advancing their members' interests. But this has not caused most unions to organise strongly. They have merely sought alternative bases for a legalistic strategy. Such bases have been found either in parallelism or in overseas pressures on foreign firms and 'Codes of Conduct'. Union recognition has been sought on the basis of registered union patronage or on the goodwill of multinationals rather than through the organised strength of the workers. The united action on the basis of which many unions won their first demands was seldom successfully transformed into a strong organisation to take the struggle forward. Organisation lapsed as union leaders succumbed to the temptation of legalism and international pressures.

Unregistered unions have been unsuccessful in weaving strength from the law, international pressure and the enlightenment of big business. Some see the root cause of their failure to advance their member's interests in the refusal of management to meet with them and negotiate legally binding agreements. They look to registration to correct the situation. Incorporation under the new Industrial Conciliation Act will indeed offer the law new prospects to prove itself a sound and effective weapon of the unions. Quite apart from legally negotiated agreements, one can envisage battlefields of new legal cases for the Fosatu unions, a challenge of the registrar's refusal to register them over paper parallel unions, court applications to procure the extension of their registration certificates (new occupations and new areas) and urgent interdicts against the admission of employer-built parallels into industrial councils.

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