

SEVENTEENTH TRIPARTITE

Official texts of
* Conclusions of the 17th Indian
Labour Conference * Documents on
Industrial Relations, Works Com-
mittees, etc. * AITUC's Me-
morandum on Government's
Labour Policy

1959

ALL - INDIA TRADE UNION CONGRESS

New Delhi

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On The 17th Indian Labour Conference

Resolutions of the Working Committee of the AITUC

(New Delhi, August 8—10, 1959)

The Working Committee of the AITUC notes that the 17th Session of the Indian Labour Conference held at Madras in July 1959 has made no appreciable headway in arriving at tripartite agreements on the many pressing problems faced by the trade union movement.

The Delhi and Nainital tripartites had undertaken the task of evolving general conventions and principles affecting such vital problems as rationalisation, minimum wage, closures, recognition of trade unions, the Code of Discipline, etc.

It was but natural that a review of these conventions in their actual working should have formed an important part of the 17th Madras Tripartite.

But the review presented by Government was sketchy and unsatisfactory and failed to nail down the essential fact that the Code had not been worked in its proper spirit by the employers, that recognition of trade unions and collective bargaining which are the foundation pillars of industrial relations had made little progress under the conventions of the 15th and 16th Tripartite Conferences.

The 17th Madras Tripartite was scheduled to give concrete shape to some of the conventions of the previous tripartites. The main principles of the Code of Discipline to be effective must find a legal body in the Industrial Relations Law of the country. As such, all the main ideas of those conventions in the matter of recognition, conciliation appeals, quickness of decisions, verification, ballot, etc., were bound to raise

questions for clarification and where the law and the conventions conflicted, demand harmonisation. As such, the Madras Tripartite had to function more as a Committee on Industrial Relations Law and clarifications and rulings than ever before.

But it is unfortunate that the concretisation and clarification of the conventions was being attempted in such a way as to put more curbs on trade union rights, and permit the Government officialdom to interfere in the day-to-day running of the unions, ban formation of new unions which were not to their liking or obstruct their growth. The State Governments, particularly of M.P. and Bihar were seen to be keen in introducing laws so as to strengthen the Government-sponsored and employer-approved unions of the INTUC and disarm the workers in their struggle for better life.

In spite of this, the trade unions reacted sharply to the demand to permit the Registrar of Trade Unions to decide whether he should allow a new union to be formed or not. There was also reluctance to allow powers to Government to sit in prima facie judgment over the nature of disputes and the nature of the unions who defended them before such disputes were taken up for adjudication. Despite the fact that the Government's policy was to favour the INTUC through all these measures, their very draconian look made even the INTUC wince at them. Hence the attempt to load the conventions and the law against the workers and the unions of the left, though not completely defeated, was blunted to a large extent.

As a result of the protest of workers and unions that many trade unions and their officials sign agreements without reference to the workers concerned and even their own executives (as was particularly seen in Jamshedpur), the Government had put on the agenda a proposal that the draft agreements be exhibited on the notice boards of the factory and any objections raised by workers be given consideration. If passed, this would have introduced some amount of democratic functioning in those unions which are run bureaucratically. The AITUC endorsed this proposal. It proposed that all agreements made

by a union must be submitted for ratification at least to the executive of the union, let alone the general body of workers.

But all these suggestions, including the most modest one on the agenda were opposed by all the three Centres in a most vehement manner.

The AITUC holds that in conditions of rivalry of unions, the best way to measure which is representative of workers and commands support of the majority is to take a ballot of all the workers or of all the membership of the competing unions pooled together for the ballot. The Kerala Government had put a provision for ballot in their Industrial Relations Bill, which was put before the Tripartite by the Government of India.

The INTUC opposed the ballot. The HMS, however, supported ballot along with the AITUC. But the conference as a whole would not accept it. Verification is no substitute for the ballot and the AITUC will continue to campaign for the ballot.

The Committee takes a grave view of the fact that the 17th Indian Labour Conference could not make any headway in the matter of recognition of trade unions. Curiously enough, official thinking on this question had been more on how to effect derecognition rather than provide guarantees for compulsory recognition of trade unions.

The Working Committee also notes that attempts are being made, as was evident at the Madras Session of the Indian Labour Conference, to enact legislation in the different States on the lines of the notorious "Bombay Industrial Relations Act," impose further curbs on trade union rights and exercise greater Governmental control on the functioning of trade unions. Though the attempts in this direction made at the 17th Indian Labour Conference were, in the main, defeated, the Working Committee warns the workers and trade unions to be ever vigilant on this question and thwart every measure contemplated by the Government to curb democratic trade unionism and impose Government-sponsored unions of the INTUC on the working class.

On the whole the Madras Tripartite was not an advance, but in fact a slight retreat for the working class. It could have

been more serious but for the opposition shown by the trade unions. The AITUC in its Statement at the Madras Tripartite, described the situation since Nainital, in the following words:

“The Labour Minister, Mr. Nanda, has personally intervened in the coal disputes and in the banking dispute. But such interventions while securing temporary relief, do not make up for a policy as a whole. They become only benevolent exceptions to a bad labour policy, which does not allow urgent questions of life of the workers to be resolved in their favour as a natural result of a correct policy.

“The promises made at Nainital and perspectives held before the workers have been belied for the most part. Where small fulfilments have been shown, they had to be extracted by prolonged suffering and struggles of the workers.

“This not only shows the labour policy of the Government in actual practice, it also shows that what is called ‘*planned development*’ has no plan unless all these retrenchments, closures, victimisations, and lockouts are a part of the ‘*plan*’ of the Government and the employers for better development of the profits of the gentlemen of enterprise.”

It is necessary to act more unitedly to change the situation in favour of the workers.

ON BALLOT

This meeting of the Working Committee of the AITUC reiterates its demand for ballot as the only sure and democratic form of ascertaining which union commands the confidence of the majority of the workers. The Government of Madras tried this in two units in Madras and the Kerala Industrial Relations Bill has invoked this as a sure test.

The principle of verification was advanced in Nainital at the 16th Indian Labour Conference. The verification of membership of central trade union organisations, for the year 1957-58 even with the revised procedure adopted at Nainital, only affirms the need for ballot.

This meeting re-states the decision of the Bangalore Session of the AITUC General Council and calls upon the working class and, more particularly, the affiliated unions to popularise this demand for ballot for democratically deciding as to who is the real representative union for them.

ON PAY ROLL SAVINGS SCHEME

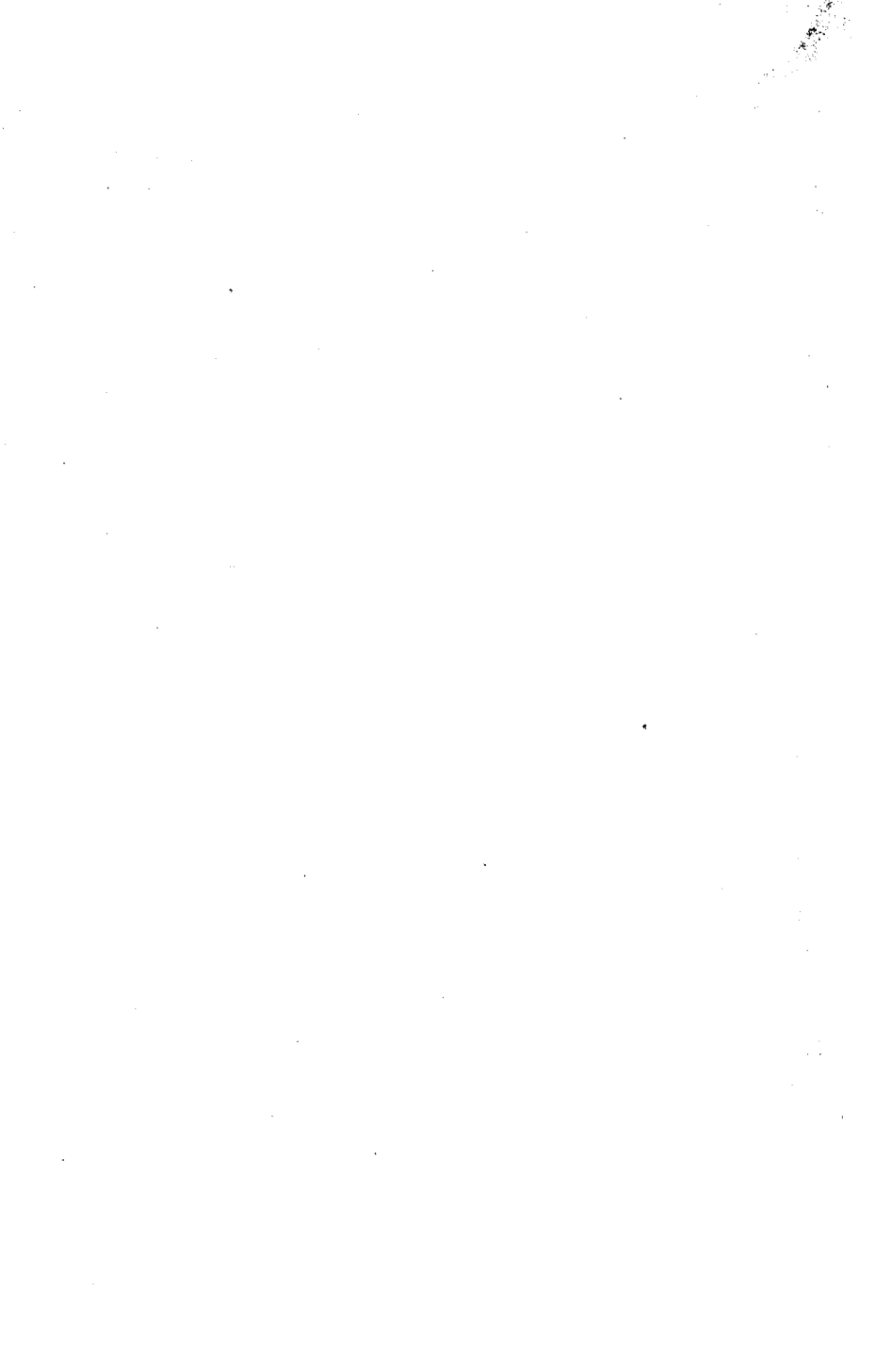
At the 17th Indian Labour Conference, a proposal was made by the Government that workers should authorise employers to deduct monthly from wages, certain amounts of money to be deposited in the Small Savings Scheme. It was further proposed that the pass books will remain with the employers.

The representatives of the INTUC, HMS and UTUC agreed to this proposal on the ground that this helps the national economy and encourages savings by the workers.

While the AITUC is not less anxious to help the national economy, it has opposed this Scheme. We feel that already quite a large percentage of deductions from wages are taking place, for Provident Fund and State Insurance. Crores of rupees have accumulated in the hands of the Government on this account. But the workers do not get full benefits from these accumulations. Large sums of provident fund taken from the workers have been misappropriated by some fraudulent employers against whom very little action is taken by Government. Deductions from our wages for ESI still bring us no hospitals or family treatment.

Hence the AITUC refuses to be a party to any further deductions from wages in the name of savings. The AITUC also flatly opposed keeping of the savings books with the employers and thus make their accounts, prisoners of the employers.

The AITUC directs all its unions to acquaint the workers of this resolution and warn them against these deductions.



Chapter 1

Main Conclusions Arrived At The 17th Indian Labour Conference (Madras Session)

1: ACTION TAKEN ON THE DECISIONS OF THE 16TH SESSION OF THE INDIAN LABOUR CONFERENCE

The statement of action taken on the decisions of the previous session placed before the Conference should give more factual information than was being done at present. (*See Chapter 3*)

2: INDUSTRIAL RELATIONS

A. *Machinery for collective bargaining and the settlement of Industrial Disputes*

1. Recognition of Unions

(a) The procedure for verification of membership of unions for the purpose of recognition and representation in Committees and Conferences as formulated at Nainital Conference and subsequently clarified at the meeting of trade union representatives held on the 21st March, 1959 (*see pp. 126-134*) was confirmed.

(b) Where there is only one union, the employers may recognise it even if it does not fulfil the condition of 15% membership or of one year's standing.

(c) Where there are more than one union and none of them fulfils the membership condition laid down in the criteria for recognition, as evolved at Nainital, none would be entitled to recognition. The suggestion for recognising a union having the largest membership, but having less than 15% membership, was not favoured.

(d) The words 'industry' and 'local area' occurring in clause 3 of the criteria for recognition of unions should be defined by the Government concerned. The provisions contained in the Industries (Development and Regulation) Act and other enactments might be examined for the purpose and the matter placed before the next meeting of the Standing Labour Committee.

(e) The question whether a representative union should represent also the technicians, the supervisory staff, etc., was postponed for further consideration in consultation with the interests concerned.

(f) A union would be entitled to recognition provided it has committed no breach of the Code of Discipline for one year immediately before claiming such recognition.

(g) When a union has been recognised, there should be no change in its status for a period of two years from the date of such recognition, subject to the requirements of sub-clause (h).

(h) Failure to observe the Code would entail de-recognition normally for a period of one year. This period may, however, be increased or decreased by the Implementation Committee concerned. It would be open to the employer to recognise another union during this period provided it fulfils all necessary conditions for recognition.

(i) In States where statutory provisions concerning recognition, etc., exist and they are at variance with the criteria provided in the Code of Discipline, the legal provisions will override the provisions of the Code till the State Government concerned modifies them.

II. Validity of agreements reached through direct negotiations between the parties

The consensus of opinion was that an agreement entered into by a representative union should be binding on all the workers. Opinion was, however, divided on the question whether the agreement should be ratified by the executive of the union or displayed on the notice board for the information of the general body of workers. It was, therefore, agreed that the existing position regarding the validity of agreements should remain unchanged for the present.

III. Voluntary Arbitration

(a) Increased recourse should be had to mediation and voluntary arbitration and recourse to adjudication avoided as far as possible. Matters of local interest not having any wider repercussions should, as a general rule, be settled through arbitration.

(b) While there would be no element of compulsion in the matter from Government, the employers agreed to extend their full co-operation in developing this new approach to settlement of industrial disputes through mediation and arbitration.

(c) A panel of arbitrators should be maintained by the Central and State Governments in order to assist the parties in the matter of choosing suitable arbitrators. The parties, however, will be at liberty to choose arbitrators outside the panel.

(d) The question how far the provisions of the Indian Arbitration Act could be usefully made applicable to the arbitration procedure provided under the Industrial Disputes Act, 1947, should be examined afresh by the Central Government.

(e) The principles and norms so far evolved through awards and judicial decisions on important issues should be compiled, and published and made available for the guidance of authorities, parties and arbitrators.

(f) Every case of refusal to have recourse to arbitration should be reported to the evaluation and implementation machinery in the States or at the Centre, as the case might be.

IV. Model principles for reference of disputes to adjudication

Model principles as given hereunder were approved. It was also agreed that the question of evolving a clear definition of the term 'illegal strike' would be considered further.

MODEL PRINCIPLES FOR REFERENCE OF DISPUTES TO ADJUDICATION

A. *Collective disputes*

(1) All disputes may ordinarily be referred for adjudication on request.

(2) Disputes may not, however, be ordinarily referred for adjudication:

(i) Unless efforts at conciliation have failed and there is no further scope for conciliation and the parties are not agreeable to arbitration.

(ii) If there is a strike or lockout declared illegal by a court or a strike or lockout resorted to without seeking settlement by means provided by law and without proper notice or in breach of the Code of Discipline as determined by the machinery set up for the purpose unless such strike (or direct action) or lockout, as the case may be, is called off.

(iii) If the issues involved are such as have been the subject matter of recent judicial decisions or in respect of which unduly long time has elapsed since the origin of the cause of action.

(iv) If in respect of demands other legal remedies are available, i.e. matters covered by the Factories Act, Workmen's Compensation Act, Minimum Wages Act, etc.

B. Individual disputes

Industrial disputes raised in regard to individual cases, i.e., cases of dismissal, discharge or any action of management on disciplinary grounds, may be referred for adjudication when the legality or propriety of such action is questioned and, in particular:—

(i) if there is a case of victimisation or unfair labour practice,

(ii) if the standing orders in force or the principles of natural justice have not been followed, and

(iii) if the conciliation machinery reports that injustice has been done to the workman.

V. Revival of the Labour Appellate Tribunal

While the consensus of opinion was in favour of the revival of the Labour Appellate Tribunal, it was emphasised by some members that the mere existence of the Labour Appellate Tribunal could not by itself eliminate appeals being taken to the Supreme Court. Other suggestions made included the creation of a special Labour Bench in the Supreme Court and similar Benches in the High Courts, providing in the Industrial Disputes Act, a revision to the High Courts as under Section 115 of the Civil Procedure Code. It was also suggested that restrictions should be placed on appeals going to the Labour Appellate Tribunal by providing that no appeals should lie unless an important point of law or principle or a large sum of money was

involved or the lower Courts certified that a particular case was fit for appeals.

It was decided that the views expressed would be examined and a final decision taken by Government, after placing the whole matter again before the Standing Labour Committee.

VI. Machinery for dealing with disputes relating to individual dismissals, etc.

(a) Disputes relating to individual cases including dismissals should, as far as possible, be sponsored by a union.

(b) In the absence of a union to sponsor such cases, or the union concerned declining to sponsor them, the aggrieved individuals might approach the Government conciliation machinery for redressal.

(c) The Government official authorised for the purpose should be empowered to refer such cases to a labour court for adjudication.

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B. Problems relating to Trade Union Organisation

I: Registration of Trade Unions

(a) Application for registration should be disposed of expeditiously. In practice it should not take more than three months to complete the procedure finally. All cases in which the period exceeds three months should be reported to the State Implementation Committee. For this purpose, the time taken by the applicant in carrying out any correction in the application forms will be excluded. The authority should indicate all the defects and mistakes in the application immediately at the time.

(b) While no further restraint should be placed in the law regarding the minimum number of persons who must be shown as members for the purpose of securing registration, care should be taken by unions that the number does not fall short of 5% of the full strength of workers who can be brought into the union.

II. Statutory limit on the number of outsiders on the executives of trade unions

(a) There should be no change in the existing legal provision in respect of statutory restrictions on the number of outsiders on the executives of trade unions.

(b) Conduct of the affairs of the trade union should be placed more and more in the hands of persons drawn from the ranks of the workers engaged in industry; or who have had experience of actual work in industry. To facilitate the process, the following steps should be taken:—

(i) Educational activity for the benefit of the workers and their children should be greatly extended and in this, besides the State, the unions and the employers should participate and assist as much as possible. An increasing number of scholarships should be provided for workers and their children. Evening classes and extension courses should be developed on a large scale.

(ii) The work of trade unions and the Labour Departments of Governments and the undertakings should, as far as practicable, be carried on in the regional language so far at least as the workers themselves are concerned.

(iii) Texts of laws, rules, orders, awards and agreements should as far as possible, be made available to workers in the regional language.

(c) The existing legal provisions on the subject of victimization contained in the Industrial Disputes Act, the Bombay Industrial Relations Act and the proposed Madhya Pradesh Labour Relations Bill should also be examined with a view to providing further protection against any possible victimization, if necessary. The organisations would also give further thought to the problem and forward their suggestions to the Government of India for decision by the Standing Labour Committee or the Indian Labour Conference.

III. Membership Fee

The proposal for making legal provisions in respect of a minimum fee of 25 *naye paise* per month was accepted.

IV. Rules and Constitution of Unions

The central organisations of labour will try to ensure that the unions affiliated to them carry out the provisions and requirements of their rules and constitution, especially with regard to the holding of meetings, election of office-bearers and adoption of annual reports and statements.

V. Decentralisation of the Work of the Registrars of Trade Unions

The proposal concerning decentralisation of the work of the Registrars and delegation of the powers of the Registrars to other authorities, viz., Additional and Deputy Registrars, with a view to avoiding delays in the registration of unions was approved.

VI. Powers of Registrars of Trade Unions

It was decided that Registrars should have powers to inspect the account books, membership registers and minute books of the trade unions to verify the correctness of the annual returns. This inspection should, as far as possible, be done at a place within a reasonable distance (within city limits or within a distance of 10 miles whichever may be more) from the office of the union concerned or at the union office itself.

VII. Restrictions on the number of Unions in an Industry or Undertaking that may be registered

The consensus of opinion was not in favour of placing any restrictions on the number of unions that might be registered.

3: WORKS COMMITTEE

A small tripartite committee consisting of four representatives each from the employers' and workers' side and a few representatives from the Government side would examine the material on the subject and draw up "guiding principles" relating to the composition and functioning, etc., of Works Committees. This committee would also consider further action in respect of worker participation in management.

4: SERVICE CONDITIONS OF DOMESTIC SERVANTS

(i) It was not considered feasible to adopt any legislative measure for the regulation of the service conditions of domestic workers.

(ii) The proposals concerning the setting up of a special employment office in Delhi (as given in Chapter 6) were unanimously approved. It was felt that experience gained from the working of this scheme in Delhi might provide the basis for further action in future.

(iii) As regards the composition of the Advisory Committee, a contemplated in the pilot scheme (*see page 99*) it was felt that representatives of the Central organisations representing domestic workers and their employers should also be included in the committee.

(iv) It was also decided that the Labour Welfare Officer and others connected with the administration of this scheme should collect, as far as possible, all the available data on the prevailing practice in respect of working hours, holiday facilities, rates of remuneration, dates on which salary was normally paid, period of employment and other privileges available so that further action might be planned on the basis of well-ascertained facts.

5: PAY ROLL SAVINGS SCHEME

The Pay Roll Savings Scheme, as set out in Chapter 7 was approved subject to the following:—

(a) The collection charges at 1% paid by Government on amounts collected in respect of the National Plan Savings Certificates should be utilised for distribution among the staff engaged in actual collection work and any balance left after such distribution utilised for the general good of the employees.

(b) The Pass Books might be kept with the employer but these should be made available by the employer for inspection by the employees concerned during working hours. The employee could also keep the Pass Book with him if he wanted to do so.

(c) A view was expressed that the collection should be made by a Governmental agency only and that the money collected should not be left with the employers.

6: PROPOSAL TO REVISE THE RATES OF COMPENSATION IN THE WORKMEN'S COMPENSATION ACT, 1923.

7: DELINKING OF PROVIDENT FUND BENEFITS FROM GRATUITY FOR THE PURPOSE OF GRANTING EXEMPTION TO ESTABLISHMENTS OR EMPLOYEES COVERED UNDER THE EMPLOYEES' PROVIDENT FUNDS ACT, 1952 FROM THE OPERATION OF THE PROVISIONS OF EMPLOYEES' PROVIDENT FUNDS SCHEME, 1952.

It was decided that a tripartite Committee should be set up to consider these two items. The Committee should meet in New Delhi sometime in the first week of September, 1959.¹

GENERAL

(i) It was agreed that the legislative and administrative policies of the Central and State Governments, and the policies of employers' and workers' organisations should not run counter to the broad lines of policy that may be adopted by the Indian Labour Conference from time to time after full tripartite discussions in the Conference. Proposals involving any new major point of policy or principle should generally be undertaken after consulting the Indian Labour Conference or the Standing Labour Committee.

(ii) The workers' organisations desired that the Code of Discipline and other decisions taken in respect of recognition of unions, mediation and arbitration should apply to the public sector also, with such adjustments as might be considered necessary. Facts regarding non-observance of these decisions in the public sector should be forwarded to the Ministry of Labour and Employment so that these could be taken up with the Ministries concerned.

(iii) A suggestion was made that some convention should be laid down regarding invitation to and participation by observers and advisers in the work of the tripartite bodies. It was decided that the question of composition of the Conference and Committees be referred to the Committee to be set up to consider items 5 and 6 of the agenda.²

(iv) The question of preparing a record of proceedings of the conference was considered and it was felt that only a statement of the decisions and conclusions should be prepared. It was not considered necessary to prepare a summary of the entire proceedings. As far as practicable, the statement of conclusions of the conference should be finalised by a small drafting committee and placed for adoption during the conference itself and circulated to the organisations participating in the conference.

¹ The Committee met in Delhi on September 5, 1959. The conclusions of the meeting are given on Pp. 17-19.

² This Committee met on September 5, 1959 in Delhi. The report of the Committee is given on Pp. 17-19.

(v) Sufficient notice should be given to the parties concerned before any allegations or complaints are made against them in the conference so that they may be in a position to collect the relevant facts and give an adequate reply to the charges.

(vi) It was felt that it would be in the spirit of the voluntary obligations evolved in this conference if all the parties concentrate on the implementation of these obligations instead of levelling charges of violation against one another.

(vii) The question of delay in setting up tripartite implementation committees in some of the States was raised by some workers' representatives. It was announced that the Governments of Bombay and Madhya Pradesh would immediately set up such Committees.

Chapter 2

Report Of The Committee Of The 17th Indian Labour Conference

The Committee met on September 5, 1959 (at New Delhi) under the chairmanship of Shri Abid Ali, Deputy Labour Minister:

2. The following items were considered:—

I. Finalisation of the conclusions of the 17th Session of the Indian Labour Conference;

II. Question of invitation to various bodies for attending the Indian Labour Conference and other Tripartite Committees;

III. Delinking of provident fund benefits from gratuity for the purpose of granting exemption to establishments or employees covered under the Employees' Provident Funds Scheme, 1952; and

IV. Proposal to revise the rates of compensation in the Workmen's Compensation Act, 1923.

3. The conclusions of the Committee on the different items are as follows:—

Conclusions of ILC

I. The provisional conclusions of the 17th Session of the Indian Labour Conference, as circulated to the delegates, were finalised and approved subject to some amendments. (*The conclusions, as finally approved by the Committee, are given in Chapter I.*)

Representation at Tripartite Conferences, etc.

II. (a) The procedure followed at present in giving repre-

sentation to different organisations, etc., as set out in the Memorandum, was generally approved.

(b) It was agreed that organisations claiming representation on the Indian Labour Conference should have an all-India character with a minimum membership of one lakh spread over a number of States, and a sizable membership at least in the majority of industries. The entitlement to representation on the Standing Labour Committee should be more restricted. The allocation of seats to each organisation should be based on the relative strength of each organisation determined in accordance with the latest available data regarding its membership. It was also agreed that observers, etc., should not participate in the discussions of the conference. They might, however, speak on particular issues only with the specific permission of the chairman, if there are special reasons for the same.

(c) It was suggested that in addition to the present practice of permitting one adviser for every delegate, non-official advisers might also be allowed to attend the conference depending on the number of important items on the agenda taking into consideration the number of delegates and advisers already allowed to the various organisations. It was, however, agreed that an organisation having only one delegate might be allowed to bring one non-official adviser also. The consensus of opinion was not in favour of invitation to the members of the Informal Consultative Committee of the Parliament and organisations affiliated or not to the central organisations of workers and employers. It was agreed that the various suggestions made at the meeting should be taken into account by the Ministry of Labour and Employment while deciding these matters from time to time.

De-linking of P. F. Benefits from gratuity for granting exemption under E. P. F. Scheme, 1952.

III. It was agreed that the matter might be considered in the light of the proposals contained in the Report of the Study Group on Social Security. The representatives of the Railways expressed opposition to the suggestion for any scheme of providing gratuity in addition to the provident fund-on-basic-wages plus dearness allowance as at present available.

Proposal to revise rates of compensation in the Workmen's Compensation Act, 1923.

IV. It was agreed that:—

(a) the present system of payment of compensation in a lumpsum should be replaced by a system of periodical payments as far as practicable;

(b) the rates of compensation payable under the Workmen's Compensation Act, 1923 should be raised in accordance with the recommendations of the Study Group on Social Security;

(c) the implementation of the Employees' State Insurance Scheme should be expedited so as to cover the present coverable population as early as possible;

(d) the Employees' State Insurance Corporation would be the appropriate agency for the disbursement of the periodic payments of compensation, as now contemplated;

(e) the scope of the Workmen's Compensation Act, 1923 might be extended so as to cover persons drawing wages upto Rs. 500 per month.

The question of introducing compulsory insurance to cover the risk of accidents was briefly discussed. The employers' organisations agreed to collect and provide full information regarding the present practice amongst their affiliates in the matter of taking up such insurance policies on a voluntary basis.

Chapter 3

Action Taken On The Decisions Of The 16th Session Of The Indian Labour Conference

The statement of action taken on the decisions of the 16th session of the Indian Labour Conference was noted.

No action is called for on this.

Industrial relations

(i) Time was not appropriate for the *suspension of adjudication* for the settlement of industrial disputes, though adjudication should be the last resort in the process.

The State Governments have been requested to issue suitable instructions to the field officers of the State Industrial Relations Machinery to the effect that in all cases where conciliation fails the Conciliation Officer should make definite proposals to the parties concerned for settling the disputes by arbitration. Similar instructions have been issued by the Chief Labour Commissioner to his field staff.

(ii) The present position of the *Works Committees* should be more fully examined.

Notes on the experience of Works Committees in other countries and the functioning of such Committees in the public sector in India have been prepared and circulated along with the Memorandum on Industrial Relations. The N. C. Corporation has been asked to make a study of the functioning of the works committees in the Bombay region. The matter will be discussed in the current session of the Conference.

(iii) The Sub-Committee of the 15th Session of the Indian

Labour Conference should be requested to draft a simple and flexible *grievance procedure* in accordance with the principles evolved by it earlier.

A model grievance procedure drawn up in consultation with the State Governments was approved by the Sub-Committee with certain amendments when it met in September 1958. The amended grievance procedure has been circulated to all concerned.

(iv) The proposals made to ensure the working of evaluation and implementation machinery more effective were approved.

An Evaluation and Implementation Division as well as a Tripartite Central Implementation and Evaluation Committee have been constituted at the Centre. All State Governments|Administrations except Manipur have either set up an official cell or designated an officer to be in charge of the work relating to implementation of labour laws etc. Except Bombay, Jammu & Kashmir, Himachal Pradesh and Manipur all state Governments|Administrations have set up tripartite Implementation Committees. Jammu & Kashmir and Himachal Pradesh do not consider it necessary to set up Committees at this stage. Bombay and Manipur are considering the matter.

(v) With a view to *mitigating the evils of trade union rivalry*, a Code of Conduct was adopted at a meeting of the representatives of the different central organisations of workers.

The Code has been brought to the notice of all Central Workers' Organisations. Action is also being taken by the Evaluation and Implementation Division on cases of infringement of the Code reported to them.

(vi) (a) A trade union should prescribe a minimum membership fee of As. four a month and the Registrar of Trade Unions should be given the power to inspect the books of the union.

This will be taken up along with other amendments to the Trade Unions Act.

(b) Delay in the *registration of trade unions* should be avoided.

The State Governments have been requested to avoid delay in the registration of trade unions.

(c) If out of the 7 signatories to an application for registration, one or two got discharged during the pendency of the application and if the signatories were entitled to apply for registration at the time of the application, *registration should not be refused on the ground that they had since ceased to be workers.*

This will be taken up along with other amendments to the Trade Unions Act.

(vii) *Certain criteria for voluntary recognition of Trade Unions* were evolved. A procedure for verification of membership of trade unions was also approved.

The Criteria evolved for the voluntary recognition of trade unions now form part of the Code of Discipline which has been ratified by the organisations. These have also been brought to the notice of State Governments, Administrations and Employing Ministries. Their applicability to Corporations and Companies was discussed at the last Public Sector Conference. A revised procedure for the verification of membership of trade unions was drawn up on the basis of the principles recommended by the Conference and communicated to the Central Workers' Organisations. Certain details concerning the procedure were settled at a meeting of the representatives of the central workers' organisations held in March, 1959.

(viii) The proposals for the introduction of *union-shop* and *check off* were rejected. It was agreed that a recognised union should be entitled to collect membership fees every month within the premises of the undertakings.

The State Governments and the concerned Ministries have been addressed on this matter.

Working of the Employees' State Insurance Scheme.

(i) *The State Governments' sphere, on extension of medical care* to families should be 1/8th of the total expenditure during the Second Plan period and thereafter no revision should be effective unless mutually agreed upon.

The Employees' State Insurance Corporation have since decided that State Governments' share of medical expenditure would continue to be 1/8th even after the Second Plan period unless revised and accepted mutually.

(ii) The State Government might adopt *any system of medical care* (service, panel or mixed) which they consider most feasible.

This has been brought to the notice of State Governments. Specific proposals as and when received from the State Governments in this connection will be examined by the Corporation.

(iii) Regarding the Capitation fee to be paid to panel doctors, it was considered desirable that the Employees' State Insurance Corporation should approach the medical profession through the State Governments concerned.

The suggestion has been noted by the Corporation for guidance.

(iv) A sum of *Rs. 30 per confinement* should be paid to the wives of insured persons on extension of medical care to families.

This recommendation is being examined by the Corporation in consultation with the State Governments.

(v) (a) Some improvements in *the rate of maternity cash benefits* should be made.

The maternity cash benefits available under the Employees' State Insurance Scheme has since been raised to full average pay subject to a minimum of 12 annas per day. This has been given effect to in respect of all insured women whose right to maternity benefit commenced after 1st June, 1958.

(b) Persons suffering from T.B. should be given special cash benefits.

The question of raising the rate of cash benefits to persons suffering from T.B. is being examined by the Corporation.

(vi) The question of *revision of the waiting period* should be examined.

The matter is under examination of the Corporation. As the

recommendation would involve the amendment of the Employees' State Insurance Act, its implementation is likely to take some time.

(vii) *Families of the insured persons should be covered for medical care and treatment. Hospitalisation should also be provided for them.*

Medical care has been extended to the families of insured persons in the States of Mysore, Assam, Rajasthan, Bihar, Madhya Pradesh, Punjab and Andhra Pradesh. A few more States will also be covered shortly.

As regards hospitalisation, the financial implications of the recommendation are being examined.

(viii) The employers' contribution should be raised to $4\frac{3}{4}\%$ as provided for in law for meeting the extra expenditure involved in implementing proposals like extension of medical care to families.

The Corporation has decided that the rate of employers' special contribution need not be raised till such time as the extra expenditure involved on the extension of medical care to families could be met from the current revenue surplus of the Corporation. If, however, the Valuer's final report showed that the rates of employers' special contribution should be increased, the Central Government might then take necessary action.

(ix) *The administration of the Employees' State Insurance Scheme and of the Employees' Provident Fund Scheme should be integrated.*

The Study Group on Social Security set up to consider the question of integration of social security schemes has submitted its Report. The recommendations of the Study Group are under examination.

(x) Contribution to the Provident Fund should be increased from $6\frac{1}{4}\%$ to $8\frac{1}{3}\%$.

The matter was discussed with employers' representatives at a meeting held in Bombay in January 1959. It was decided that before taking a decision in this regard an industry-wise survey to assess the financial burden on individual industries

in the first schedule of the Employee's Provident Funds Act should be undertaken. It is proposed to entrust the survey to working groups consisting of the representatives of the employers, employees and the Ministries concerned. Each industry will be surveyed by a separate working group.

As a preliminary step the Central Provident Fund Commissioner has requested the employers in the first six industries specified in the First Schedule to the Employees' Provident Funds Act, 1952, to state their difficulties in increasing the rate of provident fund contribution to $8\frac{1}{3}\%$ as also their calculations of the additional burden and any other considerations which they may have against the proposal.

(xi) The proposal to convert the Provident Fund Scheme into an old age and/or survivorship Pension should be examined provided it could be worked out within $16\cdot2\frac{1}{3}\%$ of wages received by way of contributions from employers and workers.

The Report of the Study Group on Social Security is under examination.

(xii) (a) The present employment limit of 50 persons or more as prescribed under the Employees' Provident Funds Act 1952 (sub-section 3 of section 1) should be amended as 20 persons or more.

Government is taking the necessary steps for implementing this recommendation of the Indian Labour Conference.

(b) Employees in commercial establishments should be covered.

The Employees' Provident Fund Act has since been extended to the road motor transport establishments employing 50 or more persons with effect from the 30th April, 1959. The extension of the Act to the commercial establishments like hotels, cinemas, banks, insurance, etc., are being examined in consultation with the State Governments and the concerned Ministries.

Amendments to the Industrial Disputes Act 1947.

(i) The proposed amendment to Section 7A (3) of the Industrial Disputes Act 1947 to enable the appointment of serving

or retired District Judges as Presiding Officers of Industrial Tribunals was approved subject to certain reservations.

The question of amending the Industrial Disputes Act will be taken up along with other amendments that are now under consideration.

(ii) Regarding the suggestion of the West Bengal Government that the staff of hospitals etc. should be excluded from the purview of the *Industrial Disputes Act*, the consensus of opinion was that a Convention should be established whereby the staff would not go on strike provided that an effective machinery for the speedy redress of their grievances was set up by the employer.

The recommendation has been brought to the notice of the Government of West Bengal.

(iii) The suggestion of the Indian National Mine Workers' Federation to amend sub-section (3) of Section 24 of the Industrial Disputes Act should be examined by Government.

The same amendment was also suggested by the AITUC and INTUC and the matter was discussed by a Committee of the Standing Labour Committee in January, 1959. The recommendations are under examination.

Subsidized Industrial Housing Scheme.

(i) (a) The *quantum of loan to employers under the scheme should be raised from 37½% to 50%.*

This has since been done.

(b) The rules for the allotment of tenements should be left to the employer to be finalised in consultation with the workers subject to some broad principles being laid down by the Government.

The Government of India have decided that subject to the broad principles of the Scheme, the allotment of houses should be left to the employer in accordance with the rules to be finalised in consultation with the workers of the establishment. The allotment will be made by a Managing Committee having equal number of the representatives of the workers and the employer with an official chairman, in ac-

cordance with such rules as may be mutually agreed upon. In cases, where no agreement can be reached between the parties, allotment will be governed by the Government of India Subsidised Housing Allotment Rules with the modification that in addition to the provision made in the Rules enabling the Managing Committee to allot 10% of the houses, out of turn, another 15% of the total number of houses built, may be allotted by an employer to the eligible workers at his discretion; the intention being that the allotment of the remaining 75% of the houses will be governed by the Rules prescribed in the model Allotment Rules.

(c) The question of giving some *income tax relief* to employers should be examined by Government in detail.

The matter is being examined by the Government.

(ii) If State Governments find that industrial housing was not making progress for want of developed building land, they should spend as much of their allocation as was needed for the acquisition and development of land. The land could be utilised by them or sold at a no-profit no-loss basis to employers for the purpose of building houses.

Action is being taken on this recommendation by the Ministry of Works, Housing and Supply. It has already been decided to grant loans, repayable in 5-7 years, to State Governments under the Subsidised Industrial Housing Scheme, to enable them to acquire suitable sites and develop them either for constructing houses in their own or for selling the developed sites, to employers and co-operatives of industrial workers, on a no-profit no-loss basis.

Evaluation and Implementation of labour enactments, awards, settlements etc.

The proposals made to make the work of evaluation and implementation more effective were approved.

As referred to above, evaluation and implementation machinery has been set up in most of the States. Data on non-implementation of labour enactments, awards, etc., are being collected from the States etc., regularly.

Notes for information on Productivity etc.

This was only for information and no action was, therefore, called for.

Closure of units and unemployment.

(i) *Plantations*: Suitable steps should be taken by the Central and State Governments to avoid closures.

The Government of Assam had made some proposals to undertake legislation for taking over control of tea gardens in certain cases of mismanagement. But it was considered desirable that such powers should be taken only by the Central Government at the appropriate time when a proper organisation for assuming the management of mis-managed plantations had been built up. It has since been decided to undertake suitable legislation covering the subject.

(ii) *Cotton Textiles*: Various measures like the granting of licenses for new units, appointment of Expert Committees to examine the individual units that have closed down or likely to close down, giving relief to the mills by way of providing long staple cotton and also by rendering financial help in the form of short-term and long-term capital etc. were recommended.

The Government have accepted the suggestions made by the Textiles Enquiry Committee for enabling the closed mills to be re-opened. The State Bank and the Scheduled Banks have already reduced their margins in advancing Working Capital to the mills.

(iii) *Jute*: The Jute Committee should be convened to consider the possibilities of taking action to avert closures in this industry.

The Industrial Committee on Jute which met in August 1958 was of the view that problem of closure was not very serious in this industry. However, a Special Committee has been set up by the Government of West Bengal to watch the implementation of the agreed policy on rationalisation.

(iv) *Engineering*: Industries were affected by the acute shortage of steel and other raw materials. Government should take immediate action to remedy the situation.

The Ministry of Commerce and Industry and the Planning Commission are of the view that the position cannot be substantially improved until the foreign exchange difficulties are over. However, the Ministry of Commerce and Industry are making efforts to utilise the available raw materials in the best way that would help to minimise the difficulties experienced by the industries.

(v) *General:*

(i) The Standing Orders should be amended on shift working in respect of notices before closures.

The Model Standing Order No. 7 appended to the Industrial Employment (Standing Orders) Central Rules, 1947 has been amended. The question of amending Section 25 FFF of the Industrial Disputes Act in regard to notices for closures was discussed at the meeting of the Committee of the Standing Labour Committee held in January 1959. The matter is under examination.

(ii) Lacunae in the present provision for the lay-off compensation whereby labour could be denied compensation by working normally for some days in a week after 45 days' lay-off to avoid payment of compensation should be immediately remedied.

This was discussed at the meeting of the Committee of the Standing Labour Committee in January 1959. The matter is being further examined.

(iii) Delay should be avoided in conducting liquidation proceedings.

The department of Company Law have proposed to make amendments to the Company Law with a view to obviating delays.

Chapter 4

Memorandum On Industrial Relations

It will be recalled that at its last session held at Nainital in May, 1958, the Conference discussed at considerable length several matters relating to industrial relations and reached agreed conclusions in respect of —

- (a) Suspension of adjudication;
- (b) Works Committees;
- (c) Grievance procedure;
- (d) Mitigation of the evils of trade union rivalry;
- (e) Recognition of trade unions and verification of trade-union membership;
- (f) Evaluation and implementation of awards, etc.;
- (g) Appointment of District Judges on Industrial Tribunals;
- (h) Exclusion of hospital staff, etc., from the purview of the Industrial Disputes Act; and
- (i) The right of workers to go on strike in consequence of an illegal action by the employer.

The progress of action taken on the recommendations made by the Conference in respect of the above matters is indicated in the Memorandum on item 1 of the agenda for the present session. It may also be noted that a number of proposals for the amendment of the Industrial Disputes Act were placed before the 17th Session of the Standing Labour Committee held at Bombay in October, 1958. These proposals were, as desired by the Standing Labour Committee, thoroughly discussed by a special committee in January, 1959. The recommendations of the special committee are being looked into. In the meantime, the Ministry of Labour and Employment have been receiving nu-

merous suggestions for changes or modifications in the existing law and procedure governing the settlement of industrial disputes, recognition of trade unions and allied matters, with a view to strengthening the basis of labour-management relations in the country. The suggestions have emanated not only from the employers' and workers' organisations but also from the State Governments as well as the employing Ministries at the Centre. The Ministry of Labour and Employment are naturally anxious to have the considered views of the Conference on these matters before they make up their mind as to what should be done. The recommendations of the Conference will also be of appreciable assistance to such of the State Governments as are contemplating legislation within their own spheres of action. Incidentally, the proposals outlined in this Memorandum do not, except where specifically indicated, represent the views of either the Ministry of Labour and Employment or the Government of India as such.

It would be worthwhile to take note of certain significant developments that have taken place since the last session of the Conference and which provide the necessary climate for a dispassionate discussion of the problems raised in this Memorandum. In the first place, the unreserved acceptance of the Code for Discipline in Industry by the employers and workers has had a perceptible influence on the trend of industrial relations as revealed by the statistics of industrial disputes for 1958. While there was a very minor increase in the number of disputes during the second half of the year as compared to the first half (from 781 to 783) the number of workers involved and the number of man-days lost recorded an appreciable decline from 5,11,237 to 4,31,183 and from 45,19,087 to 30,73,516 respectively. Secondly, the evaluation and implementation machinery at the Centre and in States has been, generally speaking, functioning effectively, thus leading to the elimination of a number of misunderstandings between employers and workers and also to a better appreciation of the difficulties of one party by the other. Thirdly, the faithful observance of the Inter-union Code of Conduct by the four all-India organisations of workers should, if it has not done so already, result in a better atmosphere in which the employers would find it easier to carry on negotiations.

Government also stand to gain by this in as much as the process of verification of trade union membership will not be complicated by extravagant claims of strength.

Encouraging as these trends are, there is no denying that there are still many loop-holes to be plugged before it can be affirmed that the foundations of a rational system of labour-management relations have been securely laid. Nor can there be any finality in a field which is subject to the influence of continuous and swift changes in the country. Problems will have to be tackled and solutions found for the same as and when they come up to the surface. It is with this at the background that the Conference will have to consider the matters raised in this Memorandum.

For the sake of convenience, the subject can be discussed under two broad headings, viz., 1. Machinery for collective bargaining and the settlement of industrial disputes, and 2. Problems relating to trade union organisation.

As has been pointed out above, the numerous problems relating to industrial relations cannot be tackled all at once. For the present, the views of the Conference are invited on the following matters:—

Machinery for Collective Bargaining and the Settlement of Industrial Disputes.

(i) The procedure proposed in the Kerala Industrial Relations Bill for the certification of negotiating agents.

(ii) The appointment of a small tripartite Committee for drawing up "guidance principles" relating to the composition and functioning, etc., of Works Committees.

(iii) Validity of agreements reached through direct negotiations between the parties.

(iv) Removal of the difficulties standing in the way of reference of disputes to voluntary arbitration.

(v) Replacement of Labour Courts and Industrial Tribunals by Arbitration Boards.

(vi) Model principles for reference of disputes to adjudication.

(vii) Revival of the Labour Appellate Tribunal.

(viii) Creation of separate machinery for dealing with disputes relating to individual dismissals etc.

(ix) Jurisdiction of a tribunal appointed by one State Government in respect of a dispute concerning workmen employed in different States.

Problems relating to Trade Union Organisation.

(i) Alteration of the present statutory limit on the number of outsiders on the executives of trade unions.

(ii) Insertion of a provision in the Trade Unions Act regarding membership fees.

(iii) Decentralisation of the work of Registrars of Trade Unions.

(iv) Empowering Registrars to look into the records of trade unions.

(v) Cancellation of registration for failure to observe the rules of the union.

(vi) Cancellation of registration for failure to submit annual returns.

(vii) Placing a restriction on the number of unions that may be registered.

MACHINERY FOR COLLECTIVE BARGAINING AND THE SETTLEMENT OF INDUSTRIAL DISPUTES

(a) Recognition of unions

Collective bargaining can derive reality only from the organised strength of the workers and a genuine desire on the part of the managements to co-operate with the representatives of the former, in exploring every possibility of reaching a settlement. The question naturally arises as to who should represent the workers in direct negotiations with the employers. The general consensus of opinion, as confirmed by the discussions at the last session of the Indian Labour Conference, is that time is not ripe for introducing any element of compulsion and that emphasis should be placed on the evolution of certain conventions for the voluntary recognition of unions by employers. With this end in view, the Conference recommended at its last session, the following criteria:

(i) Where there was more than one union, a union claim-

ing recognition should have been functioning for at least one year after registration.

Where there was only one union, this condition would not apply.

(ii) The membership of the union should cover at least 15 per cent of the workers in the establishment concerned. Membership would be counted only of those who had paid their subscriptions for at least three months during the period of six months immediately preceding the reckoning.

(iii) A union might claim to be recognised as a representative union for an industry in a local area if it had a membership of at least 25 per cent of the workers of that industry in that area.

(iv) When a union has been recognized, there should be no change in its position for a period of two years.

(v) Where there were several unions in an industry or establishment, the one with the largest membership should be recognized.

(vi) A representative union for an industry in an area should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment had a membership of 50 per cent or more of the workers of that establishment, it should have the right to deal with matters of purely local interest such as, for instance, the handling of grievances pertaining to its own members. All other workers who were not members of that union might either operate through the representative union for the industry or seek redress directly.

(vii) Only unions which observed the Code of Discipline would be entitled to recognition and the procedure for recognition should form a part of the Code of Discipline.

It is rather premature to attempt an estimate of the impact of this recommendation on the problem of recognition and the extent to which the criteria referred to above are being adhered to. In this connection, the All-India Trade Union Congress feels that where the claims of rival unions for recognition cannot be settled otherwise, the simple method of determining the representative character is to hold a ballot of the workers in the

plant or area or industry concerned. A provision on these lines has been made in the Kerala Industrial Relations Bill, 1959, which confers a statutory right on trade unions fulfilling certain conditions to be recognised by the employers or failing that through certification by the registering authority. According to Section 12 (1) of the Bill "A recognised trade union shall be entitled for the purpose of collective bargaining to be certified as a negotiating agent of workmen in relation to an appropriate unit if that trade union has the support of a majority of the workmen of the establishment or industry comprising the appropriate unit, or where there is no union having such majority, that union which has the largest support of the workmen in comparison to any other recognised trade union shall be entitled to be so certified." Section 18 of the Bill gives the right to a recognised union having at least 20% membership to appeal to the State Industrial Relations Board against the order issued by the registering authority under Section 12. The Board is empowered inter alia to order a referendum of the workmen concerned to be taken by secret ballot and dispose of the appeal in the light of the result of the referendum. It may be mentioned in this connection that at the last session of the Conference it was agreed that the method of election or referendum was not suitable for solving the question of recognition but that the criterion should be paid membership of standing over a specified period.

The Conference may consider the merits of the procedure proposed in the Kerala Bill for the certification of the negotiating agent. It may also examine the need for and the desirability of making consequential modifications in the criteria for recognition as adopted at the last session.

(b) Validity of agreements through direct negotiations between the parties.

Section 18(1) of the Industrial Disputes Act provides that a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Sub-Sections (1) and (2) of Section 19 of the Act prescribe the period of operation of such settlements. Sub-Rule (2) of Rule 58 of the Industrial Disputes (Central) Rules, 1957, specified the signa-

tories to such agreements. The Act and the Rules do not, however, make any reference to the kind of unions with which the employer can enter into negotiations. Consequently, the agreement concluded by the employer with one trade union can very well be repudiated by other unions. The Delhi Administration have drawn attention to specific cases where such repudiation has taken place and where the Industrial Tribunal has held that such agreements could not be binding on unwilling parties. A satisfactory solution to this problem can be found only in the final settlement of the issue of recognition. Assuming that the managements would normally conclude agreements only with representative unions, it is for consideration whether provision on the following lines should be made in the Industrial Disputes Act and the Rules made thereunder:

(i) Only an agreement which is concluded between the employer and a representative union or the duly elected representatives of his employees can be registered and thereby become binding on all the employees concerned.

(ii) The draft agreement should be displayed on the notice board of the establishment concerned for the information of the general body of workers.

(iii) Any objections or modifications to the proposed agreement, submitted within a prescribed time-limit, should be taken into account by the negotiating parties before finalising the agreement.

(iv) The registering authority should issue a certificate indicating the period of validity of the agreement.

The Conference may discuss the issue raised by the Delhi Administration and also comment on the desirability of making the above mentioned changes with regard to collective agreements.

(c) Settlement of disputes through Arbitration

As the Conference is aware, both employers and workers have bound themselves, through the Code for Discipline, to settle differences through voluntary arbitration before it becomes necessary to refer disputes to the Industrial Relations Machinery. Sub-section (1) of Section 10A of the Industrial Disputes Act provides that where an employer and his workmen agree to

refer a dispute to arbitration, the reference may be to such person or persons as may be specified in the agreement between the parties. With a view to helping the parties, instructions have been issued to the officers of the Central and State Industrial Relations Machinery to ensure that in every case where conciliation was likely to fail or had failed the conciliation officer should suggest settlement through arbitration. Panels of arbitrators have also been drawn up. It is, however, found that not much use is being made of the facilities provided by Government. The reasons for the hesitancy on the part of the employers and workers to have recourse to arbitration is not clear. Nor is it Government's intention to exert any pressure in this matter. All the same, *it is desirable that difficulties, if any, standing in the way of reference of disputes to voluntary arbitration, may be examined and a way out suggested.*

The Industrial Disputes Act provides for a three-tier system of tribunals, manned mainly by persons who are holding or have held judicial posts. The Government of Madhya Pradesh feel that consequently these tribunals are swayed more by the niceties of civil law than by considerations of equity and social justice. The State Government have, therefore, suggested that consideration should be given to the question of replacing the Labour Courts and Industrial Tribunals by Arbitration Boards, consisting of representatives of employers and workers selected out of panels maintained by Government, the Chairmen being independent persons with a judicial background. The suggestion of the Madhya Pradesh Government amounts in effect to the substitution of adjudication by compulsory arbitration. The system of Labour Courts and Industrial Tribunals was introduced only in 1956 and perhaps needs to be given a fair trial before a change-over is thought of.

However, *the Conference may like to discuss the implications of the suggestion made by the Madhya Pradesh Government for the setting up of Arbitration Boards in place of Tribunals.*

(d) Principles for Reference of Disputes to Adjudication.

The question whether the practice of referring disputes to adjudication should not be suspended on an experimental basis

at least has been under discussion for some time now. The decision reached both at the Conferences of Labour Ministers and the Indian Labour Conference has been that, taking into consideration the vital need for maintaining industrial peace in the interest of economic development, it would be unwise to take the risk. At the same time, it has been unanimously recognised that adjudication should normally be ordered only when all other avenues have been fully explored. The State Governments were therefore requested, in accordance with a decision reached at the 14th Session of the Labour Ministers' Conference held in October, 1957, to supply to the Centre full information, together with their critical observations, regarding the methods followed by them in referring individual cases to adjudication, the intention being to analyse the existing practices and to evolve a set of principles for general guidance. The work has since been completed and a set of draft Model Principles has been prepared. The 'norms' referred to in the draft are to be evolved in the light of awards given by tribunals, etc., as recommended at the 15th Session of the Labour Ministers' Conference.

Professor Richardson, the I.L.O. Expert on Industrial Relations, who is at present working with the Ministry of Labour and Employment, has opined that the draft principles seem generally adequate and practicable. However, he has made the following observations:

(i) A useful distinction may be drawn between (a) disputes arising out of the implementation of existing legislation, awards, etc. (implementation disputes) and, (b) disputes arising from demands for new conditions.

(ii) "Implementation disputes", which usually affect only individual or small groups of workers should rarely be sent up for adjudication. The Labour Commissioners may be empowered to give binding decisions in such cases.

(iii) In the case of the second category of disputes, often involving large numbers of workers, wider use may be made of Courts of Enquiry, provided for in Section 6 of the Industrial Disputes Act, to investigate the facts and make impartial recommendations which would provide an authoritative basis for settlement by agreement and further conciliation.

(iv) Disputes which could not initially be settled through

conciliation should, instead of straightaway being referred for adjudication, be sent back for further conciliation even if this process involved the risk of a strike or lockout.

The observations made by Professor Richardson deserve consideration. *The Conference may examine the Draft Model Principles and indicate whether the same should be adopted, with changes if any.*

(e) Revival of the Labour Appellate Tribunal

The Conference will recall that the working of the Industrial Disputes Act, 1947 as it originally stood revealed the need for a central appellate authority to review the divergent, and sometimes conflicting, decisions of the large number of Industrial Tribunals set up by the Central and State Governments and to co-ordinate their activities. The Industrial Disputes (Appellate Tribunal) Act, 1950, was the result and the Government of India constituted an Appellate Tribunal, with four Benches functioning at Calcutta, Bombay, Madras and Lucknow. Additional *ad hoc* Benches were set up later to deal with urgent cases. It, however, soon became apparent that appeals filed before the Appellate Tribunal not only took an unduly long time to be disposed of but also involved a great deal of expenditure which the workers could ill afford. Opinion in favour of the abolition of the Tribunal therefore gathered quick momentum and in view of the large volume of criticism in Parliament and at tripartite meetings, the Government of India were obliged to repeal in 1956 the Act of 1950 and substitute the then system of tribunals by the present three-tier system of Labour Courts, Industrial Tribunals and National Tribunals.

The abolition of the Appellate Tribunal has apparently resulted in a large increase in the number of cases going up in appeal to the Supreme Court as will be seen from the following figures:

Year	<i>Number of Petitions for Special leave to Appeal</i>	
	No. Registered	No. granted
1953	59	23
1954	51	21
1955	57	37
1956	297	257
1957 (upto 31.10.57)	189	148

Quoting figures in support of this statement the Law Commission has observed as follows:-

“The situation created by these large number of appeals causes concern in two respects. It has the natural effect of clogging the work of the Supreme Court The graver aspect, however, of the matter is that labour matters are being thrust upon a Court which has not the means or materials for adequately informing itself about the different aspects of the questions which arise in these appeals and therefore finds it difficult to do adequate justice Equally grave are the delays caused by these appeals in the disposal of industrial matters which essentially need speedy disposal”.

From the information available it appears that 209 cases were pending with the Supreme Court on 30th November, 1958.

So far as appeals to the High Courts are concerned, the Law Commission has remarked that a party aggrieved by the decision of the tribunal approached the Supreme Court because the jurisdiction of the High Courts under Article 226 of the Indian Constitution is too narrow to afford relief. A High Court can only quash an order of a tribunal but cannot make its own decision and substitute it for that of the tribunal. Incidentally, it appears that on 30th November 1958, there were 756 cases pending before the various High Courts.

According to the Law Commission the remedy lies in providing for an adequate right of appeal in industrial matters. “Such a right of appeal could be provided either by constituting tribunals of appeal under the labour legislation itself or by conferring a right of appeal to the High Court in suitable cases”.

The remarks made by the Law Commission need to be paid close attention. The observance of the Code for Discipline is likely to lead to a reduction in the number of cases going up to the High Court. Even so, *the Conference may discuss the desirability of reviving the Labour Appellate Tribunal.*

(f) Creation of Separate Machinery for Dealing with Disputes Relating to Individual Dismissals, Discharges, etc.

Under the Industrial Disputes Act, as it stands at present, a dispute between an individual worker and his employer can-

not be treated as an 'Industrial Dispute' unless sponsored by a group of workers or a trade union. It is likely that an aggrieved worker who has no standing with a trade union might find it difficult, if not impossible, to secure redress. Recently the Government of Madras approached the Centre for permission to undertake legislation providing for a separate and self-contained machinery for dealing with individual disputes in order to ensure that discharge and dismissals take place for a reasonable cause; that any aggrieved individual has a prompt and automatic remedy by way of appeal to a designated authority. The genesis for this proposal is to be found in the opinion held by the High Court of Madras and the Labour Courts in the State that the discharge of any worker after a month's notice or pay in lieu thereof, under the provisions of the Standing Orders, was perfectly in order. This opinion has led to some consternation among the workers who have demanded a suitable remedy.

The State Government have pointed out that provision for appeals by individual workers is already contained in the Madras Shops and Establishments Act, 1947, the Madras Catering Establishments Act, 1958, and the Madras Beedi Industrial Premises (Regulations and Conditions of Work) Act, 1958. The State Government have further pointed out that experience with the working of the provision in the Shops Act of 1947 has not been unhappy. It has also been explained that cases of discharges and dismissals touching on group relations, with which the trade unions are mainly concerned, may continue to be raised as industrial disputes, as defined in the Industrial Disputes Act, 1947. Besides, the State Government are of the opinion that trade union activities and industrial relations in general may well benefit by the method of individual cases being dealt with separately without the mediation of the trade unions.

The point to be kept in view in examining the proposal made by the Government of Madras is whether direct access by individual workers to the Industrial Relations Machinery or other special machinery in cases of discharges and dismissals would —

- (a) undermine the influence of trade unions,

- (b) result in indiscriminate resort to appeals, and
- (c) adversely affect discipline.

According to the State Government, there is no such risk. On the other hand, they feel that the proposed measure would remove a fruitful source of discontent.

In view of the urgency in Madras in this matter, the State Government are, with the concurrence of the Centre, going ahead with their proposal. However, the Conference may examine the implications of the proposal and whether the matter should be left to the discretion of the individual State Governments or whether any action should be taken at the All-India level.

(g) Jurisdiction of a Tribunal appointed by one State Government in respect of a dispute concerning Workmen Employed in different States.

Under the Industrial Disputes Act, the 'appropriate Government' except in the case of disputes affecting more than one State, are the State Governments. A large number of disputes are naturally referred to the Industrial Tribunals appointed by the State Governments concerned. There are, however, cases where the headquarters of an undertaking is situated in one State but which employs workers in adjoining States also. In such cases the extent to which the decisions of the State Tribunals are binding becomes a bone of contention. In the Delhi Union Territory, for instance, there are situated several branches of commercial concerns controlling workmen in other States such as Punjab, Rajasthan, U.P. and Jammu and Kashmir. One of the Industrial Tribunals, Delhi, has held that it is not within the power of the Delhi Administration to refer disputes in such undertakings to the local Tribunals. Another Tribunal had taken the opposite stand and the Supreme Court has upheld the latter view. It has also been pointed out that the cost of Tribunals, etc. will have to be borne by one State, whereas the benefits may go to workers in other States also. Attention has been drawn by some unions of transport employees in the Punjab to similar difficulties.

The Conference may consider the problem raised by the Delhi Administration and indicate whether any change should

be made in the Industrial Disputes Act. At present the Central Government may appoint National Tribunals only in the case of disputes involving questions of national importance or which are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

PROBLEMS RELATING TO TRADE UNION ORGANISATION

Workers' organisations have a dual role to play. One is to negotiate with the employers and enter into collective bargaining or, as a last resort, have recourse to direct action for securing satisfactory conditions of work and fulfilling the reasonable aspirations of workers. These problems raise the issue of recognition of trade unions either voluntarily by the employers or through certification by governmental agencies if necessary. The implications of the issue of recognition have been dealt with earlier in this Memorandum.

The other important, perhaps much less ostentatious, function of trade unions is to look after the day-to-day welfare of their members and, where practicable, their families. The conditions to be fulfilled by trade unions from this angle are different from those required for the purposes of recognition. The Constitution of India guarantees freedom of association to all citizens, subject only to such reasonable restrictions as may be imposed by the State in the interest of public order or morality. Workers are thus free to form their own associations without any previous authorisation. If, however, any association wants to acquire a legal personality, and thereby immunity from civil and criminal liability, it has to get itself registered under the Trade Unions Act, with the concomitant restrictions stipulated in the Act. This Act, as the Conference is aware, was placed on the Statute Book as early as in 1926. The actual working of the Act for over two decades, revealed the need for its overhauling and a Bill seeking to revise and replace the same was brought forward in 1950. The Bill, however, lapsed with the dissolution of the interim Parliament, and no steps were taken in the matter since then.

The desirability of making substantial changes in the Act

of 1926 has, however, been stressed on several occasions in the recent past. Emphasising that a strong trade union movement was necessary both for safeguarding the interests of labour and for realising the targets of production, the Second Five Year Plan made, *inter alia*, the following recommendations:

(i) Unions should realise that undue dependence on any one not belonging to the ranks of industrial workers must necessarily affect the capacity of workers to organise themselves.

(ii) The gap created by the reduction in the number of outsiders should be filled by training of workers in trade union philosophy and methods.

(iii) In order to improve the finances of trade unions from their internal resources, a membership fee of at least four annas a month should be prescribed in the rules of a trade union.

(iv) There should be stricter enforcement of rules regarding payment of arrears.

Recommendation (ii) above is already being taken care of by the "Workers' Education Scheme" which is well under way.

With regard to outsiders, the Second Plan observed that the number of outsiders managing the trade unions had shown a decline. Recently, the Ministry of Labour and Employment collected information as to whether the trend noted by the Planning Commission was being maintained. It appears that as compared to 1947, the proportion of outsiders is showing a decline in Assam, West Bengal, Punjab, Orissa, Kerala, Mysore and Tripura. In other States the trend is in the reverse direction. The data on which this assessment has been made is not, however, complete and may, therefore, be accepted with some reservation. *The point for consideration is whether the present statutory limit on the number of outsiders on the executive of a trade union, viz. 50%, should be altered.* In this connection a distinction needs to be made between outsiders who have at no time been workers and those who have actually been workers some time or other. It has to be examined whether any restriction should be placed on the percentage of outsiders belonging to the latter category and whether any period of service as a worker should be specified.

The question of making it obligatory for unions to prescribe a minimum membership fee of annas four a month, as

recommended by the Planning Commission, was considered at the last session of the Conference and was agreed to. *Necessary provision will be made in the Trade Unions Act when it is amended.*

It will be recalled that at its last session the Conference recommended that delay in the registration of unions should be avoided. Apart from other reasons, one of the causes for delay may be the number of applications to be dealt with by the Registrars of Trade Unions. The Act, as it stands, does not permit the delegation of the powers of the Registrar to any other authority. The Government of Bombay have suggested that provision should be made for the decentralisation of the work of the Registrars and the appointment of Additional and Deputy Registrars. *The Conference may consider this suggestion.*

Under the present Act, the powers of the Registrars are restricted. They have no authority to inspect the records and accounts maintained by the unions. With a view to ensuring that unions functioned properly and complied with legal requirements, it has been suggested that the Registrars, or their nominees, should be specifically empowered to inspect the books of trade unions. *The Conference may like to endorse this suggestion.*

Attention has been drawn by some State Governments to the fact that while trade unions obtained registration by providing in their rules for all matters mentioned in Section 6 of the Act, many of them did not in practice observe the rules. Non-observance of the rules does not, however, constitute a violation under the Act as it stands and cannot, therefore, be a ground for the withdrawal or cancellation of registration. *The Conference may consider the desirability of this defect being removed.*

Similarly, the desirability of providing for the withdrawal or cancellation of registration of unions failing to submit their annual returns may also be considered.

One of the drawbacks of the trade union movement in this country is the multiplicity of unions. There are several registered trade unions functioning in the same industry, and in many cases in the same unit. This situation, it has been pointed out, arises from the fact that under the Trade Unions Act

any group of seven persons can apply for registration of a union and the Registrar has no power to refuse registration if the union complies with the prescribed requirements. Suggestions have, therefore, been made to the effect that either the number prescribed under Section 4 of the Act should be sufficiently raised or that the Registrar should be empowered to refuse registration to a trade union if he considers that there is already an adequate number of registered unions functioning for the workers in the undertaking or industry concerned. While it is true that multiplicity of unions is a recognised evil, it is doubtful whether the remedy lies in tightening up the provisions of the Trade Unions Act and making it difficult for unions to secure registration. The primary purpose of the Act is to enable organisations of workers to acquire a corporate status. Freedom of association is a fundamental right and the conditions for registration should not be such as to negate that right. I.L.O. Convention No. 87 concerning Freedom of Association and the Right to Organise confers on workers (and employers) the right *inter alia*, to establish organisations of their own choosing and these organisations should have the right to acquire a legal personality. Even as it is, there is a risk of the regulatory provisions of the Trade Unions Act being construed to be inconsistent with the Convention and this is one of the reasons why the Government of India have not ratified this Convention. In a recent report to the I.L.O. from the Government of India it has no doubt been urged that "such restrictions as may be imposed by the competent national authorities on the right of association of workers and the functioning of trade unions in consultation with and with the full concurrence of representative organisations of workers shall not be deemed to be in violation of the Convention." Still it is questionable whether the Trade Unions Act should be utilised to curb an undoubtedly unhealthy development. *The Conference, may, however, discuss the matter.*

Several other amendments of a minor nature to the Trade Unions Act have been received. These can, however, be taken care of if the fundamental issues are settled and the broad principles are laid down by the Conference.

*Appendices to Memorandum on
Industrial Relations*

1. On Kerala Industrial Relations Bill, 1959

In the Memorandum at page 35, mention has been made of the Kerala Industrial Relations Bill, 1959. The problems posed therein are: procedure for the certification of negotiating agent of workmen for collectively bargaining on their behalf on issues affecting the industry as a whole and the desirability of making consequential modifications in the 'criteria' adopted at the last session for recognition of unions. The Bihar Central Advisory Board, at its meeting in February, 1959, adopted a resolution to the effect that only a recognised union should be competent to take up disputes of general nature and that the rival union might handle individual grievances of the workers. At the meeting of the State Co-ordination Committee (April 1959), a suggestion was put forward that the aforesaid procedure should be followed in Central sphere also for maintaining industrial peace. There may be practical and legal difficulties in adopting the procedure suggested by the Government of Bihar.

Apart from the certification of the negotiating agent of workmen, the Kerala Industrial Relations Bill, has a few special features which the Indian Labour Conference might like to discuss. Some of the important items are:

- (i) Enlargement of the scope of the definition of 'industrial dispute' and 'workman'—clauses 2 (i) and 2 (u) of the Bill;
- (ii) Reduction of the employment limit to fifty for formation Works Committees—clause 4 of the Bill;
- (iii) Constitution of Industrial Relations Committees and State Industrial Relations Board—clauses 6 and 7 of the Bill;
- (iv) Legal enforcement of the 'Code of Discipline' as one of the conditions of recognition of trade unions—clause 8 of the Bill;

(v) Procedure for recognition of representative association of employers—clause 15 of the Bill; and

(vi) Enlargement of the scope of provision relating to “retrenchment compensation”—clause 24 of the Bill.

Significance of the aforesaid provisions are briefly discussed below *seriatim*.

The definition of ‘industrial dispute’ varies from section 2(k) of the Central Industrial Disputes Act, 1947, inasmuch as the term “industrial dispute” under the State Bill means any dispute between an employer and a registered trade union and covers also any dispute concerning a person whether or not he is a workman.

The definition of ‘workman’ embodied in the State Bill is wider than that contained in the Central I.D. Act inasmuch as it covers all employees including those employed directly or through a contractor as well as casual workmen or *badli* workmen other than those employed in a managerial capacity.

Under the State Bill, the employer shall be bound to constitute a ‘works committee’ in an establishment where there are fifty or more persons employed as against 100 or more workmen laid down in the Central Industrial Disputes Act. This will increase the number of works committees considerably. There is already a feeling that even the existing works committees are not functioning well. The Conference is being requested to set up a tripartite committee to examine the material so far collected, so that certain “guidance principles” could be drawn up. It is felt that unless and until the functioning of the existing works committees in establishments employing 100 or more workmen is improved, it would neither be desirable, nor feasible, to reduce the employment limit to fifty, as proposed in the State Bill.

The Industrial Disputes Act, 1947, provides for constitution of Boards of Conciliation and Courts of Inquiry for promoting the settlement of industrial disputes and for setting up Labour Courts, Industrial Tribunals and National Tribunals for adjudication of disputes. Since the provisions of the State Act will not be in derogation of those contained in the Industrial Disputes Act, the aforesaid authorities will presumably continue side by side though they may be made use of only on rare occasions. The State Bill envisages two new authorities, viz., the In-

Industrial Relations Committees and the State Industrial Relations Board. The former are even now stated to be functioning in the State of Kerala in almost all important industries and what is proposed in the Bill is to clothe them with statutory authority. These Committees, which are to be constituted with equal number of workers' and employers' representatives, may be set up for any specified establishment in specified industry. A majority decision of the Committee will be deemed to be a settlement arrived at by agreement between the employer and the workers who are represented in the Committee and their decision will be binding and enforceable on these parties and will not be called in question in any court for any reason whatsoever. The Committees are to forward their report to the Government within a period of fourteen days from the conclusion of the proceedings and Government are required to publish the enforceable decisions of the Committee within one month from the date of the receipt of the report.

The functions proposed to be assigned to the State Industrial Relations Board envisaged under the Bill are:

- (a) to aid and advise Government on matters regarding industrial and labour relations;
- (b) to settle and decide industrial relations as may be referred to them by Government; and
- (c) to discharge such other functions as may be allotted to them by the Government.

The board is to consist of 11 members excluding 2 ex-officio members. Of the 11 members, 10 are to be chosen to represent, in equal numbers, employers and workmen. The Chairman is to be a person who is or has been a judge of the High Court. Due representation to the national trade union organisations (put in the order of AITUC, INTUC, HMS and UTUC) functioning in the State and having not less than 10 per cent of members of *registered* trade unions has also been provided. The Board will have all the powers of a Civil Court under the Code Procedure when trying a suit.

The State Bill seeks to give legal force to the Code of Discipline for Industry evolved at the last session of the I.L.C. The main objective behind the adoption of the Code as a non-statutory measure was to encourage harmonious industrial relations

between the employers and their employees and to instil a sense of rights and duties in both the parties on a moral plane rather than on a legal plane so that they do not always adopt a legalistic approach in the attitude towards each other or resort to unfair practices.

As against recognition of unions provided for in clause 8 of the Bill, it also provides for recognition of representative association of employers in relation to an appropriate unit where a recognised trade union (or unions) has (or have) been certified as a negotiating agent of workmen. The Bill envisages one representative association of employers for an appropriate unit.

The procedure proposed in the State Bill for dispensing with the service of workmen is wider in scope than Section 25F of the I.D. Act. While this Act imposes certain conditions precedent to the retrenchment of a workman who has been in continuous service for not less than one year, the State Bill stipulates that the services of a workman employed for not less than six months cannot be terminated except on proved charges of misconduct or continued ill-health. In the latter case, the workman will be treated as having been "retrenched" and would be paid his compensation. The workman whose services are dispensed with or whose services are terminated has been given the right to appeal to the prescribed authority, but he gets suitable compensation for the period of unemployment only in the event of his reinstatement.

Since the points discussed above may have an all-India repercussion, the views of the Conference are invited.

2. Draft Model Principles for Reference of Disputes to Adjudication

A. Individual disputes.

Industrial disputes raised in regard to individual cases, i.e., cases of dismissal, discharge or any action of management on disciplinary grounds, may be referred for adjudication if there is a *prima facie* case of—

- (1) victimisation or unfair labour practice,
- (2) that the standing orders in force have not been properly followed or that the principles of natural justice have not been followed, and
- (3) the conciliation machinery reports that injustice has been done to the workmen.

In all the aforesaid cases, however, if there is *prima facie* evidence to show that the workmen concerned have resorted to violence or otherwise committed a serious breach of the Code of Discipline, then adjudication may ordinarily be refused.

B. *Collective disputes.*

No dispute may, ordinarily, be referred for adjudication—

- (1) Unless efforts at conciliation have failed and there is no further scope for conciliation and the parties are not agreeable for arbitration.
- (2) If there is an illegal strike or lockout or a strike or lockout resorted to without seeking settlement by constitutional means and without proper notice, unless such strike (or direct action) or lockout, as the case may be, is called off.
- (3) If the demand relates to a claim for wages for the period of a strike, or the demand is such, which following judicial decisions the Tribunals have consistently refused to concede, e.g. the demand about recognition of union.
- (4) If in respect of demands other legal remedies are available, i.e., matters covered by the Factories Act, Workmen's Compensation Act, Minimum Wages Act, etc.
- (5) If the matters in dispute are pending before a Committee appointed by Government.

11. In ordering adjudication the following factors will be taken into account:—

- (1) The reasonableness of demands and their justiciability.
- (2) The repercussion on the other units of the same industry or allied industry.
- (3) The capacity of the industry to pay or accede to demands like increased wages, etc.

- (4) The standing of the union raising the dispute and the strength behind the demands.

Note:

It will be useful if 'norms' are laid down with regard to various conditions of service, welfare provisions, etc., in industries. They will be of help in deciding whether a particular dispute should or should not be referred to adjudication.

3. Note on Principles for determining which Disputes to refer to Adjudication

BY

Prof. J. H. Richardson, ILO Expert on Industrial Relations.

Throughout the 1950's the number of disputes referred to adjudication was seriously excessive, involving overloading the Tribunals and causing heavy expenditure and often long delays before settlements were reached. Many factors were responsible for this situation, including exceptionally numerous disputes because of changing economic and industrial condition, inadequacy of principles for settling disputes, inexperience of Conciliation Officers, and a tendency, resulting largely from fear of strikes and lockouts, to refer disputes to adjudication whenever settlements were not reached by conciliation.

The Governments have wide discretion in deciding whether or not to refer disputes to adjudication, and there would be substantial advantages in restricting much more than in the past the number of disputes so referred. The Government of India recognises the desirability of greater restriction, and in 1958, in consultation with the State Governments gave consideration to establishing guiding principles with the object of reducing references to a minimum, and submitted proposals to the Indian Labour Conference, 1959.

A useful distinction can be drawn between (a) disputes arising out of the implementation of existing legislation, agreements, awards and other defined conditions (implementation disputes), and (b) disputes arising from demands for new con-

ditions, which may require consideration of economic factors affecting an undertaking, a whole industry or even the economy of the country. Implementation or interpretation disputes usually affect only individual workers or small groups of workers and should rarely be referred to protracted adjudication procedures. Expeditious settlements could be affected if Labour Commissioners and Regional Labour Commissioners were empowered to give binding decisions in such cases, or, if preferred, had authority to appoint competent impartial persons to make such decisions.

Disputes arising from demands for new conditions, including wage changes and annual bonus may range from those affecting large number of workers in vital industries, to those involving fewer workers in industries in which strikes or lock-outs would not have serious dislocating effects on the economy. Adjudication should be reserved mainly for disputes of the former kind, while for the latter kind the parties should be left to reach settlements by further negotiation, further conciliation, or agreement to accept arbitration. When the parties realised that failure to reach an agreement by these means would incur risk of the losses which a strike or lockout would entail, they would usually see that it was in their own interests to avoid a trial of strength and would make serious efforts to effect a settlement.

It must be reiterated that adjudication should be much more sparingly used than in the past and only then when there is no further scope for conciliation.

Adjudication may be needed for four main kinds of disputes: (1) those in which stoppages of work would seriously injure the economy of the country, including the progress of the Government's development plans; (2) those in which stoppages of work would inflict serious hardship on the community, particularly by interruption of essential public utility services or of food and other necessary supplies; (3) those which would be likely to involve serious danger to the maintenance of law and order; and (4) those which raise important issues of principle, or where need for protection where there seems to be a *prima facie* case of victimisation, or other unfair labour practices or injustice.

Reference to adjudication should normally be withheld where there has been resort to illegal strikes or lockouts unless the strike or lockout is terminated. The following also would seem to be unsuitable for reference:—

- (1) Where the demand is unreasonable or impracticable.
- (2) Where the issues involved have already been the subject of decision by a Tribunal, Court or other authority, or where other legal remedies are available.
- (3) Where the dispute is whether a person should or should not be a member of a trade union, or is over the recognition or non-recognition of a union.
- (4) Where the dispute is about the employment or non-employment of any person, except where there is *prima facie* evidence of victimisation.
- (5) Where the dispute arose more than six months previously.
- (6) Where a dispute is raised by a union on behalf of workers who were not members of the union at the time the dispute arose, or where a dispute is raised by a union whose membership is not open to the workers on whose behalf the complaint is made.

The above indications of the kinds of disputes that may suitably be referred to adjudication and those which should not are suggested for general guidance. What is more important is the attitude of the Governments towards adjudication. Hitherto, the number of disputes has been excessive, and drastic reduction in the future will depend not only on the establishment of principles for reference or non-reference, but on the way they are applied in practice. The responsible authorities should endeavour persistently to reduce adjudication to a minimum, and reserve adjudication for important disputes. Such executive action can contribute greatly to strengthening the processes of negotiation, conciliation and agreement.

4. On Adjudication and Arbitration

BY

Professor J. Henry Richardson, ILO Expert on Industrial Relations

Except on strictly juridical issues, reference of industrial disputes to the High Courts and Supreme Court is unsatisfactory. These courts are highly competent to deal with technical legal aspects of disputes, but in many industrial disputes including most of the important ones, the issues are not primarily legal and cannot be effectively determined on juridical lines. They involve such economic considerations as capacity of industry, standards of living, work loads, intricate relations between production and pay, and balance of power between the parties in dispute, and these matters cannot be settled by reference to legal texts and by the ordinary principles, precedents and processes of courts of law. In the absence of more appropriate machinery for dealing with industrial disputes the High Courts and the Supreme Court have made valuable contributions in the settlement of disputes, but, though highly qualified in legal texts and procedures, they have no special or specialised competence for dealing with issues which are essentially economic and industrial. Indeed many of the appeals have involved legal technicalities which have little relevance to the real issues in dispute.

Legal texts may include such concepts as "social justice," "a fair wage," "a minimum wage sufficient to provide reasonably for a worker with a family of average size" and such general principles as equal pay for equal work, and the fixing of appropriate differentials for different grades of work. In the practical application of such principles and concepts a legalistic approach has no special value and may be distinctly harmful. Only on the basis of wide knowledge of economic, industrial and labour conditions and a sound understanding of the implications of varying and often rapidly changing economic and social conditions can industrial disputes be effectively settled.

To deal adequately with such problems, there is need for

tribunals consisting of people who combine a sound knowledge of law and of procedures for obtaining the relevant facts in hearings at which the contesting parties give evidence, with a comprehensive understanding of economic problems and of industrial and labour conditions. Often an award will necessarily be arbitrary, or may sometimes be a compromise between conflicting claims, based, however, on a systematic, competent appraisal of a wide range of complex economic, financial, industrial issues, whether the rate of interest to be allowed on the fixed capital of an undertaking should be 6 or 8 per cent when calculating surplus profits available for annual bonus. Experience of the factors indicated as needed for adjudication of industrial disputes reveals that judges with purely juridical training, experience and outlook have no specialised competence.

The Law Commission which issued its Report in 1959 made the following statement on industrial disputes appeals to the Supreme Court:

"The situation created by these large number of appeals causes concern in two respects. It has the natural effect of clogging the work of the Supreme Court . . . The graver aspect, however, of the matter is that labour matters are being thrust upon a Court which has not the means or materials for adequately informing itself about the different aspects of the questions which arise in these appeals and therefore finds it difficult to do adequate justice Equally grave are the delays caused by these appeals in the disposal of industrial matters which essentially need speedy disposal."

The present adjudication machinery includes Labour Courts which deal mainly with disputes arising from dismissal and discharge of workers, and from disciplinary action. Industrial Tribunals are appointed *ad hoc* and deal at State level with such subjects as wages, allowances, hours, leave, occupational gradings, and labour effects or rationalisation. There are also National Industrial Tribunals, also appointed *ad hoc* under legislation enacted in 1956 when the Labour Appellate Tribunal system was abolished, and they are appointed for the adjudication of disputes of national importance or which concern establishments in more than one State. Then because of dissatisfac-

tion with Tribunal awards, including various inconsistencies in decisions, many cases are taken to the High Courts of the States, and to the Supreme Court. High Courts, in accordance with a provision of the Indian Constitution (Article 226) have jurisdiction limited to quashing an order of an Industrial Tribunal but cannot make a new decision, and in consequence parties aggrieved by a Tribunal decision often approach the Supreme Court with a view to redress. The members of all these courts and tribunals are persons of high legal standing but generally with no special competence and experience in industrial affairs. Persons appointed to Tribunals are often retired High Court judges or others of somewhat similar legal standing. In practice a Tribunal consists of only one person, and as the Tribunals are *ad hoc* there is lack of adequate continuity, though in practice the same person may deal with a succession of disputes.

There are considerable disadvantages in the machinery for industrial adjudication being mainly *ad hoc* without permanence and continuity. In order to remove this defect and also to remedy other inadequancies of the present system mentioned above, the following recommendation is made:

That a permanent Court of Industrial Arbitration and Adjudication be established for the adjudication of industrial disputes of national importance, for the arbitration of such disputes when the parties voluntarily agreed to settlement by arbitration, and for the hearing in important cases of appeals from State Courts and Industrial Tribunals. The Court should consist of a President and four other members of the highest legal standing appointed from among persons who have a special interest in industrial and labour questions. The members should have continuity of service and security of tenure and should have a status and prestige similar to that of members of the Supreme Court. For the most important cases the Court would consist of all the members, but one judge would hear and determine other cases, and this would enable judges to specialise on certain kinds of dispute or on certain groups of industries. The Court could be assisted by assessors, and also as they would need to examine company balance sheets and be well informed about economic and industrial conditions, they should have services of highly qualified economists and

accountants. Where convenient the Court could go on circuit to deal with cases in different parts of India.

The Court would resemble in some respects the Australian Commonwealth Court and the Industrial Court in the United Kingdom which for many years have been effective in the settlement of industrial disputes. By its permanence the Court would progressively accumulate the specialised experience necessary for dealing with industrial disputes. Any appeals to the Supreme Court should be rare and only on legal issues strictly defined.

The establishment in India of a Court along the lines proposed is essential for purposes of coordination, and would enable a body of principles to be established which would progressively facilitate the settlement of disputes throughout the country. Its scope could include the public as well as the private sector, except, for example, for the Civil Service and the Railways where special arbitration systems were considered to be more appropriate.

5. Industrywise Adjudication

The Central Government had in the past ordered industrywise adjudications in the following industries: (1) Banking Industry, (2) Coal Mining Industry.

Regionwise adjudications had also been ordered in respect of the following industries: (1) Mica mines in the States of Bihar and Madras, (2) Manganese mines in the State of Madhya Pradesh (before reorganisation).

In such cases, certain practical difficulties had to be faced which do not normally arise in the case of references which are confined to one or two Establishments. The following were some of these difficulties.

(i) Considerable time was taken to collect the names of all the units in the industry as these had to be enumerated in the schedule to the order of adjudication. In fact by the time the

information was collected some of it became obsolete in view of the changes in proprietorship, closures, etc.

(ii) The Tribunals required considerable time to go through the formalities of issuing notices to individual parties, receiving their replies, examining their statements and accounts, etc.

(iii) There was the possibility of some individual party to the dispute approaching the High Court or Supreme Court and obtaining a stay order on a technical point, thus preventing the Tribunal from proceeding further even though most of the parties may have no objection to the proceedings going on.

(iv) Tribunals need considerable time to give their awards in industrywise adjudications.

In spite of these difficulties, industrywise adjudications sometimes become inevitable. The Conference may, however, like to consider ways and means of obviating some of the difficulties of the type mentioned above.

In a recent case, the Supreme Court has held that an award will continue to remain in operation even if either of the parties terminates it under S. 19 (6) of the Industrial Disputes Act 1947, unless it is replaced by another award. But this would not prevent the parties raising disputes over the matters which have been already settled by a previous adjudication.

The Industrial Disputes Act 1947 does not make any distinction between disputes in respect of individual establishments and industrywise disputes as far as the period of operation of an award is concerned. In all the cases, the appropriate Government can extend the period of operation of an award upto three years. It is arguable that an award in an industrywise adjudication, which is given after much effort on all sides, should not be placed on a par with other awards. A suggestion for consideration is whether in respect of awards given in industrywise adjudication, the appropriate Government should be empowered to extend their period of operation upto a period of five years. In fact the period of operation of the Banks Award was fixed, for nearly five years vide Section 4 of the Industrial Disputes (Banking Companies) Decision Act, 1955. The U.P. Government are also amending the U.P. Industrial Disputes Act, 1947,

giving powers to the State Government to extend the period of operation of an award upto a period of five years.

The Indian Labour Conference may consider the following points.

- I. What steps are feasible to eliminate certain difficulties which at present tend to delay proceedings in Industry-wise adjudications.
- II. Whether the Industrial Disputes Act 1947 may be suitably amended so that the appropriate Government may be given powers to extend the period of operation of awards in industrywise adjudications upto a period of five years.

6. Implementation of Code of Discipline, Labour Enactments, Awards, etc.

In pursuance of recommendations of the 16th Session of the Standing Labour Committee, an E&I Division in the Ministry of Labour & Employment and a tripartite Central Implementation & Evaluation Committee were set up last year. The Central I&E Committee held its first meeting in September, 1958.

All State Governments, except Manipur Administration, have also set up an Official Implementation Cell or have designated an Officer to look into the cases of non-implementation, breaches of the Code of Discipline, etc., falling in the State sphere. Tripartite Implementation Committees have been set up in all States except Bombay, Jammu & Kashmir, Himachal Pradesh and Manipur. While Governments of Bombay and Manipur are still considering the question, Jammu & Kashmir and Himachal Pradesh have said that they have very few labour problems to necessitate the setting up of separate Committees.

As almost all State Governments have now set up Implementation Machinery, the Central Organisations of Employers and Workers have been advised to issue suitable instructions to

their member-units to refer complaints of non-implementation, breaches of the Code of Discipline, etc., falling in the State sphere, to the concerned State Implementation Officers.

In addition to dealing with cases of breaches of the Code of Discipline and non-implementation of labour enactments, awards etc., the E&I Division has also been able to persuade the Central Organisations of Employers and Workers to set up Machinery to screen cases of industrial disputes before they are taken to higher Courts so as to avoid unnecessary litigation. Attempts are also being made, both in the Central and State spheres, to bring about out-of-court settlements in cases of industrial disputes already pending in courts. An analysis of successful cases of industrial disputes, decided by the Supreme Court in 1957 and 1958, has also been made to find out the extent of advantages secured by the parties concerned, both in terms of money and as vindication of principles, by going in appeal against the awards of Industrial Tribunals|Courts.

A few important points which have arisen in connection with the Implementation of the 'Criteria for Recognition of Unions' are mentioned below:

(i) A clarification was sought whether the condition relating to 15% membership, laid down in clause 2 of the 'Criteria', would apply rigidly for recognition even if there is only one union or would it apply where only more than one union exist in an establishment. On the analogy of clause 1 of the 'Criteria', which provides that where there is only one union, it can be recognised even if it has not completed 1 year from the date of its registration, it would seem logical that the qualifying membership condition should apply only where there are more than one union in an establishment. Thus, where there is only one union in an establishment it will be entitled to recognition irrespective of its membership but where there are more than one union and none of them has 15% membership, none will be entitled to recognition.

(ii) It seems desirable to maintain status quo for 2 years from June 1958 in the case of unions already recognised before that date. The 'Criteria' do not, however, seem to place any bar to recognition of different 'craft unions' representing distinct

and separate interests in an establishment so long as they fulfil the conditions for recognition laid down in the Criteria.

(iii) Clause 8 of the 'Criteria' implies that if a Union has been found guilty of violation of the provisions of the Code, its recognition can be withdrawn by the employer. Before, however, such an extreme step is taken, it seems desirable that the charges against a Union should be investigated and confirmed by an Officer of the Central or State Government, as the case may be, on behalf of their I&E Machinery. In case the charges are refuted by the union, the matter may be decided by the Central|State Implementation Committee. The 'Criteria' are silent on the question of period for which a union can be de-recognised but, as under clause 4 of the Code a Union once recognised would continue to be so recognised for a period of 2 years, it may follow that a union found guilty of violation of the provisions of the Code can be de-recognised for a maximum period of 2 years.

(iv) Where, in a State, statutory provisions for according recognition, etc., exist, and they are at variance with the Criteria provided in the Code these will over-ride the provisions of the Code till the State Government concerned modifies them.

7. Conclusions of Central Implementation & Evaluation Committee

(First Meeting, New Delhi, September 20, 1958)

Action taken on the conclusions of the 16th session of the Standing Labour Committee held in October, 1957 regarding evaluation and implementation of labour laws, awards etc.

The information contained in the memorandum was noted. It was agreed that the suggestion made by the workers' representatives that the State Evaluation and Implementation Committees should be as representative as the Central Committee would be forwarded to State Governments for their consideration and adoption.

Cases on non-implementation or partial, delayed or defective implementation of

(i) *Awards, agreements, settlements and*

(ii) *Labour enactments received from State Governments, employers' and workers' organisations and action taken thereon.*

(i) It was clarified that complaints of non-implementation of labour laws, etc., relating to the central sphere should be referred to the Central E&I Division and those falling in State sphere to the State Governments concerned. In either case references to the implementation machinery at the Centre or in the States should be made only after the existing machinery under the Union Labour Ministry or the State Labour Departments has been fully utilized.

(ii) It was agreed that organisations would advise their constituent Units that when they refer cases of non-implementation to the Implementation machinery at the Centre and in the States they should give full details about the provisions violated, parties involved and their affiliations to the Central Organisation, etc. For this purpose, it was suggested that information regarding the members of Central Employers' Organisations should be supplied to Central Workers' Organisations so as to enable them to quote the central affiliation of the parties concerned.

(iii) It was decided that while reporting cases of non-implementation, etc., to the E&I Division, the parties should at the same time, send a copy of the complaint to the Central Organisation of the employer or worker concerned, as the case may be.

Non-implementation of awards, agreements etc., due to appeals to High Courts|Supreme Court.

(i) It was agreed that workers' and employers' organisations should take early steps to set up a machinery to screen cases before it is finally decided to take them up to higher courts.

(ii) As regards cases of appeals against industrial awards and agreements, relating to undertakings in the central sphere, already pending in courts, it was agreed that the Central Government might explore the possibility of bringing the parties to-

gether with a view to settling disputes outside the court. Similar action might be taken by State Governments in respect of cases falling in the State sphere.

This procedure may be tried for some time and if it did not succeed, the question of setting up a standing tripartite screening committee for this purpose may be considered.

(iii) It was agreed to consider the question of associating neutral auditors as assessors with the industrial tribunals so as to provide them with expert advice on accounting matters.

(iv) It was decided that an analysis of the cases of successful appeals against industrial awards may be made to determine the extent of the advantage secured, both in terms of money and as a vindication of principles.

Implementation of the Code of Discipline in Industry :

(i) It was clarified that as the Code was formally ratified at the sixteenth session of the Indian Labour Conference held at Nainital in May, 1958, it should be deemed to have come into effect from June 1, 1958. It would therefore, not be correct to apply the sanctions of the Code to cases of infringements that occurred prior to that date.

(ii) The need for following the Code in letter and spirit and for publicising its provisions, as extensively as possible, was emphasised. It was agreed that the Organisations of employers and workers would ask their member units to display the Code at convenient places.

(iii) It was decided that an on-the-spot-study under the Code of Discipline by a tripartite body comprising nominees of the members of the Central Implementation and Evaluation Committee of the Calcutta tram workers' strike should be conducted. It was suggested that the Government of West Bengal should be consulted in the matter immediately.

(iv) It was decided that in addition to its present functions the implementation machinery both at the Centre and in the States should organise itself to take preventive action, before a major strike takes place.

Evaluation of labour enactments, awards, agreements, disputes, etc.

The programme for evaluation drawn up in the memorandum on this item was accepted with the addition that the evaluation of Factories Act may also be included in the programme.

A review of some typical cases of non-implementation.

The need for a scrutiny of major complaints before passing them on to the E & I Division by the Central Organisations of Workers and Employers was appreciated.

8. Analysis of Appeals Made to Supreme Court in Matters Relating to Labour Disputes During 1957 and 1958.

Objects and Coverage:

In pursuance of the recommendations of the Central Implementation and Evaluation Committee, an analysis has been made of appeals against Industrial Awards, filed in the Supreme Court, with a view to determining the advantages secured by the appellants both in terms of money and by way of vindication of principles. The analysis covers 33 judgments delivered by the Supreme Court during 1957 and 1958 (and published in Law Journals during these two years) in matters relating to labour disputes; 16 of these judgments were delivered in 1957 while 17 were delivered in 1958.

Classification of Cases Studied:

Of the 33 cases, appeals were initiated by employers in 25 or about 76% cases; by workers in 5 or about 15% cases and by State Governments in 3 or about 9% cases. In 16, or roughly about 50% cases the appeals related to termination of service (dismissal or discharge) of workmen; in 7 cases they related to bonus issues while 5 cases concerned the payment of wages and dearness allowance. Thus, cases pertaining to termination of service, wages and bonus accounted for about 85% of the

total number of appeals made to the Supreme Court. The remaining cases related to miscellaneous issues, e.g., compensation for accidents outside the works premises, power of Government to supercede a reference pending before a Tribunal by a fresh notification, validity of awards after a prescribed date, scope of the term 'worker', etc.

Of the total number of cases filed in the Supreme Court, 22 or about 67% cases were either wholly or partly successful. Employers were wholly successful in 18 out of 25 cases (i.e. in about 72% cases); partly successful in 1 case and were unsuccessful in the remaining 6 cases. Workers succeeded in 2 (40%) of the 5 appeals filed by them. The State Governments were partly successful in 1 case and unsuccessful in 2 cases.

Advantages Secured in Successful Appeals:

(a) Gain in Terms of Principles

The advantages secured by the appellants in successful appeals were either in respect of monetary gain or with regard to vindication of a principle or both. The advantage, in terms of principles upheld or enunciated by the Supreme Court is, in several cases, of a wider significance, for, whenever an appellant wins a case it not only implies that the ground on which he made it has been upheld but once the principles for determining a particular issue are decided by the Court, they continue to govern similar issues in future. Most of the cases studies involved interpretation of law, examination of the validity of legal provisions of labour enactments in the light of Fundamental Rights, determination of principles in matters not laid down by law and elucidation of principles enunciated by the Court in matters like determination of bonus, etc. vindication of principles—big or small—was generally implied in almost all successful appeals.

In appeals pertaining to termination of service of issues arising from such termination, important points of law or broad guiding principles were settled by the Supreme Court in deciding such cases. Thus the employers' right to dismiss employees for misconduct or for absence without permission for more than 14 consecutive days was upheld as also his right to discharge his employees under the Standing Orders. New principles regard-

ing computation of money value of reinstatement benefits were laid down in another case. In cases concerning bonus, the Supreme Court enunciated several important principles. It has, for example, laid down that bonus is not a mere matter of bounty or gratuitous payment made by an employer to his employee, nor is it a matter of deferred wages. In one case, the Court refused incentive bonus to workmen as they could not prove that the employer had earned profits due to their contribution.

(b) *Monetary Gain:*

It is not easy to estimate precisely the monetary gain secured by appellants in successful cases; these are normally not indicated in the judgments as it is on the question of law or principles that appeals are generally filed in the Court. In cases pertaining to bonus, dearness allowance, dismissal of workers, etc., it is all the more difficult to calculate monetary gain or loss as it is of a recurring nature and may cover a large number of persons over an indefinite period of time. The information about monetary gain, etc., involved, given below, has thus either been estimated on certain assumptions about average wages, etc. or by obtaining relevant information from the employers concerned. The analysis on the basis of these estimates shows that of the total 22 successful cases, in 5 no direct monetary gain was involved—they related to the question of interpretation, etc., e.g., amending a prayer for dismissal by a prayer for discharge, fixing of responsibility on the management for change of service conditions, payment of compensation for accidents outside works premises, interpretation of the term 'worker' under the Factories Act, validity of awards given after a prescribed date, etc. The classification of cases where some monetary gain was involved is as follows:—

<i>Monetary gain</i>	<i>Number of cases</i>
1. Not more than Rs. 1,000 -	3
2. More than Rs. 1,000 - but not more than Rs. 2,000 -	2
3. More than Rs. 2,000 - but not more than Rs. 10,000	2
4. More than Rs. 10,000 - but not more than Rs. 15,000	2
5. More than Rs. 15,000 - but not more than rupees one lakh.	3
6. More than rupees one lakh.	5

Judging from the fact that appeals to the Supreme Court involve considerable legal expenses, loss of time and inconvenience, it may be said that in majority of cases the monetary stake was comparatively small. In most of the 12 successful cases concerning termination of services of workmen, the monetary gain involved was not more than Rs. 10,000|-; in 4 of these cases, the disputes related to dismissal of only 1 worker each while in 10 cases, the disputes related to dismissal or discharge of not more than 20 workmen. Even with regard to cases concerning bonus, which generally involved large sums of money, in 1 case the employer went in appeal on the issue of paying bonus to 4 workers involving only about Rs. 1,200|-. It may be argued that these cases involved sometimes only 1 or a few workmen, and that probably they concerned not so much the vindication of a principle as the vindication of prestige and that such approaches to the highest court of the land are not only detrimental to healthy and harmonious growth of industrial relations but also smack of harassment and inconvenience to the workers whose bargaining and litigation capacity is so obviously inferior. But in each successful case an important point of law was involved and the clarification given by the Supreme Court is bound to reduce causes of friction in the future.

The following broad conclusions emerge from the above analysis:—

- (1) In 1|3rd of the cases studies appeals were not successful; of the appeals filed by employers, about 25% were not successful—in these cases the view point of employers was not upheld by the Court and it may be said generally that they were not based on very substantial grounds.
- (2) The largest number of appeals in the Supreme Court in respect of which judgments were delivered in 1957 and 1958, were preferred by employers; a majority of them were successful.
- (3) Eighty-five per cent of the appeals related to termination of service, wages and bonus.
- (4) In most of the cases, questions of law or principles were involved; in a number of cases important decisions laying down broad guiding principles were given by the Court.

(5) In a majority of cases, the monetary benefit involved was comparatively small; in cases relating to termination of service, the monetary aspect did not seem important at all as several of these cases concerned only 1 or 2 workmen. But important questions of law and principles were involved and in some of them the vindication of the view point of the appellants, judged objectively, was considerable and worth while.

Chapter 5

Memorandum On Works Committees

1. Experience In Other Countries

Introduction

Since the last World War many countries have set up machinery for associating the staff closely with the general operation of the undertaking. The machinery thus established differs from country to country and also bears different names like Works Committees or Councils, Management Councils, Joint Production Committees, Joint Advisory Committees, Labour Management Committees, Occupational Committees, Factory Committees or Councils, Workers' Committees, etc. These bodies are meant to serve economic and social purposes, by promoting cooperation in the undertaking. The economic motive is, to ensure increased production and the moral|social motive is to secure full recognition of the importance of the human element and accordingly to give staff a greater interest in the general operation of the undertaking.

Method of establishment of joint bodies.

In some countries these joint bodies have a purely contractual origin while in others they owe their existence to legislation. The countries which belong to the former category are U.K., Sweden, Switzerland, Norway, Canada, Israel, Japan etc. In the countries where the Works Councils are the outcome of voluntary agreements between the employers and the trade unions, the method of joint consultation generally varies not only from one industry to another but also from one firm to another. The position in Sweden is however slightly different. Here, two general agreements were signed on 30th August 1946 regarding the appointment of Works Councils. One was between the Confederation of Swedish Employers and the Confederation

of Swedish Trade Unions and the other between the Confederation of Swedish Employers and the Swedish Confederation of Organisations of Salaried Employees. The agreement becomes legally binding on the employers, wage earners and salaried employees concerned only when it is ratified by a particular industry.

To the latter category of countries which have passed legislation for the establishment of Works Councils belong Federal Republic of Germany, Austria, France, Belgium, Finland and the totalitarian (*Government of India's term for planned economies — Publishers*) economies like the U.S.S.R., Czechoslovakia, Yugoslavia, Poland, etc.

In the Federal Republic of Germany the "Works Constitution Act" of 11th October 1952 established a uniform system of collaboration between employers and workers at the plant level throughout the Republic. The Act expressly states that its provisions in no way impair the function of the trade unions and the employers' associations.

In Austria the "Federal Act" of 28th March 1947 introduced a representative system in all undertakings. Another Act of 30th June 1948 deals with the representation of wage-earners in agriculture and forestry undertakings.

In France, production or management committees were set up spontaneously in a number of factories. With a view to making the establishment of these bodies a general practice and to give them legal status the Ordinance of 22 February 1945 was issued and thus Works Committees came to be established. Works Councils are required to be formed one in each individual plant together with a Central Council for the firm as a whole. The representatives of the Central Council are elected by the Works Council. Similar practice is adopted by Austria and a number of other countries. A Works Council may also appoint special Committees to deal with employment problems or social problems in the proper sense of the term. The legislation, however, does not prevent any arrangements as to the operation or powers of Works Committees being based on collective agreements or custom. In some cases, even the application of the legislation is optional.

In Belgium, Works Councils have been set up under the

Act of 20 September 1948 to make provisions for the organisation of the country's economic life. Under this Act, Works Councils may be established on the employer's initiative. Depending on the size and structure of the undertaking, every Works Council may split itself up into Works Sections comprising delegates representing particular categories of workers.

In Finland, Works Councils became definitive under the Act of 30th December 1949.

In Netherlands, the Act of 4th May 1950 deals with the setting up of Works Councils but it is also closely related to the question of the general organisation of the economy.

In the countries with nationalised and planned economies, such as the U.S.S.R. and other countries of this group trade union Works Councils or Committees have been formed by legislation. But these Councils differ from their counterparts in private enterprise economies mainly in their responsibilities and in their relationship with the unions.

In Czechoslovakia for instance, Works Councils have been set up under a Decree issued on 24th October 1945 in all establishments employing more than 20 workers. The unified trade union organisation has the sole right to put forward a list of candidates and also complete control over holding the elections, finances etc.

Under the Act of 2nd July 1950, the Workers' Councils in Yugoslavia (the membership of which varies from 15 to 120) are elected by workers who have signed a contract of employment with the undertaking and also by the technical, engineering and other staff. The management Committees made up of between 3 and 11 members are elected by the Workers' Councils from among the employees of the undertaking. The manager of the undertaking is appointed by the management Committee of the association grouping a number of undertakings or, if no such association exists, by the appropriate Government agency. The manager is, ex-officio, a member of the management Committee. These Committees are generally responsible for seeing that the regulations regarding industrial relations, salaries and wages, promotion, safety, social insurance and the improvement of the workers' living standards are properly carried out.

Works Councils in Poland were set up under the Decree of 6th February 1945. In practice, however, those Committees were incorporated in the trade union organisation, in which they functioned as the "basic units" and their statutory duties of safeguarding the workers' interests remained a dead letter. However, the recent indications are to explore the possibility of increasing the powers of the Works Councils so as to implement the Decree once more and to enlarge its scope in certain respects.

Composition of the joint bodies.

In the majority of countries, legislation or regulations governing the setting up of Works Councils prescribe a minimum number of employees above which an establishment is required to set up such a Council. In Austria for example, a Works Council is elected in any undertaking in which at least 20 workers are employed while the number stipulated in countries like Germany, Czechoslovakia, and Poland are over 20 workers. In the Netherlands the law lays down a minimum of 25 workers, whereas in Sweden and Italy the minimum fixed is over 25 workers. In Belgium, France and Israel, Committees are to be formed in establishments employing 50 workers or more while the number in U.K. is over 50. In Poland, the law allows workers' management Committees to be set up in all undertakings provided that not less than 50% of the wage earners approve the idea.

Structure

The structure of Works Councils also varied from country to country. In some countries they are composed of workers' delegates while in others they are joint bodies. Their structure also may vary from one plant to another within the same country in accordance with the proportion of wage earners to the total number of employees.

In Austria and the Federal Republic of Germany the Works Councils may only include representatives of the workers. In Austria, the law specifies that in undertakings employing more than 50 workers separate Works Councils for the wage earners and for the salaried employees should be set up if each of these two groups comprises 20 persons or more.

Similarly, the internal Committees in Italy consist of only

the workers made up of representatives of the technical and clerical staffs and of the wage earners elected separately by direct secret ballot by all the work people whether they are members of a trade union or not.

In Belgium, France and the Netherlands the law required Works Councils to be joint bodies, although there may not be as many employers' as workers' representatives. Works Councils in Belgium are composed of the head of the business and one or more delegates appointed by him together with a number of staff delegates. The number of staff delegates may be between 3 and 14 depending on the number of working-people. The number of seats allotted to the workers' and salaried staff's delegates also depends on the relative strength of these two groups.

In France the Works Council includes the head of the business or his representative and a delegation of employees. Delegates are elected from lists submitted by the organisations that are most representative of each category of employees. A system of representation by occupation is adopted. The allocation of seats to different categories of employees and the division of the work people into voting groups is settled by the management with the trade unions concerned. If the manager fails to convene a meeting of the Works Committee in time, the latter may, at the request of workers' representatives, be convened by and meet under the Chairmanship of the Labour Inspector.

A similar position exists in the Netherlands where the manager in addition to his being a member is also the Chairman of the Council. The Council comprises members varying between 3 and 25, elected by the wage earners.

In Poland, the law stipulates at least $\frac{2}{3}$ of the members of the workers' management council must be chosen by secret ballot from among the workers themselves. The manager is, ex-officio, a member of the council but cannot be elected Chairman or Vice-Chairman of the Council.

In Finland, Works Councils consisting of two employers' representatives, 3 workers' representatives and one representative from the salaried staff are formed in establishments where the number of man hours worked during a single year does not

exceed 240,000. In establishments where this limit of working hours is exceeded, the Council is composed of 3 employers' representatives, 5 workers' representatives and two representatives of the salaried staff. The Chairman of the Works Committee is elected by the Committee and chosen alternately, each year, from among the representatives of management and those of the staff. A Secretary is also elected by the Committee from among the members representing the staff.

In Canada and Israel the productivity Committees are joint bodies, the representatives from each of the groups of management and workers' being equal. The wage earner representatives are elected solely by the workers (secret ballot in the case of Canada) while the management representatives are appointed by the management (by the senior executives and foremen in the case of Canada). In Israel every Committee elects two Chairmen, one from each group who take it in turns to preside. These two Chairmen with the existence of the Secretary, handle the Committee's business between meetings and supervise the work of sub-committees.

Role of Trade Unions in the formation and functioning of joint bodies

In many countries, irrespective of whether the Works Councils are set up by agreement or law, trade unions take part in the appointment of members, (although in some cases once the Councils have been elected, it is completely independent of the Unions). Close collaboration between the unions and the Councils takes place at all times, particularly if the unions are strong and have a large membership in the undertaking concerned.

In Sweden only trade union members are entitled to take part in the election of workers' delegates. This, however, does not apply if more than half the workers in the plant are not unionised. As regards salaried employees if not less than three-quarters of them employed in an undertaking are affiliated to the Confederation of Salaried Employees' Organisations, only those who are trade unionists are entitled to vote in the election of their representatives; if the proportion is less all salaried employees are allowed to vote.

In France, and Belgium, the workers' delegates on a Works

Council are elected by a system of proportional representation from lists drawn up by the organisations considered to be most representative of each category of workers. (In Belgium these bodies are the nationally federated inter-occupational organisations with not less than 100,000 members or 5% of the labour force of the particular undertaking). Further, in France the workers' organisations which are recognised as representative in each undertaking are allowed by law to appoint one delegate (who is an employee of the undertaking) to sit on the Council in an advisory capacity.

A similar procedure is followed in the Netherlands, where the members of Works Councils (excluding the Chairman) are elected from one or more lists of candidates submitted by the union or unions designated for this purpose.

In Canada although the wage earners' representatives on the joint production Committee are elected by secret ballot by the employers, they may be appointed by the unions wherever this practice has got the approval of both the workers and management. In addition, the president of the union is often allowed to attend meetings of these joint Committees.

In the Federal Republic of Germany, a delegate from a trade union represented on a Works Council, may, at the request of a quarter of the Council's membership attend meetings in an advisory capacity.

In Australia, a somewhat different system is found. The Works Council is composed of a Chairman (who is also the manager of the plant), a trade union representative from each of the six departments in the plant, the union Secretary (who is also the secretary of the Council) and six workers' representatives selected by the management, together with the training officer as joint Secretary.

In Italy, elections of internal Committee members and factory delegates are managed by the trade unions.

Functions of Works Committees

Works Councils are generally responsible for putting forward the workers' view before a decision is taken by the management. Depending on the countries and the regulations in force the functions of these Councils range from social questions (Welfare) to technical and economic matters. Frequently, it has

been considered best to limit the scope of councils to matters of joint interest not covered by collective agreements and in such cases the councils are advisory bodies pure and simple.

Social functions: Chiefly, the Works Councils are concerned with social matters like welfare facilities, amendments of labour laws or regulations, hirings and dismissals, resolving industrial disputes by conciliatory methods etc. Generally with the exception of a few countries like France, Austria and Federal Republic of Germany these councils do not deal with the wage questions and other working conditions. In U.K., Sweden and Israel, the joint Committees deal with various aspects of welfare and working conditions (heating, ventilation, lighting etc.), vocational training questions, the personnel department and the prevention of accidents and also with such technical matters as the improvement of production methods, the raising of productivity, organisational methods, automation etc. The Works Councils in U.K. are purely advisory bodies and the final decision rests with the management. In Austria, Belgium and France law provides that workshop or working regulations or plant rules may not be issued or amended without their approval. These countries have also the right to manage or share in the management of welfare facilities provided by the undertaking for the benefit of the workers or their families. The Councils in Belgium also discuss the general criteria for hiring and dismissal of workers. In Italy too, the internal committees discuss plant regulations with the management before they came into force. Here any proposal to dismiss workers through a falling off in business or a re-organisation must be notified to the Committee with full reasons thereof, and the matter thereafter is discussed with the management. In the event of any disagreement the matter is submitted to the appropriate bodies for investigation. In some countries like the Federal Republic of Germany and the Netherlands, the Councils are responsible for ensuring that social legislation and collective agreements are carried out. In these as well as in some other countries like Japan, Finland, Italy and Switzerland they also make the first attempt at conciliation. In the Federal Republic of Germany no large-scale hirings or dismissals may take place without the Works Councils being consulted. In Austria, the Works Councils are entitled to

establish welfare funds (this includes all funds to improve the well-being of the workers and their families) and to administer them without interference. In the Netherlands they take part in the running of welfare facilities attached to the undertakings. Also, the Councils should first be notified about the establishment or termination of each wage earner's contract despite the Councils' opposition. If the employer terminates the contract it may appeal to the conciliation office and by virtue of its right to a share in the management can even suspend the decision of the employer to close down the plant until a ruling is obtained from the State Economic Commission.

Technical functions: The technical responsibilities assigned to the Works Councils cover safety and production and productivity. These functions are however discharged purely in an advisory capacity. In the Federal Republic of Germany, the Councils must be allowed to express an opinion, wherever safety devices are introduced and whenever an inquiry is held in the case of an accident. Here as well as in Finland the Councils co-operate with employers and labour inspectors in enforcing the safety regulations. Similarly, in the Netherlands Works Councils are responsible for seeing that the laws and regulations for the workers' protection are observed and that the facilities provided in the interests of safety, health and hygiene are maintained in good order. In Canada, Norway, Israel etc., the Councils are called production Committees which are mainly intended to secure the expansion of production and the raising of productivity. Works Councils in Sweden not only express their views on system of organisation and planning for optimum production but also hold a watch over all technical and economic matters. In the Netherlands and Finland they suggest ways and means of improving technical and economic efficiency for intensifying production. Austrian Works Councils may make suggestions to the management regarding improvements in equipments. In France, the Councils examine any suggestions for increasing output put forward by the management or workers, while in Italy they give suggestions for increasing productivity.

Economic functions: Many countries have taken steps to give Works Councils some voice in the internal administration and in some cases in the management of the undertakings in the

belief that workers have a vital stake in the efficiency of the undertakings. In France the powers of the Works Councils in respect of economic matters are purely advisory. They must, according to the law be consulted over matters affecting the organisation, management and general running of the undertaking. They must also be informed of the profits earned and in cases of some companies (with limited liability) they can also make suggestion as to the uses to which these profits should be put. In Belgium and Sweden the management must supply the Works Councils with full information on the financial results of the business. In the Federal Republic of Germany, joint economic Committees made up of between four and eight members (with at least one member from the Works Councils) are set up in factories with more than 100 workers. These Committees discuss manufacturing and working methods, production schedules, the financial position of the business, the state of output and sales etc. In Austria, a Works Council by virtue of its right to a share in the management, is entitled to make proposals to the management in the interests of the economy as a whole as well as of the plant and its workers.

Assessment—Extent of Success: In the Federal Republic of Germany and the Scandinavian countries the Works Councils operate to general satisfaction and seem to have become a permanent feature of the industrial scene. In Canada and Finland these Councils have given encouraging results and satisfaction to all parties. Their number is also on the increase. In U.K. although joint consultation at the plant level is ineffective, sometimes the Works Councils are encouraged as the experiment is considered to be an excellent way of educating trade union leaders in the techniques of administration. Although joint consultation has become a widespread practice in an ever-increasing number of countries and has generally proved itself worthwhile, a number of snags have been struck over in the establishment of these councils and the way in which they discharge their duties. The dangers of keeping the workers informed fully about the state of business are exaggerated in some countries. In this account the Belgium Manufacturers' Federation has taken the line that the Works Councils would have been more effective if their powers had been freely negotiated in each undertaking

with the law being applicable only in the event of disagreement. On the other hand, the Belgium trade union movement is not satisfied with the powers granted to the Works Councils or the scope of the joint consultation.

In France, Works Councils are undergoing a critical period. The commonest attitude is sheer apathy and it is hard to find men now to stand as candidates for the Works Councils. Sometimes they seem to have been shunted into a siding and by wasting their time in futile efforts, have incurred the contempt of the workers whom they are supposed to be representing. The reasons for this deplorable condition are to be found mainly in the psychological atmosphere. In many cases the managements deliberately try to ham-string the councils and discourage them. In some cases, failures have also been attributed to the fact that many of the employers do not even know how to take the chair at a meeting and when they are asked to supply the information, give it in a language which is over the workers' heads.

In some countries like Australia trouble has been caused by the fact that the wage earners and salaried staff took part in the work of the same council.

Paradoxical as it may seem, co-operation at the plant level is viewed with suspicion and disfavour in those countries where the trade union organisations are weak through fear of their losing control over the workers whose difficulties could be largely solved through the Works Committees, etc. Where trade unionism is well founded, the Works Committees receive better treatment at the hands of the unions.

2. International Standards Relating To Works Committees Etc.

The expansion in the use of joint consultative machinery at the plant level led the International Conference to adopt a Recommendation (No. 94) in 1952 concerning consultation and co-operation between employers and workers at the level of the undertaking. This Recommendation stipulates that Works Committees etc., should deal with matters of mutual concern to the employers and workers but not within the scope of collective bargaining machinery or not normally dealt with by other ma-

chinery concerned with the determination of terms and conditions of employment.

The question of bipartite co-operation at the unit level has also been discussed by several of the I.L.O. Industrial Committees. It has been recognised that bodies for consultation and co-operation should have the essential function of increasing understanding of each other's points of view between all parties in the undertaking on a basis of real equality. Also, the successful functioning of the Works Committees etc., depends on the willingness of the management of undertaking to inform the joint body at regular intervals regarding the activities of the undertaking, future plans and provide the joint body with general information about the economic and the technical situation of the undertaking.

While no comprehensive list of the functions that could be assigned to joint consultative bodies has been drawn up by the I.L.O., the following subjects have been considered suitable for consideration by these bodies:—

- (a) information on general problems which have an influence on the operation of the undertaking;
- (b) information on the employment situation;
- (c) conditions in the plant, such as ventilation, lighting, noise, temperature, factory hygiene;
- (d) amenities, such as rest rooms, health services, housing, canteen services, recreation;
- (e) safety and accident prevention;
- (f) vocational training; and
- (g) measures for increasing efficiency.

Recently, the International Labour Office had called for detailed information from Member States regarding the extent to which the principle of co-operation at the level of the undertaking is being followed. This information, which would be useful as guidance material will become available sometime later.

3. Critical Analysis On The Functioning Of The Works Committees In The Public Sector

The provisions of Section 3 of the Industrial Disputes Act, 1947 empower the appropriate government to direct (by gene-

ral or special orders) that works committees will be constituted in any industrial establishment in which 100 or more than 100 workmen are employed or have been employed on any date in the preceding 12 months. In so far as public sector undertakings falling under the Central sphere are concerned, orders have been issued in the case of the following to set up Works Committees:—

(i) The three Major Ports—Bombay Port Trust, Madras Port Trust and Commissioners of the Port of Calcutta.

(ii) All industrial establishments in the public sector falling under the Central sphere (other than Government Railways, mines, oil fields and major ports).

(iii) Industrial establishments in the mines falling in the public sector.

(iv) Banking and insurance companies (falling under the public sector) having branches in more than one State provided substantial proportion of employees working therein apply for the formation of works committees. The Chief Labour Commissioner (Central) has been empowered to exercise his discretion whether to order formation of works committees or not.

In order to assess and examine critically the functioning of the works committees in these public sector establishments, a questionnaire was prepared and issued to them through the Regional Labour Commissioners. Replies were received from 161 public sector undertakings falling in the Central sphere. A major portion of these public sector undertakings is under the administrative control of the Defence Ministry and the remaining are under the administrative control of the Ministry of Food & Agriculture, Irrigation & Power, Finance, Works, Housing & Supply, Communications and Health etc.

Amongst the three major ports, works committee has been set up only at Madras. In Bombay and Calcutta, the Port authorities have expressed their inability to set up these committees in view of the prevailing labour conditions and apathy amounting to opposition from the trade union organisations concerned. The question of exempting them from setting up works committees, is already receiving the attention of the Ministry of Labour & Employment. Works committees are also not functioning in any of the banking or insurance organisations belonging to the public sector as no request was received from the

employees working in these organisations for the formation of these committees. The analysis given below therefore pertains to 161 public sector undertakings falling in the Central sphere and it excludes the undertakings referred to above.

Size of the Undertaking and the Works Committees:

The majority of the establishments from which replies have been received employ more than 500 workers and in more than 25% of the establishments, the workers employed were more than 2,000. From the reports received, it has been observed that the successful working of the works committees is in no way interdependent on the number of workers employed in any establishment. It depends more or less on the keenness of interest evinced by the representatives of both sides, i.e., the workers as well as the management and the size of the establishment has practically no bearing on the interest taken by the parties concerned in the successful working of the committees.

Composition of Works Committees:

Rule 39 of the Industrial Disputes (Central) Rules, 1957, provides that the number of representatives of the workers on these committees will not be less than the number of representatives of the management and that the total number of members shall not exceed 20. No restriction, however, has been placed in the rules, on the management's representatives being less in number than the representatives of the workers. In 9, i.e., in about 6% of the establishments (out of the total of 161), it was observed that the representatives of the management were less in number than that of the employees. The main reason usually given for this disparity in number was shortage of adequate number of officers in these establishments. The disparity in some cases is reported to have given rise to certain practical difficulties such as election of Chairman and Vice-Chairman as well as Secretary and Joint Secretary of the works committees. In accordance with Rule 51 of the Industrial Disputes (Central) Rules, 1957, the offices of Chairman and Vice Chairman are not to be held by the representatives of the employers or workmen for two consecutive terms and similarly the offices of Secretary and Joint Secretary are not to be held by the representatives of the employers or workmen for two consecutive years. This inter-

change is not possible in the installations where there is only one officer.

Frequency of the meetings of the Committee:

In accordance with the rules, the meetings of the works committees are to be held once in a quarter and more frequently if possible. On the whole it was noticed that the meetings were being held once in a quarter in almost all establishments except in a few cases, the number of which was limited to 3%. The reasons which have been furnished for irregularity in holding the meetings are:—

- (i) non-submission of agenda by the representatives of workers as well as management.
- (ii) lack of quorum.
- (iii) administrative difficulties such as lack of space, holidays etc.
- (iv) absence of representatives of both the sides on account of various reasons including misunderstanding among the parties concerned.

With a genuine goodwill and desire to ensure that the works committees are functioning successfully, these difficulties could be easily met.

Minutes of the Works Committee:

There is no uniformity in the system of maintaining the Minutes of the committee meetings. Where the committees are active, minutes are written in an elaborate manner but in cases where the committees are more or less inactive, the minutes are written, it appears, only to meet the requirements of the law. They do not furnish details of the issues under discussion nor the arguments advanced by both the parties are incorporated therein. In a very few cases, the minutes contain questions put up by the representatives of the workers and answers given by the representatives of the management. Thus there is enough scope for improvement in this connection.

Subjects discussed in the meetings:

The functions of the works committees, in accordance with the Act, are to promote measures for securing and preserving amity and good relations between the employers and workmen

and to that end to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters. The Act as well as the Rules are silent as regards the exact matters which are to be discussed by these committees. In the Defence Installations, through administrative directives, effort has been made to give guidance to these committees as regards the subject matters to be discussed therein but in other installations falling in the public sector, no such guidance is available to the members of these committees. This lacuna, many a time, furnishes a fertile ground for disputes when workers insist on discussing certain items in these meetings which the management regards as purely managerial functions such as matters of discipline etc. It has been noticed that managements are usually reluctant to suggest any item in the agenda by themselves. The workers' representatives, on the other hand, try to bring in all sorts of issues in the agenda which leads to a clash between the representatives of the two sides. There is a marked tendency among the representatives of the workers to regard works committees as something like Municipal Councils wherein they could ask questions or criticise the administration. This attitude on the part of workers' representatives, often results in misunderstanding being caused which once established is rather difficult to remove. A lot, therefore, depends on the attitude and the frame of mind not only of the workers' representatives but the management-members of the committee as well. The workers' representatives generally tend to regard these committees as a platform where they could grab and seize all advantages they can instead of securing just remedies for the really aggrieved workers. The management's side, at times, fails to understand the difficulties of the worker-members of the committees who have to stand pressure from a large number of workers especially when there are a number of grievances. In the event of their failing to represent these grievances adequately, they lose the confidence of the workers who had elected them. It has often been suggested that the scope of these committees should be properly defined under the Act while some are of the opinion that a healthy tradition should be established as regards the subject matters to be discussed in these committees and these should be left to be

decided upon mutually by both the parties.

(a) The items which are suggested by the workers' sides generally relate to their difficulties such as conditions of service including working hours etc. A list of subjects generally brought forward for discussion by the workers' representatives is given below:—

Grant of loans, holidays, advance payment of wages before important festivals, improvement of quarters, recreation and medical facilities to employees and their families, protective clothings, payment of bonus and leave with wages, promotion of good relationship, matters of general welfare, labour welfare fund, measures against illiteracy, announcement through loudspeakers, hot weather requirements, labour union office, construction of canteen service, training in first aid, medical examination of workers, water supply, purchase of games material, market rates, improvement in working environments, cinema projectors, electrification of quarters, small pox vaccination, creches, transport facilities, cheap grains etc.

(b) The subject matters referred to the committee by the representatives of the managements were as under:—

Discipline and punctuality, industrial relations, adjustment of surplus personel, welfare amenities, medical facilities. Promotion of amity, subjects covering moral and social education, health, sanitation etc., National Savings Certificates, co-operative society, financial aid to sports clubs from Welfare Fund, award of prizes to outstanding candidates in training schemes, service conditions, etc.

(c) The items which were considered as ultra-vires by the managements and on which discussion was usually not allowed, were as under:—

Wrongful termination of services of workers, investigation in disciplinary cases, confirmation, higher pay and special allowances, provision of clerical staff in L.O.'s office, representations, trade tests by workers, question of pay scale, discussion on wage rates.

Decisions and Conclusions reached in the Committee:

The study revealed that in approximately 60% of the undertakings, decisions reached were usually unanimous. Most of these decisions pertained to the matters which were within the administrative control of the Head of the Establishment concerned. In nearly 48% of the undertakings, as many as 90% of the decisions arrived at were implemented within a reasonable time. In as many as 33% of the undertakings, the average time taken to give effect to the decisions or recommendations of the works committees was less than one month. It was also noticed that decisions are given effect to fairly quickly except on certain major issues requiring Government sanction. In 53% of the Establishments, certain decisions taken remained unimplemented due to the reasons stated above. Many of the recommendations of the committees had to be referred to higher authorities or Ministries with the result that the sanction as well as implementation were unduly delayed. Policy matters could not either be decided or implemented for a long time. The reasons which are generally furnished for delay or non-implementation of the decisions are summarised below :—

- (a) matters involved huge financial out-lay.
- (b) non-availability of raw materials which are generally imported and non-availability of building materials.
- (c) lack of co-operation, friction and local politics in a few cases.
- (d) matters beyond the financial or administrative powers of the Head of the Establishment.
- (e) procedural difficulties.

In 81% of the Establishments, no difficulty, procedural or otherwise, was encountered in the smooth functioning of the works committees. Procedural difficulties generally arise due to vagueness of the scope of the works committees, controversy regarding the powers given to the Chairman to disallow certain items, inclusion of a certain item in the agenda, holding of works committee meetings without proper notice or circulation of agenda, opposition of trade unions to the inclusion of certain items in the agenda.

General difficulties :

General difficulties reported during survey in the smooth function of these committees were as follows:—

(i) lack of appreciation on the part of the management and workmen's representatives of the functions and significance of the committees.

(ii) illiteracy and lack of understanding amongst the workers especially those employed in backward areas.

(iii) disinclination of workers' representatives on the works committee to participate in the deliberations of the committee.

(iv) workers expect too much out of these representatives and they being unable to deliver the goods become unpopular and are not inclined to serve on the committees.

(v) lack of co-operation and in some cases even opposition of the trade union leaders to the constitution and the functioning of the works committees. They fear that their representative character will cease if works committees function. There have also been instances wherein it was reported that the trade unions regarded works committees as their rivals.

(vi) opposition of trade unions towards the formation of works committees due to inter-union rivalry.

Factors responsible for successful functioning of works committees:

Factors which were found helpful for the successful functioning of works committees were as under:—

(i) existence of co-operation and cordial relations between the workers and managements and also with the trade unions.

(ii) sympathetic attitude by the managements especially in encouraging workers to put forward their grievances and suggestions.

(iii) foresight of the managements in having prior consultation with the works committee before bringing any changes in respect of welfare, service conditions etc.

(iv) higher educational standards amongst the workers.

(v) model constitution and bye-laws for the works committees have been framed.

Sub-Committee of the Works Committees.

In a majority of the Establishments, sub-committees of the works committees were set up. These included canteen committees, production committees, welfare fund committees, estate advisory committees, Standing sub-committees to scrutinise the agenda of the works committees. Besides these, certain other committees also appear to have been set up on an *ad hoc* basis and these were Vanamahotsava sub-committee, Rate control committee, Puja committee etc. It was also observed that these sub-committees are generally formed by the works committees which are running smoothly. In establishments where there has been misunderstanding and consequent friction in the works committees, efforts to form sub-committees could not succeed. In most of the cases these sub-committees did not have equal number of representatives of the management and workers.

General Remarks.

(i) In an appreciably large number of public sector undertakings, inter-union rivalry has not affected the smooth working of the works committees. This is perhaps due to the fact that in these undertakings usually one union is recognised and therefore the unrecognised unions, if any, often have ineffective existence.

(ii) In private sector undertakings, the officers in charge of Establishments have usually wider administrative and financial powers but in the public sector undertakings, the powers delegated to those officers are limited. Whenever proposals made by the worker-members of the committee are reasonable, the officer-in-charge of installations in the public sector agree with them and recommend the same to the higher authorities for their sanction and implementation. This involves considerable time lag and at times the proposals recommended by these officers are not sanctioned by the higher formations or Ministries. This causes disappointment and frustration amongst the workers.

(iii) As the scope of the works committees has not been adequately defined either in the Act or in the Rules, certain limitations are often placed by the managements on the items to be brought forward for discussion. This has given rise to a persistent demand on the part of the worker-members of the com-

mittees that the scope of this committee should be properly defined and more latitude allowed to them to discuss problems concerning conditions of work, pay scales and other terms and conditions of service.

(iv) The greatest measure of success amongst the public sector undertakings has been achieved by the Defence Installations in the formation of works committees. Much of this success is due to the cadre of Labour Officer which was established in these undertakings much earlier. As most of the Defence undertakings are located outside the urban areas, the scope for improvement and for adoption of welfare measures was considerable and the representatives of the workmen as well as management were not found lacking in utilising the same.

4. Procedure For Election Of Officers to Works Committee

A point that merits consideration in connection with Works Committees relates to the procedure of election of Chairman and Vice-Chairman for them. Rule 51 (2) of the I.D. (Central) Rules, 1957, which governs election of officers for Works Committees, is reproduced below:

“51. *Officer of the Committee....*

“(2) The Committee shall elect the Chairman and the Vice-Chairman provided that where the Chairman is elected from amongst the representatives of the employers, the Vice-Chairman shall be elected from amongst the representatives of workmen and *vice versa*.

“Provided further that the post of the Chairman or the Vice-Chairman, as the case may be, shall not be held by a representative of the employer or the workmen, for two consecutive terms.”

Previous to the promulgation of the above rule in March, 1957, the provisions of the then prevailing Industrial Disputes (Central) Rules permitted the nomination of the Chairman from among the representatives of the employers and the Vice-Chairman to be elected by the Committee from amongst the workers' representatives—on the Committee.

It has been urged that the new rule about the election of the Chairman and the Vice-Chairman is operating adversely in the setting up and functioning of Works Committees. It is stated that the present provision of electing Chairman from em-

employers and workers' side on alternate basis has not been found to be conducive to the smooth functioning of the Works Committees.

A note on functioning of Works Committees in other countries is given earlier in this memorandum (pp. 70-81). Further studies undertaken in this respect show that the practice varied from country to country. While in Netherlands and Australia, the employers' representative is the Chairman, in Finland the practice of alternate election from the two sides was in vogue.

In the private sector in U.K., the Joint Works Committees which present the closest analogy to our Works Committees follow the principle of the Chairman being appointed by the management. In the Government industrial establishments in U.K. two types of councils, viz., Departmental Joint Councils and Trade Joint Councils are in vogue. The former somewhat corresponds to Works Committees in India. The constitution of the Departmental Joint Council provides that the Chairman shall be a member of the Council appointed by the Department concerned and the Vice-Chairman a member appointed by the Trade Union side of the Council and that a Secretary shall be appointed from each side of the council.

The implementation of the recommendation of Works Committees will ordinarily devolve on the management. In the collection of information and preparation of material for Works Committees also, the office of the management will be in a better position to help than the workers' side. Taking these factors into consideration, a Works Committee is likely to be more effective if the Chair of the Committee is taken by a senior person from the management side. It is suggested that the proviso to rule 51 (2) which requires that the post of the Chairman or the Vice-Chairman, as the case may be, shall not be held by a representative of the employers and the workmen for two consecutive terms may be deleted and that the question as to who should be the Chairman may be left to each Works Committee.

5. Extracts from the Memorandum on Industrial Relations on Works Committees

One of the measures envisaged by the Industrial Disputes

Act for securing and preserving amity between employers and workmen was the establishment of Works Committees at the plant level. The steps that should be taken to ensure the satisfactory functioning of the Works Committees were considered at the last session of the Conference. It was felt that the problem required fuller examination. Accordingly, efforts have been made to ascertain the experience of other countries, in this direction. The Chief Labour Commissioner (Central) has also made a critical analysis of the functioning of Works Committees in the Public sector undertakings in the Central sphere. Besides, Government have requested the N. C. Corporation, Bombay to make a close study of the functioning of Works Committees in industrial undertakings in Bombay region, as well as in some other areas. The Public Sector Conference held in January, 1959, also devoted some thought to this question.

While the enquiry entrusted to the N. C. Corporation is likely to take some time to be completed, it appears desirable for the Conference to discuss the problems relating to Works Committees and try to lay down at least some broad principles. The function of the Works Committees as defined in Section 3 of the Industrial Disputes Act is too wide. The Conference may like to specify the type of subjects that might usefully be discussed by these Committees. Certain points may be borne in mind in this connection. Firstly, any mixing up of the functions of Works Committees and the Joint Management Council under the 'Worker Participation in Management' scheme has to be avoided. Secondly, the different roles of the Works Committees on the one side and the trade unions on the other, need to be clearly demarcated. Matters, like wages, for instance, which are generally conceded to fall within the purview of trade unions, may not be discussed by the Works Committees. Thirdly, the information that would be made available by the I.L.O. may be utilised on drawing up the guiding principles for the formation and functioning of Works Committees.

The Conference may like to take note of the further information relating to Works Committees that has been given above and recommend the analysis of this material by a small tripartite Committee which could also draw up certain "guidance principles."

Chapter 6

Service Conditions Of Domestic Servants

The All-India Domestic Workers' Union, Delhi, in a representation made to the Prime Minister has stated that there is no law to protect domestic workers against injustices done by employers with regard to employment, payment, leave, quarters, etc. Their wages are not paid regularly; wrongful deductions are made; there are no fixed minimum wages; there is no limitation on the hours of work; quarters meant for domestic workers are not given to them; their services are often terminated without notice; weekly and festival holidays are not given to them; even children of tender age are employed as domestic workers; medical facilities are not given to them etc. The Union accordingly made the following demands :

- (1) Maximum working hours should be restricted to eight hours a day.
- (2) There should be weekly holidays.
- (3) Free medical treatment with pay.
- (4) Provision for servants' quarters.
- (5) One month's prior notice to termination of service or one month's salary in lieu thereof.
- (6) One month's annual leave with pay.
- (7) Holidays on Festivals with pay.
- (8) At the time of transfer, both ways railway fare should be given along with pay prior to termination of service in out-stations.
- (9) Payment of salary on the 1st day of each month.
- (10) Bonus according to service during the year.

- (11) Aged and under-age servants should not be given hard work beyond their capacity.
- (12) No deductions from the pay.

The Union suggested that to cover the above demands, the Payment of Wages Act, the Minimum Wages Act, the Shops and Establishment Act and the Industrial Disputes Act (so far as retrenchment|Compensation) is concerned may be applied to the domestic workers.

In 1954 also a representation was made to the Prime Minister regarding the condition of domestic workers in Delhi. It was stated that a large number of them consisted of boys who were asked to put in very long hours of duty, there were no arrangements regarding holidays or leave with pay and that it was not unusual for them to be dismissed without notice. The State Governments were addressed in the matter to find out whether there were any laws or rules applying to domestic workers in any State in India. It was also suggested to the State Governments that they might examine the question of bringing domestic workers under the purview of the Minimum Wages Act. If this was done, it would be possible for the State Governments to provide under the Act for minimum wages, hours of work and weekly holidays to domestic workers. The State Governments were also requested to consider the feasibility of any further statutory protection, by way of registration of domestic workers, fixation of minimum age for employment, provision of annual holidays with wages and food and accommodation for those required to live in premises.

In the light of the opinion expressed by various State Governments, the question was very carefully considered and it was decided not to pursue it further for the following reasons :

- (1) Possibility of large scale retrenchment and of shrinkage of employment opportunities as a result of the enforcement of any law.
- (2) The problem of inspection and enforcement will be particularly difficult. It would be very difficult to administer any legislation in the case of domestic workers as it would involve the maintenance by individual

householders, of records, submission of periodical returns etc., which are so essential for the enforcement of any law.

- (3) The time for undertaking legislation would be when we have created a substantial volume of employment and can absorb domestic workers if thrown out of employment.

In India there are no laws in any State to cover the domestic workers.

It seems from the available information with regard to foreign countries that in the Federal Republic of Germany, there is no legislation with regard to domestic workers. In the United States of America there are State Minimum Wages Laws in some States in respect of domestic workers. There is no legislation in the United Kingdom. In France, there is no legislation but standards of work of domestic workers have been developed through collective agreements between the employers and workers. In Belgium regulations regarding conditions of work of domestic workers have been provided by Statute. In Argentine Republic and Mexico, the basic right of domestic workers have been provided in the constitutions of those countries. In Sweden the legislation covering domestic workers as well as the extensive development over a considerable period of vocational training for domestic workers and housewives together has raised substantially the status of the domestic workers. In Western countries shortage of supply of domestic workers has been the chief cause of improved standards for domestic employment.

The matter was discussed in the Informal Consultative Committee of Parliament for the Ministry of Labour and Employment on the 29th April, 1949. The Committee considered the question in all its aspects. They considered it desirable to explore ways and means to improve the condition of domestic workers without upsetting the households where they serve or throwing them out of employment. The consensus of opinion among the Committee members was that it would not be desirable to have any rigid law to regulate the domestic workers'

working conditions. It was, however, felt that the demands of domestic workers for weekly holidays, termination notice by either side of say 15 days or salary in lieu thereof, annual leave and payment of salary within 15 days of the beginning of the month should be sympathetically considered. It was further felt that any legislation to cover the above on all-India basis may not be practicable.

The Committee also suggested that Government might consider the appointment of a Committee to enquire into the condition of domestic workers. The views of the State Governments have been invited on the question of appointing a Committee for enquiring into the condition of domestic workers. The reactions of the State Governments have also been requested on the suggestions made by Informal Consultative Committee. The replies from the State Governments are given below.

Comments by State Governments

The State Governments and Union Territory administrations were requested to consider the desirability of appointing a Committee for enquiring into the conditions of domestic workers and inform the Government of India of their reactions on the suggestion made in this Ministry's letter dated the 11th May 1959. Replies have been received from only the following 8 State Governments: Assam, Bombay, Kerala, Madras, Mysore, Orissa, Rajasthan and West Bengal. All Union Territory administrations have also replied. None of the replies (except the one from Tripura Administration) favour the idea of appointing a Committee for enquiring into the conditions of domestic workers at State level for one reason or other. Only the Government of Assam consider legislative measures necessary. The Government of Kerala have suggested that if any Committee is to be appointed to enquire into the conditions of domestic workers it should be on an all-India basis. The Delhi Administration are of the view that it would be better if the Unions of domestic servants themselves decide regarding the minimum terms that they should accept in the present conditions and see that their members do not accept service at less than the terms fixed by them for a particular

class of domestic workers. A gist of the replies received from the State Governments|Union Territories is attached.

It is proposed to set up a Special Employment Office in Delhi, on a pilot basis to deal with registration and placement of domestic servants in Delhi. A Scheme giving details is appended for consideration of the Indian Labour Conference.

Comments received from the Union Territories

1. ANDAMAN AND NICOBAR ISLAND ADMINISTRATION

The number of domestic workers is very few and there is no Union formed by them. The information is being collected.

2. DELHI ADMINISTRATION

No survey about the conditions of domestic servants has so far been carried out. On account of varying conditions of domestic servants it would be difficult to draw any conclusions. Door to door investigation would be required. The Administration is not in favour of any legislation as it would mean unjustified interference in the private life of a citizen. It would be better if the Unions of the domestic servants themselves decide regarding the minimum terms that they should accept in the present conditions and see that their members do not accept service at less than the terms fixed by them for a particular class of domestic workers.

3. HIMACHAL PRADESH ADMINISTRATION

The number of domestic servants is few and the administration has not received any complaints against the employers. No comments on the proposal for appointment of an enquiry Committee.

4. THE ADMINISTRATION OF MINICOY, LACADIVE AND AMINDIVI ISLANDS

There is no domestic servants problem in any of the Islands and as such there is no necessity for constituting a Committee for enquiring into the condition of domestic servants.

5. MANIPUR ADMINISTRATION

Very few men are prepared to work as domestic servants. Employers are at more disadvantage than the domestic servants.

6. TRIPURA ADMINISTRATION

The information about the conditions of domestic workers in this Territory is not readily available at present and have no objection to the appointment of a Committee for enquiring into the conditions of domestic servants.

Comments received from the State Governments

1. ASSAM

It will be difficult for the Committee to collect information regarding domestic workers' conditions as the Committee will have to go from door to door of every middle class household as no service records of domestic workers are maintained by individual employers. Suggest legislation to safeguard fixed hours of work, weekly holiday, month's notice for termination of service or pay in lieu thereof, regular payment of salary, provision of quarters, medical treatment and prohibition of employment of young persons, etc.

2. BOMBAY

Not in favour of appointment of any Committee. Suggest that enquiries about the condition of domestic servants will be conducted under the Scheme of "Socio-Economic Enquiries" during Third Five Year Plan.

3. KERALA

No reliable data is available. Do not consider any legislation necessary. Suggest that if any Committee is to be appointed to enquire into the conditions of domestic workers, it should be on an all-India basis.

4. MADRAS

No factual data available. Conditions of employment of domestic servants in the Madras State has not so far become a problem. There is no immediate need to appoint a Committee to enquire into the conditions of domestic servants in the State. Nor is it necessary to embark on legislative measures, for reasons of difficulties in implementation and adverse effect on employment potential.

5. MYSORE

The State Government are not in favour of setting up a

Committee at State level nor are they in favour of any legislative measures being adopted to regulate the service conditions of domestic workers.

6. ORISSA

No information about the condition of domestic workers in the State is available. The engagement of domestic servants is not large enough. In the circumstances the State Government do not favour the idea of appointing an enquiry Committee at the State level.

7. RAJASTHAN

The State Government do not feel the necessity of appointing a Committee to enquire into the conditions of domestic workers since there are no trade unions or association of domestic servants there. The work has been entrusted to Ad-hoc Survey Section of their Labour Department who will take a few months to assess the actual position.

8. WEST BENGAL

No useful purpose will be served by appointing a Committee at State level. The background information may be collected through direct Government agency.

Scheme for Setting up Special Employment Office for Domestic Servants

INTRODUCTION

1. It is proposed to set up, on a pilot basis, a Special Employment Office in Delhi, as a Unit of the National Employment Service, to deal with registration and replacement of domestic servants in Delhi. Domestic workers constitute a special category of employment seekers and a special office to handle them is likely to prove advantageous to them as also to employers who require such workers. We have set up in the past such special offices to cater to the needs of important occupational categories.

ORGANIZATION

2. *Location* : The Special Employment Office will serve the employers and domestic servants in Delhi and New Delhi areas. It will be located in a centrally situated area in New Delhi well-served by public transport.

3. *Procedure* : The Special Employment Office will work on the same lines as any other Employment Exchange. At the time of registration, domestic servants may be asked to give the names of two responsible persons who are residents of Delhi. The names of the referees should be recorded and may be supplied to the employer at his request when the applicant is submitted against a vacancy.

4. The Office will, in addition, maintain in a specially designed form a register of employers, who need domestic workers.

5. *Administrative Arrangements* : As the scheme is to function on a pilot basis, it may be centrally administered by D.G.R.&E. through the Director of Employment and Training, Delhi.

6. ADVISORY COMMITTEE :

It is considered that a separate Advisory Committee composed of the representatives of the parties as given below may be set up to advise the authorities concerned on the working of this Employment Office.

- i) Director of Employment & Training, Delhi — Chairman.
- ii) One Representative of the Organization of the Domestic Servants of Delhi.
- iii) One Representative of employers, preferably a housewife.
- iv) A Social worker, preferably a lady interested in the welfare of domestic servants.
- v) A Member of Parliament.

Employment Officer in charge of the Special Employment Office will be the Secretary of the Advisory Committee.

7. The Special Employment Office will handle only placement of domestic workers. The welfare of domestic workers will be looked after to the extent possible by a Labour Welfare Officer appointed for this purpose under the Director of Industries and Labour, Delhi Administration. The Employment Officer in charge of the Special Employment Office will, when required, render assistance to the Labour Officer in this respect by supplying information regarding the terms and conditions notified by the employer at the time of placing the demand for domestic workers.

Chapter 7

Pay Roll Savings Scheme

The Pay Roll Savings Scheme is a voluntary arrangement made between the employers and employees to facilitate regular investments of the savings of employees in Small Savings Securities. It promotes thrift among the employees and provides an easy method to enable them to save as they earn; the saving is a first charge on the income, not, as is usual, the last. The savings fulfil a social purpose in collecting loans for national development and checking current inflation.

2. The mechanism of the Pay Roll Savings Scheme is simple. The following steps are required to be taken:

(i) the employers are requested to display posters on National Savings, distribute pamphlets, folders and other literature; put the message of savings in the house magazines and notice boards, show films produced by the National Savings Organisation and to publicise the movement generally.

(ii) a Savings Committee is to be formed with representatives of employers and employees to propagate the message of savings, to give ideas on spreading the movement, to investigate and take steps to remove grievances or difficulties experienced in working and arrest any falling of in membership and collections of the group.

(iii) the Savings Committee, voluntary workers from the industry or outside, paid workers and agents will obtain consent letters from every employee agreeing to the deduction of a stated amount from his pay regularly for deposit in Post Office Savings Bank or Cumulative Time Deposits Accounts or investment in National Plan Savings Certificates. Such deduction is permissible under the Payment of Wages Act.

(iv) the employer, through his staff, time-keeper, cashier,

etc. will effect the collections and send a consolidated amount giving separately lists of employees for deposits in (a) Post Office Savings Bank (b) Cumulative Time Deposit Account or (c) investment in National Plan Savings Certificates.

Where such accounts have not been opened the first remittance is accompanied by an account opening form. Where such accounts already exist, the list is accompanied by the relevant pass book. The Savings Committee will encourage the workers to leave the pass books with the employers to facilitate periodical remittances.

For investment in National Plan Savings Certificates, a few signed N.C.I. application forms signed by the employees will be kept with the employers and sent along with the remittance. •

The employer will obtain the certificate from the Post Office on behalf of his employees and distribute them individually. He may keep the certificates in safe custody if the employees desire it.

3. Collection charges at 1% of the amounts collected towards National Plan Savings Certificates are allowed to the employers towards his expenses of collection. This amount is intended to be utilised for the general good of the employees or distributed to the staff engaged in actual collection work.

4. In order to give effect to the above proposal, the consent of the representatives of the employers' and employees' organisations is sought.

Chapter 8

Proposal To Revise Rates Of Compensation In The Workmen's Compensation Act, 1928

Introduction

The Workmen's Compensation Act, 1923 was experimental in character and came into force on the 1st July, 1924. A few amendments, which were designed to remedy obvious defects or to embody improvements of a non-controversial character, were effected by the Workmen's Compensation (Amendment) Act, 1929. Proposals which involved modification of the principles underlying the Act or its more important features were referred by the Government of India to Local Governments for opinion in a circular letter in 1928. Copies of this circular letter and of the replies received thereto were supplied to the Royal Commission on Labour, who, after reviewing the question in the light of further evidence supplied to them, made a number of recommendations on the subject in Chapter XVI of their Report. One of the recommendations related to the revision of the rates of compensation as existing at that time. The rates prevailing at that time were briefly as follows:—

For temporary disablement the scale was based on half the rate of wages, the waiting period was fixed at 10 days and the maximum period of payment at 5 years. For complete permanent disablement the sum payable was 42 months' wages; and for partial permanent disablement compensation was fixed at fractions of this amount corresponding to the loss of earning capacity, that loss being fixed for certain injuries by a schedule on the American model. For death the compensation was 30 months' wages. These scales applied to adults; for minors the compensation for temporary disable-

ment was at the rate of two-thirds of wages up to 15 years of age, and full wages thereafter, and for permanent disablement the number of months' wages was double that prescribed for adults. For death in the case of minors a fixed small sum was payable irrespective of wages. All the other payments which were regulated by wages were subject to minima and maxima. In the case of the death of adults and all permanent disablement the maximum corresponded to a wage level of roughly Rs. 83 per mensem, and in the case of temporary disablement to a wage level of Rs. 60, i.e., the receipt of wages in excess of those sums did not add to the compensation. The minimum in all cases (except the death of minors) corresponded to a wage of Rs. 9. The amounts were rounded off by means of a schedule of assumed wages, which had the effect of dividing workmen into 14 classes; all workmen in the same class got compensation on the same scale.

The recommendation of the Commission regarding enhancement of the rates of compensation was accepted and a Bill incorporating the decisions of the Government of India on the various recommendations of the Commission was introduced in the Legislative Assembly in 1932. The Bill was referred to a select committee, which made certain reductions in the amount of compensation affecting the first two and the last two of the wage classes in Schedule IV. These are shown for purposes of comparison in tabular form below:—

Monthly wages of the workman injured		Compensation as proposed in the Bill for—		Compensation as modified in committee for—	
More than Rs.	But not more than Rs.	Death	Permanent total disablement.	Death	Permanent total disablement.
0	10	600	840	500	700
10	15	600	840	550	770
100	200	3,750	5,250	3,500	4,900
200	...	4,500	6,300	4,000	5,600

The Committee stated—

“The increase proposed by the Bill in these classes are heavy and it seemed to the majority of us impossible to ignore the fact that since the Royal Commission reported there has been a very substantial change in the price level. The Commission indicat-

ed that their proposals were based on conditions prevailing in 1929 and early 1930. Since then the prices have fallen to a much lower level and wages have been reduced to some extent. The greater part of the Schedule is based directly on wages, and therefore reductions in wages make themselves felt automatically in reducing the amount of compensation. But this does not hold good at the extreme ends of the Schedule, for the maximum and minimum are fixed sums. At the lower end particularly, the effect of a fall in the wage-level is to increase the proportion which compensation bears to the wages of those receiving it. We would observe that even with the reductions we have proposed, the minimum rate of compensation represents an increase of over 100 per cent on that given by the present Act, while the maximum compensation is increased by 60 per cent."

Subsequently, the following changes were made in Schedule IV:—

(i) In 1946, the wage limit of workers covered by the Act was increased from Rs. 300 to Rs. 400 and suitable rates of compensation were provided in Schedule IV for the wage group drawing wages more than Rs. 300.

(ii) By the Amendment Act (9 of 1959) the distinction between an adult and a minor for the purpose of payment of compensation was removed and the rates of compensation in Schedule IV now apply to all workers covered by the Act.

The Act provides for payment of compensation for : (1) Death, (2) Permanent total disablement, (3) Permanent partial disablement, (4) Temporary disablement.

In case of death the amount of compensation payable varies from a minimum of Rs. 500|- (in the case of workers drawing wages less than Rs. 10) to a maximum of Rs. 4,500 (in the case of workers in the wage group Rs. 301-400).

For permanent total disablement the amount of compensation varies from a minimum of Rs. 700 to a maximum of Rs. 6,300|-.

In the case of permanent partial disablement, the rates of compensation are not given in Schedule IV. The extent of permanent partial disablement is expressed in percentages of loss of earning capacity. These percentages are percentages of the compensation which would be payable in the case of permanent total

disablement.

In the case of temporary disablement, compensation is paid in the shape of periodic half-monthly payments—for a maximum period of 5 years. For workers earning upto Rs. 10|- p.m., the rate of payment is full wages per month. Those earning more than Rs. 10|- receive payments varying from approximately two-thirds to half wages, subject to a minimum of Rs. 10|- p.m. and a maximum of Rs. 60|- p.m. No compensation is payable for the waiting period of 3 days, but compensation is payable for this period also if the disablement lasts for 28 days or more.

Proposal for revising the rates of compensation.

The Act at present provides for payment of compensation in lump sum except in the case of temporary disablement. Lump sums are generally frittered away and the workman is left without resources very soon. The rates of compensation were also considered to be disproportionately low, considering the considerable rise in prices since the last war. Taking these facts into consideration Government proposed in a circular letter to the State Governments in September 1955 that provision might be made in the Act for payment of compensation in the form of periodic payments in all cases, as follows:—

(i) *For death:* At the rate of 40% of wages for a period of 15 years from the date of death.

(ii) *For permanent total disablement:* At the rate of 50% of wages for a period of 15 years or till the date of death of the workman, whichever is later.

(iii) *For temporary disablement:* At the rate of 50% of wages from the date of disablement till the date of recovery, if disablement lasts for more than 2 days. [It was originally proposed to reduce the waiting period from 7 days to 2 days. But by the Amendment Act (No. 8 of 1959), the waiting period has been reduced to 3 days.]

The comments received were of a varied nature. A suggestion was made that an assessment should be made of the cumulative effect of the revised rates on industry. This matter was considered by an inter-departmental committee in July-August 1957. The committee recommended that an actuarial committee should be appointed to assess the burden on industry of the

above proposal and that the terms of reference to the committee should be finalised in consultation with the Insurance Commissioner in the Employees State Insurance Corporation. This recommendation was accepted and an actuarial Committee was set up in June, 1958. The Committee was asked:

I. to assess the relative burden on employers of the:

(a) present liability under the Workmen's Compensation Act;

(b) liability if the benefits are increased to correspond to those in the Employees' State Insurance Act; and

(c) liability in respect of benefits as proposed in the Government's circular letter of September, 1955.

II. to recommend schedules:

(a) for assessment of lump-sum payments by employers, so that the Employees' State Insurance Corporation or some other Central Agency could take the liability for periodical payments in case of death or permanent disablement in respect of alternatives (b) and (c) under item I above; and

(b) for payment of a premium as percentage of wage roll of persons covered, for different industries for alternatives (b) and (c) under item I above; and

III. to assess the percentage increase in liability by inclusion of persons above the wage of Rs. 400/- and upto Rs. 500/-.

In August, 1957 a Study Group consisting of 6 members was constituted under the Chairmanship of Shri V. K. R. Menon, Director, I.L.O. (India Branch), *inter-alia*, to study how the existing social security scheme and any other privilege given to workers could be combined in a comprehensive social security scheme. The Group has recommended integration of the Employees State Insurance and the Provident Fund Schemes. In regard to the Workmen's Compensation Act, the Group has recommended:

" Under conditions as exist today, the Group feels that the Schedule can be revised so that the maximum liability on the employer can, in each case, be doubled. This is recommended and, thereafter, actuarial calculations should be made as to what

scale of recurring pensions may be provided from the lump sum payments of these amounts received by the Corporation. It is desirable, however, to ensure a simple form of pensionary benefits as the amounts, in any case, will not be as great as those provided in the E.S.I. Act. We have suggested the E.S.I. Corporation as the agency for distributing these pensions as it is already doing this type of work in regard to pensions under the E.S.I. Act. It is understood that the Corporation can make suitable arrangements for remitting sums due to persons or dependants living in outlying areas where the Corporation may not have its own offices."

Actuarial calculations have been made as regards the monthly payments that can be made available under:

- (i) the existing lump-sum payments under the Act;
- (ii) the recommendations of the Study Group on Social Security by doubling the employers' liability.

There are thus the following alternatives for consideration in connection with the question of revising the rates of compensation in the Workmen's Compensation Act:

- (i) Payment of compensation on the scale provided for in the E.S.I. Act;
- (ii) Payment of compensation as proposed in Government's circular letter of September 1955 mentioned earlier; and
- (iii) Payment of compensation as per recommendations of the Study Group on Social Security.

The proposal for replacing the lump sum payments by pension payments raises also a number of other issues which are mentioned below.

- (i) *How the pension scheme should be administered.*

One way is to require the employer to deposit the compensation amounts in lump sum with the Commissioner for Workmen's Compensation concerned, who would arrange for periodic payments. Another way is to arrange for these payments through a separate agency. The Study Group on Social Security has recommended the E.S.I.C. as the agency for distributing the pensions as it is already doing this type of work in regard to pensions under the E.S.I. Act.

- (ii) *How the employers should be required to discharge their liability.*

The question here is whether the employers should be required to discharge their liability by making a lump sum deposit in respect of each case or whether they should be required to make payments in the form of periodic contributions related to the wage bill. In this connection it may be pointed out that in September, 1945 the Government of India circulated a proposal to the then Provincial Governments for the amendment of the Workmen's Compensation Act with a view to providing employment injury benefits similar to those provided under the E.S.I. Scheme to workers not covered by the Scheme, but covered by the Workmen's Compensation Act. The broad features of the scheme were:

(i) Imposition on the State Governments the obligations to pay employment injury benefits to workmen covered by the W.C. Act, but not covered by the E.S.I. Scheme.

(ii) Utilisation of the E.S.I. Corporation as an agency for payment of these benefits.

(iii) Payment of benefits through a specially created Workmen's Compensation Fund.

(iv) Collection of premia from the employer in two manners:

(a) from *Category I* employers (i.e., principal employers employing more than an average of 1,000 workmen a day) in the form of a monthly premium, and

(b) from *Category II* employers (i.e., principal employers employing less than an average of 1,000 workmen a day) in the form of a *lump sum payment* calculated to cover the periodical or other equivalent lump sum payments to be made by the Fund to injured workmen.

The main drawback from which the scheme suffered was that it did not give the benefit of compulsory insurance to the small employers who are more in need of it. Payment of large amounts of compensation in the form of lump sums in the case of small employers may result in closure of business. To meet this difficulty one suggestion was that the category I treatment

should be extended to the largest number of establishments. Even after this has been done, there will still remain a sizable number of employers who are not insured for one reason or the other. In their case, therefore, there will have to be provision for deposit of compensation in lump sum, the actuarial value of which will have to be laid down. The question that arises is that the Corporation could undertake to make payments only after realising lump sums where employers are not compulsorily insured. It might be desirable that only claims in respect of fatal cases or cases resulting in permanent disablement (whether total or partial) should be made through the Corporation. The employers should make payment themselves for temporary disablement.

(iii) *Should the contribution to be charged from employers be:*

- (a) a fixed weekly contribution for each workman [as in U.K. National Insurance (Industrial Injuries) Act] or
- (b) a flat percentage of the wages ranking for compensation, for all workmen, or
- (c) a varying percentage of the wages ranking for compensation taking into account the industry in which the employer is engaged and/or the occupation of the workman.

A suggestion was made that it would be more practicable to have a uniform rate of contribution, subject to the following :

(i) Each employer covered should be required to pay each month a contribution equal to a uniform specified percentage of the wages distributed by him in cash or in kind in the previous month to his workmen. (A list of the workmen should be furnished to the Corporation to enable it to verify from independent sources, if possible, that all workmen have been included in the wage-payment figures).

(ii) The claims in respect of the workmen of each employer should be entered at the Centres in individual accounts of the employers. The claims should include the payments for temporary disablements as well as the actuarial equivalents of any pensions which become payable by a death or assessment to permanent disablement.

(iii) At the close of the year the accounts of the Corporation

at the Headquarters will show the excess of the contributions received over the amounts disbursed in :

- (1) Cash benefits for temporary disablement.
- (2) Actuarial reserves in respect of death or permanent disablement claims.
- (3) Cost of providing medical care and administration including investigation expenses for claims.

The excess should first be used for making any necessary transfer to reserve and for making provision for outstanding claims and debts.

(iv) The *surplus* left should be divided among employers, in whose case the value of the claims as calculated under (ii) above was less than the contributions paid, in proportion to such excess, subject to no refund being admissible to small employers paying contributions below a specified limit of say Rs. 200 and subject to provision being made for marginal cases so as to provide no sudden difference in treatment between employers paying higher amounts near the minimum limit.

This scheme has the following advantages :

- (a) All but the smallest employers get the benefit of any good claim experience to a substantial extent and this will keep them alert regarding the safety measures, first aid and medical care of workmen.
- (b) Employers whose risk is low get the benefit of their good experience to a considerable extent.
- (c) Employers with a heavy risk or bad claims experience pay relatively larger amounts, but even their final contribution is limited to the percentage originally charged.

After a few years' working when the experience furnishes necessary statistics, either merit rating or a flat just adequate rate can be adopted if considered preferable.

This matter has also been considered by the actuarial committee, which has prepared a system of contributions graduated according to risk. To quote from their report :

"It is obvious that despite preventive measures there are great inequalities in employment injury risks between different industries and units in the same industry due to natural causes

such as differences in processes, machinery etc. Contributions may, therefore, be fixed according to risk; for this purpose the principle of 'merit rating' or 'experience rating' is widely applied. Under it an average premium based on an assessment of the natural risks of the class is established for each class of undertaking. Variations, up or down, are made in the premium charged from each undertaking according either to the number and severity of accidents occurring in it or to the appraisal of its equipment and organisation, special credit being given for the installation of safety devices. Apart from the incentive of lower premium, this process of merit rating itself serves to draw the attention of the employer to the possibilities in the direction of accident prevention.

"In India the need for such incentives is very great, since the enforcement of statutory provisions regarding installation of safety devices is not always fully effective. Thus, the pooling of risks, accepted in most social security schemes is, to a considerable extent, intentionally ignored in a great majority of employment injury schemes. In most of the European countries, New Zealand and U.S.A., contributions are graduated according to risk. However, the application of the principle of merit rating in a scheme of compulsory social insurance has a serious objection. Preventive measures can affect employment injury risk only to a moderate extent; most of the inequalities in risk are due to natural and inevitable circumstances, under which the workers have to work. In the case of a national insurance scheme, such as we are considering here, this raised an ideological question whether the high risk in an industry or undertaking should be borne individually or by the whole economy through prescribing uniform contributions not graduated according to risk. There is a definite tendency to substitute uniform contributions for those varying with the degree of risk involved or at any rate to restrict risk differentiation to a few categories only.

"In countries like Bulgaria, U.S.S.R., where employment injury benefits form a part of a coordinated social security scheme granting other types of benefits e.g., sickness, pension, the contribution is composite and uniform. In Austria and U.K. where there are special schemes of employment injury, contri-

bution rates fixed by law do not vary with the risk. In Austria, contributions for non-agricultural workers are equal to 2% of wages in the case of manual workers and to 0.5% of salaries in the case of salaried employees; in the case of agriculture it is a fixed percentage of land tax. In U.K. contribution is fixed at a flat rate, which, compared to women and youths, is higher for men. Considering the stage of industrial development in India, while it may not be desirable to have one uniform rate of contribution for all industries, it may equally be undesirable to have contributions on merit rating system based on an assessment of individual risk of each undertaking. It may be appropriate to lay down premium for an industry depending on the level of the risk for the industry *as a whole*. It is on this basis that premium rates suggested below have been worked out."

(iv) *Should there be provision for medical care?*

A suggestion was made that there should be provision for medical care for the following reasons :

"The amount of workmen's compensation which may fall to be paid as a result of a particular injury depends very largely on the medical attention given to the case. If prompt and adequate medical care is provided, the deterioration of the workmen's condition will be prevented and the recovery be speedier. Absence of medical care will lead to aggravation of the workmen's condition, may prolong the period of disablement and may result in death where it may be avoided, or total or partial permanent disablement to an extent which might have been avoided or reduced. If the financial responsibility of the claim does not directly fall on the employer, it will be unsafe merely to rely on his providing adequate medical care and it seems that the Corporation must make some arrangements for prompt and adequate medical care to injured workmen wherever it extends workmen's compensation insurance cover."

"Where full time medical officers cannot be appointed, arrangements may be made with suitable private medical practitioners to attend to any cases either on the basis of a monthly stipend or a small retaining fee plus a fee for actual attendance and cost of medicines."

(See pages 18-19 for conclusions of the Conference on this question).

Chapter 9

On delinking of provident fund benefits from gratuity for the purpose of granting exemption to establishments or employees covered under the Employees' Provident Funds Act, 1952 from the operation of the provisions of the Employees' Provident Funds Scheme, 1952.

Section 17 (1) (b) of the Employees' Provident Funds Act, 1952 provides that any establishment, to which the Act applies, and which provides provident fund, pension or gratuity benefits to its employees, which are jointly or separately not less favourable than those provided under the Employees' Provident Funds Scheme, may be exempted from the operation of all or any of the provisions of the Scheme. Similarly, any person or class of persons in a particular establishment covered under the Act may also be exempted under section (17) (2) of the Act.

It will be seen from the above that in addition to provident fund and pensionary benefits, gratuity is taken into account in judging whether the retirement benefits provided by an establishment are not less favourable than the benefits under the Employees' Provident Funds Act and the Scheme, 1952.

Consequently establishments which provide both provident fund and gratuity and allow provident fund benefits on basic wages alone can continue to do so if the quantum of the total benefits allowed in the shape of provident fund and gratuity under their rules is not less favourable than the benefit of provident fund provided under the E.P.F. Act and the Scheme; and still get exemption from the E.P.F. Scheme. In the same way, such establishments may provide provident fund on basic wages and dearness allowance to keep on par with the benefits under the E.P.F. Scheme to get exemption therefrom and could, if there were no other restrictions in the Act, deprive the workers

wholly or partly of the gratuity allowed in addition to provident fund benefits without jeopardizing their claim to exemption.

The contribution under the E.P.F. Scheme is to be calculated on the total of basic wages and dearness allowance including the cash value of the food concession, if any, under section 6 of the E.P.F. Act. Dearness allowance and the cash value of the food concession are being paid to the workers as the basic wages alone have ceased to be sufficient for their upkeep in the context of the current purchasing power of money. That is why provident fund is payable on the total of basic wages and dearness allowance. It is felt that the benefit of gratuity, where already allowed to workers, should not be taken away wholly or partly on the advent of provident fund.

It is proposed to amend section 17 of the Employees' Provident Funds Act, 1952 and the relevant provisions in the E.P.F. Scheme, 1952 to provide specifically that the benefit of gratuity, if any, should be completely ignored and that only provident fund benefits and pensionary benefits, if any, should be taken into account in assessing the level of retirement benefits under the employers' schemes against the statutory provisions for the grant of exemption from the provisions of the E.P.F. Scheme.

[This proposal was considered by the Sub-Committee of the Indian Labour Conference, which met in Delhi on September 5, 1959. It was agreed that the matter might be considered in the light of proposals made in the Report of the Study Group on Social Security (vide AITUC Publication, *A Question to Trade Unions on ESI, PF and Pension Schemes*).]

Chapter 10

On invitation to various bodies for attending the meetings of the Indian Labour Conference and other tripartite committees.

The 17th Session of the Indian Labour Conference held at Madras on the July 27—29, 1959, decided that the question of invitations to the Indian Labour Conference and Standing Labour Committee be examined by a Committee of the Conference.

The procedure being followed at present in the matter of determining the composition of tripartite bodies is as follows :

(i) *Delegates* : In giving representation to the workers' and employers' sides on tripartite bodies, parity is maintained between the two sides. Seats within the groups are allocated among the central organisations of workers and employers on the basis of their relative strength. All the State Governments are invited to send their representatives to the sessions of the Indian Labour Conference and the Standing Labour Committee. In the case of meetings of Industrial Committees representatives of the Central Ministry and the State Governments concerned are also invited.

(ii) *Advisers* : Each delegate is permitted to bring one official adviser. Requests are however, received from time to time from the organisations to increase the number of advisers. Sometimes permission is given to bring in un-official advisers.

(iii) *Invitation to Members of Parliament* : It was decided at the Standing Labour Committee held at Bombay in October 1958 that some of the Members of Parliament on the consultative committee of this Ministry may be invited to attend these tripartite meetings. For the 17th Session of the Indian Labour Conference held in Madras all the 64 Members of the consultative committee were invited.

(iv) *Invitees* : The Director, I.L.O., India Branch, is usually invited. Invitations have also been extended, at times, to individuals or representatives of organisations having a special interest in the particular subjects to be discussed.

(v) *Observers and Visitors* : Requests to attend meetings of these bodies as observers or visitors are considered on merits and permission given, wherever possible, subject to the availability of space and other facilities at the place of the meeting.

2.2 *Participation in the Discussions* : Both delegates and advisers participate in the discussions. As a matter of convention, all decisions are taken by agreement and not by voting. Invitees and observers usually do not participate in discussions, but can be permitted to do so by the Chairman in his discretion. Non-official advisers are not permitted to participate.

3. The Committee may consider whether any change is necessary in the procedure being followed at present, in particular, whether any criteria or principles should be laid down in respect of the following :—

- (i) The organisations and the number of delegates and advisers that may be invited.
- (ii) Participation by un-official advisers, observers and invitees in the discussions.

(The conclusions of the Committee on this question are published on pages 17-18)

Chapter 11

AITUC's Comments On Government's Memorandum On Industrial Relations

Note circulated at 17th Indian Labour Conference

INTRODUCTION

The papers prepared by Government for this conference completely shut their eyes to certain pressing problems affecting the workers, though these problems dominated the Nainital Conference and continue to remain acute as before. At Nainital every delegation raised the question of closures, retrenchment and unemployment. We discussed these problems and Government and employers promised to do certain things. But situation has not improved.

True, one textile mill in Bombay has been taken over since then. But many more units in Bombay and elsewhere remain closed. Large-scale retrenchment and rationalisation in textiles, engineering etc., are taking place, which the employers declare have the consent of the recognised unions of the INTUC as in Bombay and Madhya Pradesh.

Several strikes have been taking place on these questions of retrenchment and victimisation of trade union workers. Court judgements permitting dismissals at the sweet pleasure of the employers are evoking protest strikes to defend the rights of the working class. Strike in the Grindlays Bank, the Mahindra concern in Calcutta, Remington Rand, The National Electric and New Era Silk in Bombay, the lockout in the Harveys, the failure to take over Kaleswarar Mills in Coimbatore, show that the Government of India and the State Governments after having debated the question at Nainital, have gone back to

their usual position of leaving the workers alone to fight the superior weight of the employers.

In this period some wage agreements have been negotiated. The Jamshedpur wage agreement has come out. But even there, the problem of workloads is still unresolved and unless wages and workloads are resolved together, it is useless to expect the workers to settle down to calm work. Workloads and retrenchment in Jamshedpur, the failure to evolve proper scheme in Burnpur and elsewhere, disturb the Iron and Steel sphere, the most vital one for our economy. Tea Bonus is still unsettled and a Wage Board for Metal and Engineering as a whole is an urgent necessity.

The promises made to appoint the wage boards for industries have been frozen. Even the Pay Commission and the Textile Wage Board have been unable to report though a long period, enough to exhaust the patience of the workers, has passed since their appointment.

BENEVOLENT EXCEPTIONS TO A BAD LABOUR POLICY

The Labour Minister Mr. Nanda has personally intervened in the Coal disputes and in the Banking dispute. But such interventions while securing temporary relief, do not make up for a policy as a whole. They become only benevolent exceptions to a bad labour policy, which does not allow urgent questions of life of the workers to be resolved in their favour as a natural result of a correct policy.

The promises made at Nainital and perspectives held before the workers have been belied for the most part. Where small fulfilments have been shown they had to be extracted by prolonged suffering and struggles of the workers.

This not only shows the Labour Policy of the Government in actual practice, it also shows that what is called *PLANNED DEVELOPMENT* has no plan, unless all these retrenchments, closures, victimisations and lockouts are a part of the "*PLAN*" of the Government and the employers for better development of the profits of the Gentlemen of enterprise.

Not content with the position in which the employers aided by the Government machinery are launching offensives against

the workers, it seems in this conference, the Government has put forward an agenda on Industrial relations, which is calculated to hamstring still further the freedom of the workers and their trade unions.

The proposal to give unheard of powers to the Registrar of Trade Unions, that is Government officials, over the organisations of trade unions, is the most reactionary proposal on the agenda. He is no more a mere Registrar. He is to be the Supreme Maker and Unmaker of trade unions. He is to judge how many and where the workers should have unions or not. In one state he is even given the power to dismiss and decide the office-bearers of the union. Very soon it will not be the workers, who will be running the unions, but the nominees of the Government or its party. So long it was done behind the back of the workers. Now it is proposed to be done with the sanction of the law. We refuse to accept this position. All these proposals of enhancing the powers of the Registrar of keeping his Veto on the Unions must be scrapped in toto.

WHITHER CODE OF DISCIPLINE ?

The Government of India has not been able to compel observance of the code of discipline by the employers, by the State Government or by its own Ministries. The Unions of the AITUC particularly have not reaped a single benefit under the code. Not one union of the AITUC has been recognised under the Code. And there is the most flagrant case on record, where the Secretary of the Union of Employees of Audit and Accounts has been dismissed on charges, one of which is that he submitted memo to the Pay Commission of the Government of India, and suggested curtailment of the authority of his employer (immediate boss). We need not cite further facts which are too numerous to be quoted here.

The experience of the working of the code shows that the majority of the employers and the State Governments as also Ministries of the Government of India are not prepared to honour the Code. Hence the AITUC thinks that the Code of Discipline be suspended until the employers and Governments come in the proper mood to work it and that the AITUC be

allowed to withdraw from its obligations, where the employers and states do not reciprocate and adopt a policy of special discrimination against AITUC. To begin with AITUC will like to opt out of the code in Bihar, Madhya Pradesh and Bombay.

The Government of India compels the workers to subscribe Crores of Rupees to ESI. In spite of the promises, it has failed to provide hospitalisation, care of the families of the insured and enhancement of the employer's contributions. Provident fund monies of the workers are known to have been swindled by lacs. In Madhya Pradesh alone about Rs. 50 lacs have been so swindled. So is the position in Bombay and elsewhere. Several Governments have been abetting this position and workers in need do not get relief. And yet this open daylight fraud is not nailed down by confiscating the concerns involved in it. Where is Morality, Democracy and observance of law and the code of discipline in all this?

BALLOT FOR RECOGNITION OF TUs

The AITUC has always held that compulsory recognition of trade unions is a vital necessity in India, and that in order to decide which union has the workers' support and is representative a secret ballot of the workers is the only correct method. Both these demands have been refused by the Government. Ballot is regarded as the most democratic method in the political field. Then why is it denied in the Trade Union field? The verification method is one-sided and is heavily loaded on the side of the Government, and the employers and their supporters. The very fact that Unions of the INTUC or those recognised by the employers alone can collect subscription money in the factory handicaps the others in making rolls and registering fully paid membership. Over and above this some of the verifying officers are subjected to influences hostile to the AITUC. Compulsory recognition of Trade Unions and ballot to decide their representative character are the absolute preconditions for peace in industry and better industrial relations. These two measures will bring about a fundamental change in the situation and help the economy and the working class to go forward.

SOCIALIST POLICY OF LABOUR NEEDED

We have made the above remarks on some of the problems before us in general, because they embrace the most important aspects of any progressive labour policy.

For over 40 years, since the workers began to act in defence of their interests and formed mass unions, the Government and the employers have been avoiding direct collective bargaining between the unions and the employers. There has been a consistent attempt to interpose some other agencies between the workers' right to collective bargaining and the employers who as a class the world over have always resisted direct negotiations with and recognition of trade unions. The Congress Ministries with their avowed adherence to Socialism have not followed a different path. Even where they agreed to give bargaining right and recognition it is offered in exchange for surrender of some fundamental rights as shown in that new breed of unions called 'approved unions.' Hence for the last ten years there has been continuous arguments about all kinds of Tribunals, arbitration boards, conciliation machineries, appeals and so on. The present Tripartite has again placed all of these question on the agenda. We hold that unless a clear cut socialist policy of labour is adopted and unless compulsory recognition of Trade Unions, collective bargaining and ballot are introduced, no amount of tribunals, boards, and bans on this and that will lead to a satisfactory solution. However, we will give our views on the various proposals in a general way.

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BALLOT FOR RECOGNITION OF TUS

We endorse the provisions for the ballot in the Kerala Industrial Relations Bill.

WORKS COMMITTEES

Since only a committee is to be appointed to once more discuss the works committee nothing need be said. The employers do not want the works committee, nor do the Government concerns. We want works committee to have more powers and we want them as elected committees. The works committee in

principle must so evolve as to be the basis of Socialist Management in the future set up.

RATIFICATION OF AGREEMENTS

Agreements, negotiated and signed by any union must be submitted for ratification, in the first instance, to the executive committee of the Union and in case of sharp differences to the General Body of the Union. Where 15% of the workers affected by an agreement negotiated by a union object to or demand amendment of the agreement, which must in all cases be published before the workers in all suitable ways, the union shall take steps to call the General Meeting of the workers affected if it is an establishment and an elected delegates meeting or the elected works committees of the establishments in the Industry if the agreement covers whole Industry, to ratify, amend or reject the agreement and the union thereupon shall carry out the decision of such a meeting. In the absence of such ratifications the agreements will not be binding on the workers, for the mere fact that it has been negotiated and signed by the Union whether representative or not.

ARBITRATION BOARDS

Arbitration boards may be instituted to which recourse may be had by either party to dispute of their own free will. The Government should have no discretion to judge the merits of the case and then grant or withhold reference to arbitration.

ADJUDICATION

We do not want to adopt any "Model Principles" as such to predetermine the reference of disputes to adjudication. If the adjudication machinery is to exist it must be available fully and freely to the Trade Unions. The present Veto exercised by the Government on such reference and their tampering with the issues framed by the workers must be done away with. The Government are known to exercise their Veto and powers to the detriment of Unions whom they dislike and to the benefit of employers whom they favour.

REVIVAL OF LABOUR APPELLATE TRIBUNAL

The Labour Appellate Tribunal as such need not be revived because that would be no cure to the appeals sent up to the

Supreme Court unless industrial disputes are banned from the purview of the Supreme Court. The element of delay and costs also affected the L.A.T. when it existed. We would suggest that all High Courts, institute an Industrial Bench in their jurisdiction in which the Judges should make themselves versed in all questions affecting industrial disputes as such, besides common law and industrial law.

CREATION OF SEPERATE MACHINERY FOR DEALING WITH DISPUTES RELATING TO INDIVIDUALS, DISMISSALS, DISCHARGES, ETC.

The Madras Government's proposal be endorsed. All the three fears expressed are groundless.

If the Central Government acts quickly and takes over the disputes to a national tribunal the difficulty can be overcome. But in the absence of a decision by the Central Government the present power of reference to local tribunal should remain.

PROBLEMS RELATING TO TU ORGANISATION

The AITUC is of the opinion that we have come to a stage where unions in certain sectors of our economy can find enough cadres and leadership to manage all their affairs, provided the union leadership is guaranteed protection ~~from~~ the victimisation in any form. No union functionary should be dismissed, discharged or transferred during his occupancy of the union post. Secondly, no dismissed or discharged worker shall be considered as an outsider for the unions of his industry or trade. Thirdly, one-fourth of his working time shall be available to the office bearer for his trade union work. Only unions in an industry like coal mining, plantations and Class IV employees are not yet in a position to contribute suitable cadres for specialised sides of trade union work, such as correspondence, drafts of agreements, court work etc., for which outsiders are required by them. Hence the AITUC is prepared to discuss which industry or trade can even now be urged to accept a total elimination of outsiders, if the other national Trade Union Centres would agree, and the employers and the Government would provide the above guarantees.

Minimum Membership Fee

Yes, annas four may be made the minimum.

Registration of Unions

Registrars' powers be curtailed even as at present and some decentralisation may be done.

Powers to Registrar to Inspect Union Books

No powers of this type be given.

Withdrawal of Recognition

No power of this type be given.

Cancellation of Registration

The power exists and may be continued.

Refusal to Grant Registration

Even the suggestion is preposterous.

As the Government is aware and frankly shows it in its memorandum, all these powers, existing or proposed are against the spirit of the freedom of organisation guaranteed under the Constitution.

The failure of the Government to ratify the ILO convention No. 87 on this subject is a serious breach of democratic behaviour and the Government's duties to the Constitution. That the Government of India did not consult the Tripartite Conference on the question of its refusal to ratify the convention should be taken note of by this conference. Curtailment of the freedom of association even with the concurrence of representative organisations is impermissible. And this is specially so when the Government's criteria to determine the representative character of an organisation, is of a partisan type and is worked by itself with partiality and extreme considerations. The latest verification of membership and representative character of national Trade Union Organisations carried out by the Government officers is full of instances to prove the above statement. Even if verification were true and valid, no organisation has the right to curtail the freedom of association of others and the Government has no moral or Constitutional justification to undertake curtailment of that freedom. It is undemocratic and unconstitutional.

Chapter 12

Verification Of T.U. Membership

Minutes of Sub-Committee meeting held on March 21, 1959

A meeting with the representatives of all-India trade union organisations was held at 3 p.m. on 21st March 1959 in the Labour Minister's room to discuss certain issues arising out of the verification of trade union membership for the year ending with 31st March 1958. The following representatives of the trade union organisations were present :

(1) Indian National Trade Union Congress—Sarvashri Ram Singh Bhai Verma, M.P. and N. K. Bhatt.

(2) All-India Trade Union Congress—Shri K. G. Sriwastava.

(3) United Trade Union Congress—Shri Pratul Choudhry.

No representative was deputed by the Hind Mazdoor Sabha to attend the meeting.

2. The Labour Minister at the outset gave detailed background leading to the decisions reached at the Nainital Conference with regard to the verification of trade union membership and the criteria laid down for recognition of trade unions. He stated that some difficulties had arisen and there was some misunderstanding amongst some of the parties with regard to the revised procedure for verification which has been adopted following the decisions reached at Nainital. Some had objected to the results obtained through the present process of general verification being utilised to consider the question of according recognition to individual trade unions. He therefore felt that if there was anything which required elucidation or further consideration, the same could be discussed. He invited the representatives of the trade union organisations to state if, in the light of the experience so far gained, they would like to suggest any

clarification or re-adjustment of the procedure of verification of trade union membership.

3. A number of issues were then taken up for discussion and it was unanimously decided as under :

(1) As the present verification was being done on the basis of test check and random sampling, the results obtained through this general verification process, should be utilised only for purposes of giving representation to the central trade union organisations on the international and national councils, conferences and committees.

(2) As regards counting of membership of those who had paid at least 3 months' subscription during the period of 6 months ending with 31st March 1958, it was decided that since this method of counting membership has so far been followed, the same should be continued for purposes of general verification for the year ending with 31st March 1958. As the unions would require some time to adjust to this system of counting membership and to amend their constitutions accordingly, their membership for purposes of verification for the year ending with 31st March 1959, should be counted on the basis of the unions' constitutions as was the practice in respect of verification prior to 1958 *i.e.*, the rule regarding payment of at least three months' subscription during the last six months should not be insisted upon unless the same was incorporated in the union's constitution.

(3) Where a dispute arises about strength of membership for recognition of individual unions, verification on an *ad hoc* basis will have to be carried out. The procedure of verification in such cases will be the same as that of general verification except that it will naturally be a detailed check. The machinery to be utilised for this purpose in the case of unions falling in the central sphere will be the same, *i.e.*, the Central industrial relations machinery. In the case of unions falling in the State sphere, the same procedure may have to be followed and the State Government machinery will be responsible for verification.

(4) If in any State, statutory provisions for according recognition to the trade unions exist, the same will continue to apply for purposes of recognition.

(5) As the results of general verification were to be utilised only for purposes of giving representation to the all-India organisations on international and national councils, conferences and committees, the elaborate procedure outlined in the revised verification procedure forwarded with this Ministry's letter No. LC-37 (2)|58 dated 31-7-1958 will not be necessary. Objections received after circulating the verified lists amongst the four all-India organisations will be placed before a Committee composed of one representative each of the four all-India organisations. This Committee will try to resolve the disputes and if there are any unresolved matters, these will be referred by the Chief Labour Commissioner to the Ministry of Labour & Employment. Paragraphs 5 and 6 of the revised procedure, referred to above, will be deemed to be modified as follows :—

“Objections received will be placed before a Committee composed of one representative each of the four central trade union organisations. This Committee will meet under the chairmanship of the Chief Labour Commissioner or his representatives. All the objections raised will be taken into consideration by the Committee and efforts will be made to resolve the disputes. Such of the disputes which this Committee fails to resolve will be reported along with the necessary particulars to the Ministry of Labour and Employment.”

Letters exchanged between AITUC and Labour Ministry re. Verification of Membership.

1. AITUC's note to the Labour Ministry dated May 21, 1959

To

Shri G. L. Nanda,
Minister for Labour & Employment,
Government of India,
New Delhi.

Dear Sir,

I have just now received the minutes of the meeting which took place on 21st March 1959.

I am hurrying to send my remarks so that you are able to

decide on it before leaving for Geneva. The verified lists are, I am told, almost ready and may not be held up for want of this clarification.

In the proceedings, at item 5, the procedure of verification has been curtailed.

During discussion on this point, which I may also point out was initiated without previous intimation to participants about any change in the verification procedure, certain opinions were expressed and my feeling is that the viewpoint that as this procedure has been adopted by the Indian Labour Conference, no change should be made, was accepted by the Committee. Specially, the deletion of the last sentence of para 6 of Labour Ministry letter No. LC-37 (2)|58 dated 31-7-58, *viz.*, "If considered necessary, steps to refer these disputes to an independent agency will be taken by the Ministry of Labour & Employment," is very important.

Vide Labour Ministry letter No. LC-37 (2)|58 dated 5-3-59, this meeting was called to discuss only one point, *viz.*, whether the verification, under this procedure and purpose, is for giving representation in the various committees, conferences, etc., or for the purpose of recognition of individual unions. But during discussions, some more issues relevant and irrelevant were raised.

My feeling is that this meeting would take decisions on minor clarifications and re-adjustments but not change the procedure as such.

At the same time, the following two other clarifications decided upon by the meeting are not in the proceedings :

(i) Physical verification of membership in the factory will not be done in the presence of factory officials. This was announced by you on a representation of the Jamshedpur Mazdoor Union and this was agreed to by all. You rejected another part of the demand that physical verification should be done at places of workers' residence.

(ii) It was also agreed that those unions which have not sent annual returns to the Registrar of Trade Unions but have not been de-registered should be taken into account in the verification and not scored out, as reported by the Chief Labour Commissioner.

I would therefore request you to include the above two

clarifications in the procedure and delete only para 5 of the proceedings which deals with vital changes in the procedure of verification adopted by the Indian Labour Conference.

If changes in procedure of verification is considered necessary, it may be taken up in the forthcoming Indian Labour Conference.

Your decision on the above before you leave for Geneva will be helpful in the present stage of discussions of the representatives of four central TU organisations with the Chief Labour Commissioner.

New Delhi,
May 21, 1959.

K. G. Sriwastava,
Secretary, AITUC.

2. *S. A. Dange's letter to G. L. Nanda, dated
August 14, 1959.*

Dear Shri Nandaji,

I wish to draw your personal attention to the following.

There was a decision at Nainital that verification results should be subject to appeal, if an organisation wanted to.

This was sought to be changed at a tripartite sub-committee meeting held on March 21, 1959, where we did not agree to it and the HMS was absent.

And yet the minutes circulated are so framed as to show that this was agreed to. We protested against that minute and there was no reply.

Then again the matter was raised at Madras. In the sub-committee there, the appeal was restored but when the minutes came to the conference, I pointed out the omission. And you yourself clarified that the appeal remains.

Yet when the conference decisions are circulated, again the provision for appeal has been omitted. This does not seem to be a chance omission or oversight. There is a persistent attempt to change the decisions arbitrarily because someone in your ministry does not like it and wants to clothe the Labour Commissioners or officers concerned to have the final verdict on the matter of a union's position.

This method of functioning in relation to collective decisions taken at the conference and the attempt to change them

to the detriment of the unions and to smuggle them as agreed decisions is highly objectionable. I hope you will correct such practices.

Yours sincerely,
S. A. DANGE

3. *G. L. Nanda's reply to S. A. Dange, dated August 27, 1959.*

My Dear Dange,

Kindly refer to your D.O. letter No. 172-B(II)|50, dated the 14th August 1959, regarding the minutes of the meeting held on the 21st March 1959, to discuss the procedure of verification of trade union membership. I am sorry there has been some delay in reply to the letter from the AITUC on the subject, dated the 21st May 1959. As a matter of fact, I had intended to discuss this matter with you at Madras at the time of the Indian Labour Conference. I may assure you that it is the intention that in the event of the committee being unable to resolve a dispute, the same would be referred to an independent agency. An official reply to the AITUC's letter dated the 21st May 1959 is being sent separately.

Yours sincerely,
G. L. NANDA

4. *Letter from Ministry of Labour to the AITUC
dated September 7, 1959.*

Sir,

I am directed to refer to your letter No. 172|VP|59 dated May 21, 1959 addressed to the Minister for Labour and Employment and to say that the meeting of the representatives of the all-India workers' organisations held on 21st March, 1959 was convened to consider whether the results of the present verification were to be utilised only to determine the representative character of the four central organisations for purposes of giving them representation on various committees. It was, however, made clear in para 2 of this Ministry's letter No. LC.37 (2)|58 dated the 5th March, 1959 addressed to the four all-India organisations that in case it was decided to utilise the results of verification only for the purpose of determining

the representative character of the organisations for giving them representation on various committees, it would then be for consideration whether the revised verification procedure was not too elaborate for this purpose. From this, it would be apparent that the question of making any consequential amendments to the verification procedure was also intended to be discussed at the meeting.

In your letter under reply you have requested that the provision contained in the revised procedure for verification (before its modification as agreed at the meeting held on the 21st March 1959), *viz.*, "If considered necessary, steps to refer these disputes to an independent agency will be taken by the Ministry of Labour and Employment" should be retained. It will be observed in this connection that para 5 of the conclusions reached at the meeting on the 21st March 1959 provides that "such of the disputes which the committee fails to resolve will be reported along with necessary particulars to the Ministry of Labour and Employment." This does not in any way preclude the reference of such unresolved disputes to an independent agency. I am to confirm that it is the intention that such disputes which the Committee fails to resolve will be referred to an independent agency.

As regards the physical verification of membership to be conducted in the works premises without the presence of officials of the management instead of at the workers' residence, the decision was communicated to the Jamshedpur Mazdoor Union which had raised the issue as well as the management of TISCO on 18th April, 1959.

No decision was taken at the meeting to the effect that those unions which had failed to submit their annual returns to the Registrar of Trade Unions but had not been de-registered would be taken into consideration for the purposes of verification. However, where such returns have been furnished and accepted by the Registrar before the time of the verification, these would not be excluded.

Yours faithfully,

Sd.

Under Secretary,

Ministry of Labour & Employment.

Letter dated the March 3, 1959 from Jamshedpur Mazdoor Union, Jamshedpur, to Minister for Labour and Employment.

This is to bring to your notice the following facts for your immediate attention.

That after the books and papers of Jamshedpur Mazdoor Union were scrutinized by an official of the Central Labour Department, individual workers are being interrogated as to whether they belong to Jamshedpur Mazdoor Union or Tata Workers' Union. It is highly objectionable that the official of the Labour Department should go inside the works and carry on interrogation in the presence of departmental officials. It is easy to imagine that the workers cannot make a truthful statement in this situation.

Our suggestion is that these interrogations should be made at the residence of the workers concerned and in the presence of representatives of the two rival unions, so that the enquiry may be really impartial and above any suspicion.

Letter dated the 18th April, 1959, from Ministry of Labour & Employment, to the General Secretary, Jamshedpur Mazdoor Union, and copy endorsed to the General Manager, TISCO Ltd.

With reference to your letter No. JMU|Govt.-2|54|59 dated the 3rd March, 1959 addressed to the Labour Minister, I have to state that the matter was discussed with the representatives of the all-India trade union organisations on the 21st March 1959, and it has been decided that the examination of the workers for purposes of verification will be conducted in the work premises but not in the presence of the officials of the management. The management of TISCO is being requested to afford necessary facilities to the Inspecting Officers for this purpose.

Under Secretary,
Ministry of Labour & Employment.

Appendix

Composition Of The 17th Indian Labour Conference

The 17th Indian Labour Conference which met at Madras on July 27 to 29, 1959 under the Chairmanship of Shri Gulzarilal Nanda, Minister for Labour and Employment and Planning, was attended by representatives of the Central Government, the State Governments, the employers' organisations and the four central trade union organisations.

The following Ministries of the Government of India were represented: (1) Ministry of Labour and Employment; (2) Ministry of Commerce and Industry; (3) Ministry of Railways; (4) Ministry of Transport and Communications; (5) Ministry of Works, Housing and Supply; (6) Ministry of Defence; (7) Ministry of Finance and (8) Ministry of Law.

EMPLOYER DELEGATES

Employers' Federation of India: Delegates: Shri N. H. Tata, Bombay; Dr. N. Das, Bombay; Shri A. T. Montgomery; Calcutta; Shri M. J. Edwards, Madras. *Advisers:* Shri I. P. Anand, New Delhi; Shri T. S. Swaminathan, Bombay; Shri N. M. Ghose, Calcutta; Shri R. G. Gokhale, Bombay. *Unofficial Advisers:* Shri N. S. Bhat, Madras; Shri T. V. Lalvani, Bombay; Shri Y. D. Joshi, Bombay; Shri G. B. Pai, New Delhi; Shri L. C. Joshi, Bombay.

All-India Organisation Of Industrial Employers: Delegates: Shri Lakshmi Pat Singhania, Calcutta; Shri S. P. Hutheesingh, Ahmedabad; Shri Bharat Ram, New Delhi; Shri N. M. Varghese, Nilgiris. *Advisers:* Shri R. H. Mody, Calcutta; Shri C. G. Reddi, Coimbatore; Shri R. M. Agarwal, Bombay; Shri

P. Chentsal Rao, New Delhi; *Special Observer*: Shri Charat Ram, New Delhi.

All-India Manufacturers' Organisation: *Delegate*: Shri H. P. Merchant, Bombay. *Advisers*: Shri K. Naoroji, Bombay; Shri H. H. Tyabji.

WORKER DELEGATES

Indian National Trade Union Congress: *Delegates*: Shri S. R. Vasavada, Ahmedabad; Shri G. D. Ambekar, Bombay; Shri Kanti Mehta, Calcutta; Shri Kali Mukherjee, Calcutta. *Advisers*: Shri N. S. Deshpande, Bombay; Shri R. R. Rangaswamy, Madurai; Dr. G. S. Melkote, M.P., Hyderabad; Shri K. B. Thimmayya, Kolar Gold Fields; *Unofficial Advisers*: Shri N. K. Bhatt, New Delhi; Shri A. P. Sharma, Calcutta; Shri G. R. Tewari, Indore.

All-India Trade Union Congress: *Delegates*: Shri S. A. Dange, M.P., New Delhi; Shri Homi Daji, M.L.A., Indore. *Advisers*: Shri K. G. Sriwastava, New Delhi; Smt. Renu Chakravartty, M.P., New Delhi.

Hind Mazdoor Sabha: *Delegates*: Shri S. C. C. Anthoni Pillai, M.P., Madras; Shri Bagaram Tulpule, Bombay. *Advisers*: Shri P. S. Chinnadurai, M.L.A., Singanallur; Shri Ram Desai, Bombay.

United Trade Union Congress: *Delegate*: Shri Srikantan Nair, Quilon. *Adviser*: Shri Sisir Roy, Calcutta.

Shri S. M. Joshi, M.L.A., General Secretary, All-India Defence Employees' Federation, Poona, participated in the Conference as an observer.

Shri V. K. R. Menon, Director, I.L.O. (India Branch), was a special invitee to the conference.