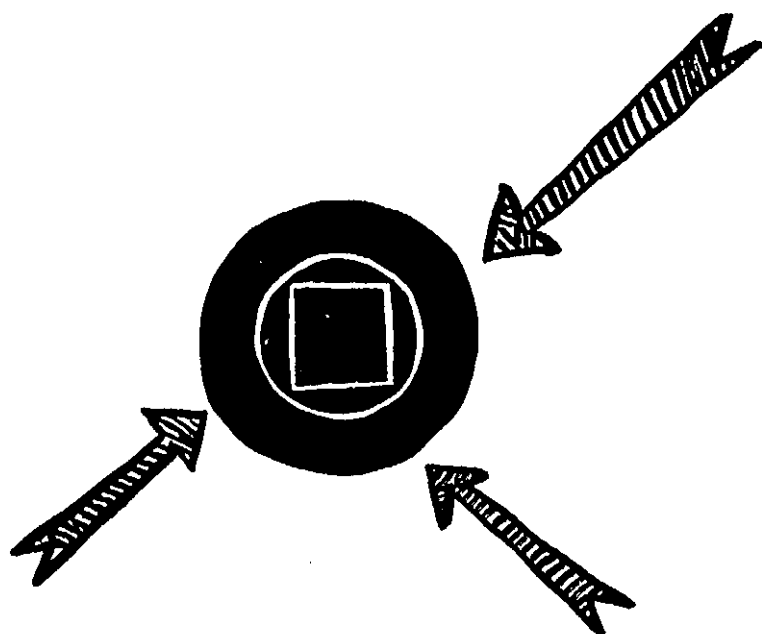


Trade Union Attitude to Industrial Relations



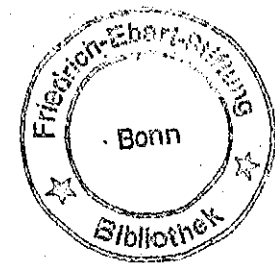
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Introduction

We do not think anyone, leaving aside a lunatic, would like to wreck his relationship with others just for the sake of fun. Moreso, workers to whom their jobs are only source of income and means of protection for themselves and their families cannot afford to have bad industrial relations. Workers preference for healthy industrial relations and also for abiding industrial peace is therefore logical. If we start with this premise, it is possible to find out a suitable framework in which a good industrial relations could be developed.

That workers would strive to get maximum benefits, better wages, and good working conditions from their employers is quite natural. It is also natural that they like to widen the frontiers of their liberties, and also their rights in the industry and economy. These demands, including the demand of co-management of the industry are not the extensions of the right of equality given to citizens in democracy, these are in fact the rights usurped by the managements because of weak bargaining positions of the trade unions and due to the existence of an intellectual, organisational, social, economic and political gaps between the trade unions and managements.

When workers are not aware of their inherent strength or when they and their trade unions are too weak to struggle for their demands, they accept the "direction" of their managements "loyally." This gives the false impression that everything is nice and beautiful. This however does not last long.

When workers and their trade unions ultimately start pressing forth their demands, the managements use all their cunning and power at their command to crush them. They also try to convince everyone that workers are disturbing industrial relations. Lot of money is used for this by the managements includ-

ing expenses on huge advertisements in numerous dailies and weeklies painting workers as irresponsible persons out to harm the interest of the country and the community. Strangely all these expenses are taken from the industry. It should not be permitted and if it cannot be avoided it is only fair that the unions are provided equal space alongside with the management advertisements for their reply as well at the cost of the industry. This would give chance to the community to judge for itself which of the two parties is guilty.

It is this management attitude and power and their obstinacy in refusing to sit with union representatives or to bargain with them in good-faith, that has marred the whole field of industrial relations in India. And it is here that remedies ought to be found out. If the managements of the steel industry both in private and public sector could come to an agreement with the trade union representatives for the first time within a period of one year on a national level, why it is not possible for other managements to do so ?

The reasons are obvious. They do not want to fall in line with this method since they want to delay the settlement of disputes. The managements prefer such methods that may tire and weaken the unions and be favourable to them. The methods like compulsory arbitration, labour courts, tribunals, wage-boards and the like meet their ends. They prefer legislative stipulations to collective bargaining since this provides them greater opportunity of delaying justice to workers and also provides them with possibilities to defeat the workers' claims in the courts because of their greater resources. Here too huge sums of money are wasted by the managements on feeding this system and in legal department establishments and lawyers on the cost of the industry. The workers on the other hand are left to defend themselves against this colossal power on meagre union resources and scanty membership fees. The fight is uneven. The results of these fights whatever these be, are injurious to the industrial relations. The delay in justice and very often defeat in their demands makes workers angry. The workers' sense of belonging to the industry is eroded. To the extent it is shaken the industrial relations are disturbed to that extent.

It is therefore considered view of trade union movement that managements and trade unions should be left alone to find solutions to their problems through collective bargaining. The state and the community should only endeavour to strengthen the collective bargaining processes by suitable legislation that would help trade unions acquire equal power to that of managements. This balance of power is in the interest of development as well as for the justice and fair treatment for the workers. Where this approach is missing the industrial relations are disturbed.

Our study of industrial relations in various countries as well as the observation of industrial relations in India convinces us that greatest insurance against industrial strife can only be found in strong trade union movement. This view is fortified when we see big unions with great financial resources, and huge strike funds in developed countries signing one agreement after another mostly without any strikes; whereas, in India though we have weak trade union movement with scanty resources, we are experiencing greater degree of industrial disharmony, and greater number of man-days lost due to strikes.

This book attempts to introduce the metal workers to the problems of industrial relations and the trade union approach to it. If the book accelerates thinking, and contributes in making metal workers conscious of the need of a strong trade union movement, we shall feel satisfied.

July 15, 1971

H. N. Nehru
IMF Representative for India

For the first time International Metalworkers' Federation (IMF) convened an IMF Asian Regional Conference for its affiliates in Asia, and Australia in Tokyo on 11-14 February 1969 to study the specific problems of this important region in which more than 50 percent of the world population lives. This conference discussed trade union attitude to industrial relations in Asian Countries and problems of metalworkers' unions and IMF action programme for the region. 102 delegates representing 12 countries—India, Indonesia, Malaysia, Philippines, Hongkong, Singapore, Korea, Taiwan, Australia, New Zealand, Fiji and Japan—attended the Conference.

Brother Alfred Dannenberg, Assistant General Secretary of the International Metalworkers' Federation addressed the Conference and provoked discussion on problems of Industrial Relations and trade union attitude towards these. Following is the text of his address.

INDUSTRIAL RELATIONS

Industrial relations are for the worker his eight—and in Asia very often more—hours of life at his work place. The workers as active participants are directly involved and trade unions cannot be indifferent to the development of industrial relations but must give it their closest attention. After all even under the most favourable circumstances it will be difficult to call the working life a paradise—but it can certainly become a hell! This note deals with industrial relations in widest terms and is restricted mainly to relations in the metal industry.

The approach to industrial relations differs depending on various groups involved. The workers and their unions will certainly call industrial relations good or acceptable that are modelled in accordance with social justice and human dignity—which entail self-expression and voluntary cooperation and freedom. Of course the worker takes up employment with the intention of earning money and an income for himself and his family or dependents. This is also the ultimate reason why he accepts an employment contract or is hired. Yet next to earning maximum income, he wants to work under such conditions which are dignified and are acceptable or give a maximum of satisfaction to his interests. He wants not only a just share of the economic results but to see his working life organized in a way that safeguards fair treatment and participation. He does not want to remain as a tool and a production investment factor in the hands of the employers.

In proper pursuit of the economic ends of industry, management has to take decisions about the utilization of material

and human resources within the setting of a given production process or enterprise. Human resources, however, are people and they do not cease to be persons, whose dignity claims respect when they are selling their labour to earn a living. Industry has social responsibilities which are based on this consideration.

Somebody said one can readily agree that "The business of business is business; economic business to create economic values and to minimize economic costs". The employers are likely to look after efficiency and maximum output. Industry and plants have economic ends producing marketable goods or services. They want to survive the test of economic viability imposed by the markets in which they operate. Similarly, the work which people perform in industry is undertaken primarily for its material rewards, and not for its own intrinsic interest. Yet, workers expect that industry take over social responsibilities on a twofold basis; to guarantee the income and assume responsibility for the internal set-up of production and the way a worker has to work.

In the absence of slavery or forced labour, the relationship between worker and firm where he finds employment is generally thought of as being a contractual one. However the idea that in market economics employers and employees enter into relationships on a basis of freedom and equality cannot be sustained in most situations. Management is the government in the factory and all its decisions directly affect the employees. Managerial power is normally overriding and workers and unions try to check these powers either by controls or by participation. This is of course resented by the employers who find it disturbing, ineffective and resulting in a costly hampering of the production process.

One word about the governments as an important party in industrial relations. Governments are supposed to do many things—to act as legislator, administrator, peacemaker, participant, and guardian. Governments should have the interests of all equally at heart. It is clear that the policy and general political programme of governments influence their attitudes. An anti-labour government will have another approach from that of, say, a socialist government. The overwhelming government interest is at best in the advancement of the nation, which includes economic and social

development, order and easy government without opposition—meaning in this respect that the organized labour movement submits to its general policy and supports it. Generally speaking, as government policies do not necessarily coincide with labour aspirations, there will be clashes on various issues. Specially in times of crisis, governments will be inclined to bridge the gap at the expense of labour. Governments tend to resort to intervention and regulations.

The varying interests, approaches and attitudes of the participating groups will therefore bring the groups into conflict and labour relations will be brought under the pressure of these groups which want to mould and create these relations in accordance with their own ideas. We are therefore likely to witness a constant struggle in this field. One may find often a mixture of all the interests implicated with varying strength. Even in all the groups a strict separation is not always apparent.

It may very well be that in the abstract everybody is willing to accept the general principles of social justice and the dignity of man and workers, but there will be differences in application and practice. The application and establishment of these principles will in any case be constantly contested in the many situations and circumstances arising in industrial life. It is difficult to find the common denominator and, if we would find a norm for industrial relations, we will meet with the opposition of other groups and compromises will finally evolve.

Another general remark: Generalization will be difficult because the industrial patterns differ, as do traditions and practice in the various countries. We find collective bargaining at the plant, district, industrial or national level. The methods of arriving at conditions of work are likewise different besides collective bargaining one finds voluntary or compulsory arbitration and adjudication. These are in addition to explicit government machinery with fixed rules. Certain methods which unions of one country oppose are supported by others in other countries.

In principle collective bargaining and free negotiation of working conditions are still considered the best method for obtaining

a maximum standard for the workers and, as such, they are preferred by most of our trade unions. In all cases collective bargaining guarantees rapid, practical, properly adjusted, expert solutions, which give most satisfaction, permit decisive participation of the parties concerned and under normal circumstances, exclude influences, which have no factual justification in controversies in the labour world. In spite of all criticisms and, in part, disapproving remarks by theorists—chiefly not parties directly concerned—no substitute is yet evident.

There can be no doubt whatever that improvement can be made on collective bargaining. More detailed and frank information from the employers for instance—which they normally try to hide—regarding all aspects of industry will go a long way towards improving the negotiation. Modern research and analyses from the union side will be necessary to prepare demands and public opinion for support.

Successful negotiations presuppose organized workers and relatively strong trade unions and employer or employer organizations both well informed, both desirous, to use bargaining really as an instrument to fix conditions, and not to misuse it. Collective bargaining presupposes the freedom and lawfulness of creating collective contracts, as also their binding force, at least for members of the trade unions and employers' organizations or for individual employers. Collective bargaining is serviceable and fruitful for a wide field of industrial life.

There are some aspects of industrial life where legal settlements give a more secure background, such as in questions of safety on the job, or in areas which go beyond the jurisdiction of the bargaining parties and represent duties for the state and the leading sides on the labour market. In both a free market economy and in a planned economy, collective bargaining proves a usable instrument to create better working conditions, provided other prior conditions are filled. Collective bargaining ensures a decisive influence on shaping the labour scene, which is in keeping with our democratic principles.

Some doubts may be felt whether, under the conditions to be

found in developing Asian countries, collective bargaining is an effective method of ensuring for the workers a fair share in the proceeds of the economy. A number of reasons are quoted that may serve as an argument against free bargaining on working conditions. The most essential of these arguments are:

- weak labour market, with much unemployment and underemployment;
- weak trade unions, associated with lack of experience and maturity;
- drawbacks in the worker's status, with lack of recognition for equality of rights;
- lack or too limited opportunity for action by the trade unions;
- preference for legal or institutional settlements, often on a national basis;
- interference of governments, and subordination of wage and social policy to the targets of economic policy and development plans, with consideration for chances for development of industry.

It is true that the widespread unemployment in developing countries makes more difficult the position of trade unions as a bargaining party. In the metal industry, however, especially in medium and large sized concerns, the situation is not so unfavourable, because the employers must to a large extent turn to skilled and semi-skilled technical personnel which, in view of the shortage of such manpower, cannot always easily be replaced.

The trade unions are by no means always weak and their contracts have brought considerable improvement in the lives of many metalworkers in these countries. In many plants, however, the unions' position is undermined by splits or their effectiveness is weakened by other influences or by the lack of real organization. This weakness has served as a stimulant to legal-minded tendencies,

which are often predominant at the present day. The unions have demanded protective legislation, and it is necessary that unco-operative employers should be forced to recognize the trade unions. Lack of strength has been compensated for by the findings of arbitration courts.

The question is posed here whether such government support like availability of arbitration courts etc. are not in the long run an impediment to trade union development. In the metal industry, where the workers are frequently to be found grouped together in major establishments, the organization of labour ought to be facilitated on its own. Here we find trained workers, in contrast with manpower in traditional branches of the economy. If they are capable of finding employment in a modern, technical production process, they will be able to furnish and to gain experience for union organising work.

Legal thinking developed also for political and traditionalist reasons. Effective social protection through progressive legislation in the labour world always receives the support of working class. However, the intervention of state institutions restricts the unions' freedom of action and their chances of sharing in the framing of working conditions. Here the question may be raised of the part to be played by the government, as also the problem of eventual unnecessary interference and bureaucratization with all its familiar consequences; these phenomena are often not conducive to practical industrial solutions.

This refers not only to the shaping of conditions and to contractual and practical standards, but also to settling disputes. To make this point clear, the need for institutions in case of disputes and for conciliation in the event of industrial controversies is not disputed but what needs discussion is powers involved and the compulsory nature of those features. I am convinced personally and as someone who has acquired his trade union experience in a country (Federal Republic of Germany) where government interference in the labour field is not desired by the parties, nor is it possible without their consent, I think that constantly running into the authorities' nets seems to me very encumbering.

That begins with the registration of the trade unions, further dealing with recognition, the various stages of conciliation, mediation, voluntary and compulsory arbitration and final adjudication. Here we have a long road of coming to terms with law. In many cases this does not do justice to practical industrial life, but it makes demands on time and money and it leads to unsatisfactory solutions creating immediately new complaints and, as far as the worker is concerned, often to frustration.

The participation of the unions, as the workers' representatives, in the shaping of the working conditions and social policies is, however, largely restricted and left to the authorities. Inter-alia it induces the employers to refuse to measure up properly to the union's demands, and the will to settle a conflict, as proposed by the trade union, is almost automatically stifled.

I do not share the view, so often stated to me in this connection by authorities, that in any case it is better to call a third party into such debates as an arbitrator. My experience has convinced me that both parties in a labour dispute have the most expert knowledge, especially if it is a question of contracts made by themselves, and that they both, if left to their own resources, arrive at a solution in the shortest space of time, often with no fixed form and practically without theoretical complications, and with the interests of both parties taken into account. One experience here may be of interest. In our disputes over contracts in (Federal Republic of Germany) the trade unions and employers felt responsible only themselves and equivalent phrasing was incorporated in collective contracts. In the same way conciliation of disputes has been written into a collective agreement, while no law exists on that subject.

In spite of these misgivings, under existing conditions in Asian countries, legal protection and interference often that of the authorities cannot be disclaimed. In some countries that provides vital protection, in the absence of any trade union pillar. Of course in all legal processes a certain form of participation and collective bargaining are component parts. But do they suffice?

Nevertheless I would raise the question whether, considering the often different conditions in the metal industry, the protection

previously demanded from the legislature has not at the present day become rather an impediment for freer development and decision making, and whether it is not in need of reform. That would lead also to stronger development of the trade unions and it would create the prior conditions for a share in shaping labours' conditions. If indeed compulsory arbitration is meant to protect the unions and workers against the shortcomings of a collective bargaining situation, then why not invoke the compulsory arbitration process only at the express individual request of the union only?

A vital point which has also been brought into discussion is need to look to the situation as a whole and for the possibilities of developing industry, especially in developing countries. This means consideration for the public, and overall economic or national interest. Here it is perfectly clear that tacit subordination to a government policy is always hazardous, all the more so when it is a matter of governments hostile to labour.

In developing countries social policy is still more directly influenced by economic development and industrialization. The need of reserves for investment looms larger. Greater restraints is expected in trade union's demands. This really needs thorough discussion and careful weighing of the situation. Planning targets fix also social goals and often quotas for wages. The planning of industrial development, however, in no way contradicts free union organization and activities. Planned economy should not come about without the voluntary cooperation of the parties concerned in the economy and in an undemocratic manner. Priorities and needs of planning and industrial development must be discussed and decided in the planning institutions, with participation by the trade unions; then active cooperation can be expected. Here the methods of industrial social policy need not be changed and collective bargaining remains as feasible as before. In such bargaining, as also in general, the trade unions must be furnished with information about the situation and the future development of industry.

In planned economies, as in free market economies, incomes policy is a subject of discussion at the present day. In so far as this is not simply a pretext for a wage freeze, it is sought to introduce a

supposedly new element into free wage policy—consideration to be given to more general objectives, relating to policy for the economy or development. This is a questionable undertaking! An incomes policy, with consideration given to all incomes, to a concomitant price policy and to a general policy of economic expansion, is in any case hardly capable of being put into effect or likely to be accepted.

I propose to deal with some aspects of Industrial Relations which, although under discussion, seem problematic if dogmatically applied. Many so-called new ideas and elements have been introduced over the last years and constitute in some countries already the basis for views and action among governments and employers. I do this, bearing in mind as a question: Have we found a valid formula in those relations, one that workers and employers have agreed upon? Or are we still at the stage where everyone stresses his own interests and ideas?

The attempt to attach proper significance to general economic views in free collective bargaining has been made in economies in a state of recession, or for reasons of economic policy.

In highly industrialized countries the situation of the trade unions and their effectiveness, as compared with previous years, have undergone a fundamental change. The trade unions have acquired greater importance and greater influence on social and economic life. Here vital economic changes, expanding economies and full employment have been contributory factors. The shift in the balance of power in favour of employees and unions brought about by full employment, has cut down the area of management prerogative.

In this situation the strategy and tactics concerning wage and social policy of the employers and many governments have been transformed. The employers, it is true, persisted in declaring in response to every demand made by the unions that their businesses would be rendered uncompetitive by further increases in labour costs, that they would be hampered in international competition and would no longer be able to make adequate investments. But in the long run even one-sidedly influenced public opinion would

find that hard to believe, especially if, over fairly long periods of time, turnover, exports and profits continue to rise, in spite of social gains for the workers.

They have therefore had to alter the arguments they offer to the public. Set-backs in some countries' economic situation, for example that of Great Britain, entailing signs of crisis, have greatly encouraged re-examination of the old practice of arriving at wages and working conditions by entirely free negotiation. It was argued that the following new elements had to be introduced:

- an attitude of impartiality and objectivity;
- a general sense of responsibility to the nation, economy or public interest;
- and as a consequence an intervention by a third party, an arbitrator is recommended.

An incomes policy was thought necessary' tying wages to increased productivity or to the rate of growth of the national income. This is discussed and proposed mainly by employers and governments economic experts. It has been said that the trade unions' sense of responsibility requires consideration for the interdependence of national economies and that favourably placed branches of the economy bringing high returns, would have to take less profitable branches of the economy into account. Signals and guidelines for social expansion were fixed by economic bodies, special councils and governments in some countries. Intervention to ensure objectivity is considered right and proper. In theory the right to strike is not contested, but it is claimed that going on strike is out of date and shows bad manners.

Making matters objective pre-supposes that hitherto the process was not. In capitalist countries, however, this form of creating social conditions has held the field and has after all considerable achievements to its credit. The question is here: are these others so-called objective or scientific methods of coming to terms truly objective and unfailing?

Let us now consider the new elements it is proposed to introduce. There is the concept of productivity. Productivity, it is said, should be the most important factor in judging what a man should be paid. Productivity next to profitability, movements in cost of living and the comparability with other firms or industries, has usually been a relevant factor in conventional negotiations. Productivity, it will be remembered, is a relation between inputs—such as labour, raw materials and capital—and output. "Productivity is notoriously difficult to measure or even to assess" says the TUC in Britain, and I think we have to agree—Further what productivity: labour of course—

It is an old employers' argument that improvements in the social standard and in wages beyond the framework of increases in productivity throughout the economy cannot fail to lead to increases in prices and to inflation. We have to be careful here and the direct link and coupling can in no way be accepted unquestioningly.

Increased labour costs do not tend to force prices up if they are balanced by reduced profits for the employers. Coupling wages to productivity does not automatically guarantee a stable price level, as can be seen for instance in Japan, where wage increases even stayed behind the increase of productivity in most periods—and yet prices have gone up perceptibly.

In the first place wage increases may be at the expense of profits; for another thing changes in capital outlay per worker would need to be considered in relation to productivity; besides the trend of prices of raw materials is important; finally the doctrine of wages related to productivity implies of course the necessity for prices to be reduced in industries with a more than average increase in productivity.

In modern automated plants with extraordinary increases in productivity the employers at once abstain from talking of coupling wages to productivity. Last but not least, such a link also pre-supposes that the rate of wages already existing at the point of departure is stabilized, which means that rate of wages is treated as

a norm and is identified with fair sharing of the national product, which would be completely arbitrary.

The generally lower rates of productivity in developing countries make the need for seeking improvement obvious. However, the many efficiency barriers at the different stages of development leave no easy way out. But to relate wages to productivity in those countries will definitely be impossible and even defeat its own purpose.

Low wages and poor working and living conditions make greater intensity of work mostly impossible. A worker with an income that does not allow him to feed and house himself properly, somebody who is under the constant strain of wondering how to keep his family, the insecurity of his job, bad treatment by the employer and with a minimum ability to recuperate his physical strength can rarely contribute to rising productivity.

But equally or even more important is the fact that production environments—lack of efficient organization, industrial experience and team work, inexperienced management, lack of complete structure and infrastructure—in newly built plants make it impossible to demand an increase in efficiency of the workers only.

While it is true that the dramatic rise of industrial productivity can be traced primarily to the transformation in the techniques of production, that is, the manual effort of the working man helped or replaced by powered equipment, machines, yet in situations where the worker is much cheaper than equipment the pressure to invest in this equipment is not very strong. This fact, in combination with a decision based on social policy, to abstain in many instances from introducing machinery for the sake of keeping more manual jobs open, are factors that do not make for the improvement of productivity.

Because the economy is always a double-sided affair: *producing and selling* greater markets which allow mass-production are always an incentive for the increase of productivity. Greater buying-power or better mass-buying power will do wonder and it is obvious that an American employer has a greater chance than say the Singapore

employer. The spirit of an entrepreneur is necessary, detailed research facilities, methodical lay-outs, to make the productivity increase a success—and it is not by chance that the American economy invented productivity. I think therefore that to gear wages to productivity is in many developing countries a very doubtful proposition and will in many cases lead to a wage freeze.

Fundamentally the tying of wage increases to productivity means a kind of permanent-payment-by results bonus, which is forfeited if a certain output is not achieved although that output does not depend on the worker alone. Thus it is by no means a reliable guide and does not eliminate the need for bargaining.

In the United Kingdom so-called "productivity bargaining" has developed. The Amalgamated Union of Engineering and Foundry Workers of Great Britain explain a "productivity bargain" as follows:

"A productivity bargain may be described as an agreement in which advantages of one kind or another, such as higher wages or increased leisure, are given to workers in return for agreement on their part to accept changes in working practice, in methods, or in the organisation of work, which will lead to greater efficiency. These changes in the interest of efficiency, and the consequent reduction of cost per unit of output, must be seen as an integral part of the bargain; they are considered as a necessary contribution to meeting the cost of the advantages conceded to the workers."

Here clearly increases in labour productivity is *the* factor to grant advantages to workers in exchange for an agreement to changed working conditions such as manning, demarcations, working practices, simplification of pay structures and so forth. However, the difference in Britain against the normal procedure is, that in productivity bargaining the British employer has to give benefits to the workers first before he gets the changes he is after—whereas otherwise productivity has to rise first and social improvements are granted afterwards.

In Britain this is a reaction to economic difficulties and work practices of long standing which have also become restrictive under

the impact of technological change. In the case of Great Britain the unions now demand 'consultation in all aspects of the companies' activities, and the unions will also accept responsibility for productivity and increasing efficiency as the means to improve the standard of living. The trade union movement should be fully involved in matters of manpower planning, redundancy questions, and should act as pressure on management to improve efficiency, to improve factory conditions and planning lay-out, to make management accept their responsibilities in the field of sick pay and pension schemes for manual workers, to ensure that changes in industry ".....should be made with the minimum hardship to our members", says Brother Conway of the AEF. This is then much more than just setting up a productivity-index-wage-increase-factor.

To avoid any misunderstandings: it is necessary, to state that I am not against the attempt at improving efficiency or productivity in industry—but what I want to emphasise is the doubtful character of pinning wages or increased social costs to productivity index—especially in developing countries. I want to stress that one should not take these elements, which are not new but made more important, without a grain of salt.

Another "new" element: the general increase of the national income. Is forecasting economic development a very safe ground for collective agreements? Or only an indicator with doubts? The increase is normally known only at the end of the year—and corrected even the next or in the next two years. Normally an argument arises among different institutes and economists as to what it will be.

My contribution is meant to be critical in order to introduce a discussion on this subject. I want to stress that the situation has to be examined and demands and action be taken accordingly. The word 'action' has been deliberately used because employers rarely give anything before they must. In the last resort I believe it is true what a sociologist has said.

"Social progress has never yet been brought about solely for rational reasons. Even rational reasons, reinforced by the most

serious moral remonstrations, do not prevail in the face of resistance either from interested parties or due to habit and thoughtlessness. Nevertheless the labour movement is aware that such positions have hardly ever been conceded to it voluntarily before it was strong enough to take them by storm if necessary."

This seems to me a very realistic view especially in Asia, where in most countries the employer makes full use of the possibility to exploit the labour situation. To rely here only on figures and the power to convince without an instrument to enforce, is at present a bit of an illusion.

In Summing up it is necessary to stress:

- (a) the difference in the approach and divergent interests of the parties involved in industrial relations make for a continuous conflict and adjustment;
- (b) in principle collective bargaining is considered the most suitable and democratic method to come to terms under the conditions indicated;
- (c) legal or institutional operations and methods have their justification under conditions indicated and found in some countries—but tend to be cumbersome and too restrictive. The problem poses itself of changes in the case a stage of development has been reached for the sake of freedom and participation;
- (d) the different factors or elements underlying the judgement of demands and justified social gains for workers have equal importance and there exists no ultimate self-regulating device suitable to cope with all the situations possible in social and industrial life;
- (e) methods devised or introduced to overcome difficult situations or a crisis are not unquestioningly making a new rule—nor can they be taken as a basis of reform under different circumstances and in different situations.

While collective bargaining in the sense of agreements voluntarily arrived at as a result of direct negotiations between trade unions and managements has not made very much progress in India, the machinery provided by the Government for solution of industrial disputes has also not succeeded. The industrial relations in India are in shambles. The situation is tense and needs quick remedy is recognised by the Government, workers as well as employers. The formation of HMS—INTUC Consultative Committee, the two trade union conferences held on 18-19 May, 1971 and 20-21 May, 1971, and many more unrecorded and recorded activities connected with it prove that something is being done.

In the following note efforts have been made to give some background of industrial relations in India and also provide some reasons as to why collective bargaining processes require to be strengthened. The note is based on the lecture notes of Brother H. N. Nehru, IMF Representative for India.

INDUSTRIAL RELATIONS IN INDIA

Governments concern in the industrial relations, the world over, is obvious and their intervention is understandable. But when the intervention crosses the limits of assistance and gradually takes the shape of guidance and direction it stifles collective bargaining. The industrial peace which they try to achieve becomes its first casualty. It eludes them and gets lost in the labyrinth of legal jargon, administrative details and bureaucratic manoeuvrings. The Governments intervention in labour disputes is on the plea that disputes dislocate normal life of the community and they do so more when these are in essential services like electricity, transportation etc. With the growth of the concept of welfare-states and due to interdependence of economic factors Government intervention gets added relevance. The Government comes forward and intervenes, it claims in order to protect the community and also the labour force and thus prevent the disputes from degenerating into an industrial anarchy. The nature and degree of such Governmental interventions depends upon the political system, of the country, the strength and development of the labour movement, and also historical background of the country.

The first enactment to deal with the labour disputes in India was Trade Disputes Act of 1929. It provided machinery for settlement of individual disputes and made it obligatory for the unions intending to launch a strike in a public utility service to submit fourteen days notice prior to the strike. It also prohibited strikes which might cause severe hardship upon the community and declared general and political strikes as illegal. The Act paid little attention for the protection of the interest of workers.

In the Second World War period the industrial relations legislation was submerged by the emergency provisions of Rules 81 and 81-A of the Defence of India Rules. These rules empowered the government to make general or special orders to prohibit strikes or lock-outs in connection with trade disputes unless reasonable advance notice of intent was given. The government also reserved the right to refer any dispute to conciliation or adjudication proceedings and to enforce awards. These rules remained in force till the Industrial Disputes Act 1947 was passed after India attained freedom.

The Industrial Disputes Act 1947 has a new feature of encouraging the setting up of Works Committees consisting of equal representatives of workers and managements with a view to remove causes of day to day friction between the parties. The Act makes it mandatory to admit disputes in public utility services in conciliation but is optional in all other cases. On receipt of reports from conciliation officers if the conciliation does not resolve the disputes the government may refer the dispute to adjudication by the labour court or Industrial Tribunal and their award would be binding on the parties. It becomes effective thirty days after publication and remains in force for one year. The government has, however, the option of reducing this one year binding or extending it to 3 years. In short the chief aim of the Act is to get settlement of industrial disputes by conciliation, arbitration and adjudication in place of trial of strength through bargaining processes. Strikes or lock-outs are not permitted during proceedings before a tribunal and two months thereafter or during any period in which the award is in force. Contravention of this provision is punishable with imprisonment or fine or both.

During the proceedings either before a conciliation officer, Board, or Tribunal an employer is not allowed to alter conditions of employment to the prejudice of workers, nor can any workman involved in a dispute be victimised by the employer in any manner except with the permission of the authority before whom the proceedings are pending. However, the employer may alter the condition of service with respect to any matter not connected with pending matter and proceed against any workman under standing orders applicable to workman. But if the action amounts

to discharge or dismissal of the employee, a month's salary is payable and such action is subject to approval of the authority concerned.

Whenever a concern is closed for reasons beyond the control of the management, compensation at 50% of the basic wages and dearness allowance is payable during the period of lay-off except for such weekly holidays as may be intervened, to a workman who is not a *badli* or casual and who has put in one year's service and whose name appears on the muster roll. But when a workman is retrenched, he is entitled for one month's pay in lieu of notice and to get compensation equivalent to 15 days wages for every completed year of service or part thereof. However, the employee is required to report the matter to the government. These provisions are supposed to minimise the friction on account of closure of an establishment for valid reasons.

In general, the Industrial Disputes Act of 1947 provides a government controlled system of adjudication of labour disputes. In substance it is a negative act seeking solutions of industrial disputes and lacks positive forward and bold urge for setting up institutions that help emergence of industrial peace and create satisfactory environment wherein the disputing parties may come to settlement on the basis of mutual interests and for the good of the community at large.

Settlement of disputes through the system of collective bargaining between the parties is a rational method since it provides for settling disputes after discussion around the table. This method needs to be encouraged but the success of this depends upon the existence of favourable legislation, an effective labour movement as well as an enlightened management. The Industrial Disputes Act provides machinery for the prevention and settlement of industrial disputes through conciliation arbitration and adjudication, which is not favourable for collective bargaining in India. It in fact arrests its growth.

The settlement of disputes by resorting to tribunals makes everything legalistic. The workers think of favourable points for winning the case rather than the strength of their unions, and

managements spend huge sums of money on their legal departments rather than in developing their productivity and production techniques. Though tribunals cannot go beyond the terms of reference, they may disregard the contractual obligations and impose new obligations on the employers in the interest of social justice and for securing industrial peace. The award of the tribunals is binding on all parties to the dispute including those who subsequently become employed. Once the award is given, the tribunal will have no powers either to review, alter, modify, or clarify it. If the tribunals act capriciously or arbitrarily the High Court can interfere with the award under articles 226 and 227 of the Constitution. It cannot act as a Court of Appeal but can examine whether a tribunal has contravened any fundamental principles of natural justice in exercise of powers. And thus industrial relations throughout remains in the domain of discussions among 'learned pundits' who are as remote from effects of industrial disputes in their lives, as they are ignorant about the industrial life of the country. Not the parties to the disputes but a third party settles the disputes, and leaves in many cases both concerned parties numb and disillusioned.

The method of compulsory adjudication discourages direct settlement though direct settlement through collective bargaining alone paves the way for sustained and happy relationship between employers and employees. Compulsory adjudication leaves behind a feeling of rancour. The cases before the tribunals are fought most vigorously. They consume lot of time. Justice is delayed, and justice delayed is justice denied. Hence the whole concept is a dead weight in the development of healthy industrial relations. The system seemingly settles industrial disputes, but in reality the climate for industrial peace recedes all the more.

True, that the voluntary arbitration is also one of the modes of settling dispute under Industrial Disputes Act, of 1947. Under this system the parties to the dispute may submit their case for arbitration by person/persons mutually agreed by them when they fail to settle the dispute by mutual discussion. The parties to arbitration are expected to accept the award of the arbitrator/arbitrators as final and binding. This mode of settling disputes is quite understandable and in this method the strength of trade union is not in

jeopardy. But in reality this does not function in the true spirit. Firstly because this method emerging out of legislation which allows other alternative like compulsory arbitration as well, its importance become secondary. Secondly, voluntary arbitration can only be in the real sense voluntary if it came out of collective bargaining according to the express wish of both the parties. The voluntary arbitration in the Industrial Disputes Act is in fact a sham.

Theoretically both employer and workers in India prefer voluntary arbitration. The Central Organization of Employers and workers adopted a Code of Discipline in 1958 which, contemplated that both managements and unions should try to settle their disputes through voluntary arbitration. The 17th session of Indian Labour Conference held in 1959, recommended that increased recourse should be had of voluntary arbitration in the settlement of disputes and that recourse to adjudication should be avoided. The principle of voluntary arbitration was further emphasised when the Central organisations of employers and workers adopted the Industrial Truce Resolution in 1962, in the wake of National Emergency. According to this resolution recourse should be had to voluntary arbitration in all complaints pertaining to dismissals, discharge, victimisation and retrenchment of workers not settled mutually and under no circumstances, there shall be any interruption in or slowing down of production of goods and services. As a step towards the implementation of this decision, officers of the Industrial Relation Machinery were instructed to serve as arbitrators in disputes of local nature. In circumstances in which the Industrial Truce Resolution came the number of voluntary arbitrations which were only 6 in 1962, increased to 185 in 1964 and during 1968 the number went down to 113.

In order to popularise the system of voluntary arbitration it is worth while to note the appointment of National Arbitration Promotion Board comprising of representatives of the central employers, workers organisations, the public sector undertaking and the Government by the Government of India in the year 1967. In spite of it the success in this regard is not encouraging is obvious.

The establishment of happy and harmonious relations between

employers and employees could be had only when the willing cooperation of the parties to the disputes is forthcoming. As dominant partners in present situation the responsibility of the management is greater. They must be ready to regard the workers as copartners in the enterprise. Equals come to settlement of their disputes honourably and stick to their agreement too, but unequals blinded by complexes of inferiority and superiority try to undercut each other on every opportunity accorded to them. A keen student of industrial relations in India can understand this by observing the trend of industrial disputes in India and their solution. The Industrial relations legislation in India should therefore be built on this honourable balance and help growth of the parties as copartners. It is the workers and their trade unions who would need protection since employers are already quite strong and united.

The setback to industrial growth and the slow rise in gross national product is to a considerable extent, due to this unsound industrial relations, apart from other factors. The situation can be remedied. One of the necessities is of course, educating the workers and employers for developing a suitable industrial climate for securing a purposeful participation of labour in management. The workers education should be the prime concern of the trade union movement to which the community and government should give all assistance. Similarly there should be emphasis on educating managers, foreman and other officers of the managements too, so that their thinking and performance may ring in unionism with the call of the times, needs of development, and objectives of the Indian society set forth in the Preamble of the Constitution of our Country.

Besides the educational drives mentioned above, it is also important that trade unions put their house in order. The trade unions in India are by and large, led and guided by politically motivated leadership and it is high time that something is done to remedy it. The remedy of course lies in democratic functioning of the unions, more involvement of members in the affairs of the union and resorting to secret ballot in the union elections. More the unions function democratically greater would they be owned and run by workers. The outside influences would then gradually wither away.

As said earlier managements are dominant party and therefore, they are mostly responsible for the present unhealthy industrial relations obtained in India. They have failed to be-friend the trade union movement rather they have no desire to do so, and have cold shouldered all methods devised for proper coordination between management and labour. Their inefficiency, if not callous disregard of human difficulties in solving individual and collective grievances, has greatly harmed industrial relations. They have been averse to workers participation in the industry. They have looked down workers as inferiors. They have withheld information, financial and otherwise from workers. All this has harmed the industrial relations. Workers faith has been eroded. This needs speedy improvement and only then the purposeful understanding will emerge as well as collective bargaining start. The industrial relations built from these bases will make industrial peace a reality, and it is towards this end that government policy should be deliberately planned.

The declaration of the first IMF Asian Regional Conference on Industrial Relations, given below, expresses the feelings of the Asian metal trade unionists in relation to collective bargaining, compulsory arbitration etc, and gives voice to trade union goals for reform. The Declaration confirms the guidelines contained in the IMF Declaration of principles, especially those demanding the recognition of freedom of association collective bargaining and right to strike in all countries as well as the right of the unions to function in the work places.

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DECLARATION
of the First IMF Asian Regional Conference on Industrial Relations

The First International Metalworkers' Federation's Asian Regional Conference, held in Tokyo from 11th to 14th of February 1969,

dealing with trade unions' attitude to industrial relations in Asian countries, confirming the guiding principles in the IMF Declaration of Principles, especially those demanding the "recognition of freedom of association, collective bargaining, and the right to strike in all countries and a guarantee of the rights of unions to function in the workplace",

express the view that industrial relations should be based on social justice and human dignity which entails self-expression, voluntary cooperation and freedom. The Conference states that the workers who take up employment, with the intention of earning a living for themselves, their family and dependents, have the right to do that under conditions that give them a maximum of satisfaction with their dignity retained and fair treatment and participation safeguarded.

The various groups involved in industrial relations, the workers with their unions, the employers and government, will differ in their approach to industrial life, and the difference in their approach and divergent interests are the cause of a continuous conflict and make constant adjustments necessary.

The delegates of the Conference are aware that industrial patterns differ as do traditions and practices in the various countries,

collective bargaining is found besides voluntary and compulsory arbitration and adjudication. Yet the principle of collective bargaining is considered the method ensuring quick, practical and the most satisfactory solutions that guarantee also a decisive influence in shaping labour conditions in keeping with our democratic principles.

In many Asian countries, due to the prevailing conditions, the unions have demanded of governments that they protect the workers against exploitation by employers, and compulsory methods have been introduced in the industrial relations system. Legal protection as given through compulsory arbitration decisions of labour courts or commissions have in some countries at different stages provided vital protection, in the absence of strong self-reliant labour unions.

Likewise tripartite institutions, such as wage boards, labour conferences and conciliation services inaugurated by governments have helped to develop standards otherwise difficult to reach.

The Conference, however, is aware of the consequences of such government or third party intervention in the process of laying down terms of labour conditions. While the introduction of social protection through progressive legislation in the relevant fields finds the conference's support, the limitation, interference and bureaucratization within industrial relations are found very often not conducive to practical and just solutions. In many Asian countries, a reform of the system is therefore called for. In some countries the application of these methods have deterred the development of independent unions.

If compulsory methods are meant to protect the justified interests of workers, then they should only be invoked at the express demand of the unions. This will leave the necessary freedom of negotiations and action for the parties to lay down conditions on a voluntary basis.

Intervention and direction leads to imposing government economic and social policy demanding subordination of trade unions, prevents cooperation or active participation and negates the recognition of the rightful status of unions in industrial life.

The Conference registers its grave concern that industrial relations have not developed to a stage where workers receive recognition and status equal to that of employers. The many barriers impeding participation ought to be removed and the autocratic government structure of management in plants ought to be abolished and replaced by democratic industrial institutions thereby bringing industry into line with principles held so important in the political and cultural field.

The delegates of the Conference, considering the discussions that evolve around an "incomes policy", state that its advocacy very often hides the pretext for a wage freeze, and they think it highly unlikely to arrive at a satisfactory solution taking into account all incomes, a concomitant price policy and a general policy of economic expansion. An income policy is rarely meant to put the burden of economic failures equally on the shoulders of all sections of the community, but tends to rectify critical situations by means of manipulation of wages and salaries.

The Conference, dealing with the many proposals of introducing "new" elements into the collective bargaining or arbitration procedures, such as gearing increases in wages and other social benefits to increased productivity or national incomes, finds it unacceptable to make improvements depending on such factors only. Factors such as, for instance, profitability, increases in prices as well as the improvement of the general living standard and the comparability with other industries and sectors of the economy, are held to be important in deciding workers' income and conditions. The Conference denies the existence of a self-regulating system suitable to and fitting for all the situations possible in industrial life.

Measures introduced to overcome difficult situations in some countries are not necessarily fitting in other economies, nor do they necessarily lay down new rules or norms, so they cannot be unquestionably taken as a basis for reforms.

The Conference stresses the necessity of unions giving their closest attention to the development of industrial relations. Modernized production processes in the metal industry, with constantly changing social environment, make flexibility and the possibility of quick reaction essential.

National Commission on Labour (NCL) was appointed by the Government of India in December 1966. It submitted its report to the Government on 28 August 1969. The recommendations of the Commission cover a vast field as defined in the terms of references given to the Commission.

The main conclusions and recommendations of the NCL on Industrial Relations are reproduced hereunder. Certain aspects of these recommendations are not acceptable to the trade union movement. There are also differences within the trade union movement on the methods of selecting the bargaining agent.

The Trade Union Conference convened by the Minister of State for Labour on 20-21 May 1971 in New Delhi discussed this question. The minister noted the differences and thought it advisable to leave this question to be settled by "a small committee or a working group" of the recognised trade union centres, themselves. The labour minister expects the committee to "report within a couple of months".

MAIN CONCLUSIONS AND RECOMMENDATIONS OF THE NATIONAL COMMISSION ON LABOUR ON INDUSTRIAL RELATIONS

Role of the State

Industrial relations affect not merely the interest of the two participants, labour and management, but also the social and economic goals to which the State addresses itself. To regulate these relations in socially desirable channels is a function which the State is in the best position to perform; such regulation has to be within limits.

Where standards of good employment are disparate, the State seeks to set them with a view to influencing employers in the private sector.

Consultation with State Governments in the formulation and implementation of labour policy becomes essential in a country with a federal constitution with 'labour' in the 'Concurrent List'.

Tripartite Consultations

(a) Tripartite consultation has its value for setting uniform 'norms' to guide industrial relations. The Indian Labour Conference/Standing Labour Committee/Industrial Committees which have been set up in recognition of this fact must remain advisory in character. The conclusions/recommendations reached by them should be treated as deserving every consideration. (b) To make the process of reaching consensus more consultative, the Government should restrict its influence on tripartite deliberations.

Tripartite decisions should be taken in two stages on the lines of the procedure followed by the International Labour Organisation.

There should be a preliminary but detailed discussion on the subject in the first stage. The conclusions recorded at this preliminary discussions should be widely publicised and comments on them encouraged. On the basis of these comments, the tripartite should frame its recommendations in the second round of discussions.

Industrial Committees should meet more often to examine specific issues connected with the concerned industry. Such general decisions as are taken in the ILC/SLC should be tested for their applicability in industrial committees and difficulties in implementation taken back to the general forum.

Tripartite discussions should last longer and should be supported by a good deal of spade work in the Committees of the Conference. The SLC should meet more often and the ILC less frequently but for longer duration.

The representation at the tripartite should be restricted as a first step to those central organisations only which have a membership of at least 10 per cent of the unionised labour force in the country. There should be a review every three years to accord representation to organisations on this basis.

A fairly senior officer of the labour Ministry should be designated as Secretary to the Conference. He should have adequate staff support; his functions will be to project and meet the informational needs of the ILC/SLC and industrial committees, as well as to coordinate the information available.

Common Labour Code

Considering the variety of subjects, presently covered under labour legislation it will not be practicable to formulate a common labour code, having uniform definitions all through and applying to all categories of labour without any distinction. Since 'labour' will continue in the 'Concurrent List', adjustments to suit local conditions in different States will have to be allowed. These

adjustments in some cases may not necessarily conform to the letter of a common code.

In order to bring about a feasible degree of simplification and uniformity in definitions, it should be possible to integrate those enactments which cover subjects having a common objective. This will mean a simplification of the existing framework of labour laws.

There appears to be no valid ground for narrowing the scope of the definition of 'industry' under the I. D. Act, 1947, as it stands today. In fact, there is a case for enlarging its scope so as to cover teaching or educational institutions or institutes, universities, professional firms and offices, etc., whose employees are at present denied the protection of the provisions of the industrial Disputes Act. However, the definition of 'industry' should be extended in scope by stages and in a phased manner over a reasonable period, depending upon the administrative arrangements which could be made to meet the requirements of the law and upon the consideration of a number of other relevant factors. The arrangement for settlement of disputes may have to be different in such employments.

The definition of the word 'workman' under the I.D. Act should be based on functional as well as remuneration criteria. While only managerial and administrative personnel may be excluded irrespective of their salary, supervisory and other personnel whose remuneration exceeds a specified limit could also be reasonably excluded. This limit, which is Rs. 500 p.m. at present, could be raised in such a way as to put an end to the present anomaly of very highly paid personnel resorting to industrial action and seeking protection under the provisions of the Act. Raising of the wage ceiling will be particularly justified in view of the fact that in industries using advanced technology wages of many of the workers, particularly in the supervisory cadres, are found to be very much in excess of the prescribed maximum of Rs. 500.

The definition of the term 'strike' under the I.D. Act is quite comprehensive and may not require any change. The forms of labour protest such as 'go-slow' and 'work to rule' may be treated

as misconduct or unfair labour practices under the Standing Orders.

Items like bonus, contributions to provident fund, and other benefits and gratuity on termination of service (where gratuity has become a term of service under an award or settlement), have all become regular elements of workers' remuneration and should therefore, be included as part of a worker's wage.

Collective Agreements—Collective Bargaining

In the absence of arrangements for statutory recognition of unions except in some States and provisions which require employers and workers to bargain in 'good faith', it is no surprise that reaching of collective agreements has not made headway in our country. Nonetheless, the record of reaching collective agreements has not been as unsatisfactory as it is popularly believed. Its extension to a wider area is certainly desirable.

There is a case for shift in emphasis and increasingly greater scope for and reliance on collective bargaining. Any sudden change replacing adjudication by a system of collective bargaining is neither called for nor is practicable. The process has to be gradual. A beginning has to be made in the move towards collective bargaining by declaring that it will acquire primacy in the procedure for settling industrial disputes.

Conditions have to be created for promotion of collective bargaining. The most important among them is statutory recognition of a representative union as the sole bargaining agent. The place which strike/lock-out should have in the overall scheme of industrial relations needs to be defined; collective bargaining cannot exist without the right to strike/lock-out.

Conciliation

(a) Conciliation can be more effective if it is freed from outside influence and the conciliation machinery is adequately staffed. The independent character of the machinery will alone inspire greater confidence and will be able to evoke more coopera-

tion from the parties. The conciliation machinery should, therefore, be a part of the proposed Industrial Relations Commission. This transfer will introduce important structural, functional and procedural changes in the working of the machinery as it exists today. (b) There is need for certain other measures to enable the officers of the machinery to function effectively. Among these are: (i) proper selection of personnel, (ii) adequate project training, and (iii) periodic in-service training.

Voluntary Arbitration

With the growth of collective bargaining and the general acceptance of recognition of representative unions and improved management attitudes, the ground will be cleared; at least to some extent, for wider acceptance of voluntary arbitration.

Gherao

'Gherao' cannot be treated as a form of labour protest since it involves physical coercion rather than economic pressure. It is harmful to the working class and in the long run may affect national interest.

In certain essential industries/services where a cessation of work may cause harm to the community, the economy or to the security of the nation itself, the right to strike may be curtailed but with the simultaneous provision of an effective alternative, like arbitration or adjudication, to settle the disputes.

The effects that flow from cessation of work warrant the imposition of certain restrictions on work-stoppages. Every strike/lock-out should be preceded by a notice. A strike notice to be given by a recognised union should be preceded by a strike ballot open to all members of the union concerned and the strike decision must be supported by two-thirds of members present and voting.

Union Recognition

It would be desirable to make recognition compulsory under a Central law in all undertakings employing 100 or more workers

or where the capital invested is above a stipulated size. A trade union seeking recognition as a bargaining agent from an individual employer should have a membership of at least 30 per cent of workers in the establishment. The minimum membership should be 25 per cent if recognition is sought for an industry in a local area.

The proposed National/State Industrial Relations Commission will have the power to decide the representative character of a union, either by examination of membership records, or if it considers necessary, by holding an election by secret ballot open to all employees. The Commission will deal with various aspects of union recognition such as (i) determining the level of recognition—whether plant, industry centre-cum-industry—to decide the majority union, (ii) certifying the majority union as a recognised union for collective bargaining and (iii) generally dealing with other related matters.

The recognised union should be statutorily given certain exclusive rights and facilities; such as right of sole representation, entering into collective agreements on terms of employment and conditions of service, collection of membership subscription within the premises of the undertaking, the right of check-off, holding discussions with departmental representatives of its worker members within factory premises, inspecting, by prior agreement, the place of work of any of its members, and nominating its representatives on works/grievance committees and other bipartite committees.

The minority unions should be allowed only the right to represent cases of dismissal and discharge of their members before the Labour Court.

Industrial Relations Commission

The present arrangement for appointing *ad hoc* industrial tribunals should be discontinued. An Industrial Relations Commission (IRC) on a permanent basis should be set up at the Centre and one in each State for settling 'interest' disputes. The IRC will be an authority independent of the executive.

The National Industrial Relations Commission should be

appointed by the Central Government for industries for which that Government is the appropriate authority. The National IRC would deal with such disputes which involve questions of national importance or which are likely to affect or interest establishments situated in more than one State. Its scope should be broadly the same as that of National Tribunals under the Industrial Disputes Act, 1947.

Each State should have an Industrial Relations Commission for settlement of disputes for which the State Government is the appropriate authority.

The main functions of the National State IRCs will be (a) adjudication in industrial disputes, (b) conciliation, and (c) certification of unions as representative unions.

The Commission should be constituted with a person having prescribed judicial qualifications and experience as its President and an equal number of judicial and non-judicial members; the non-judicial members need not have qualifications to hold judicial posts, but should be otherwise eminent in the field of industry, labour or management. Judicial members of the National Industries Relation Commission, including its President, should be appointed from among persons who are eligible for appointment as judges of a High Court.

The Conciliation Wing of the Commission will consist of conciliation officers with the prescribed qualifications and status. There will be persons with or without judicial qualifications in the cadre of conciliators. Those who have judicial qualifications would be eligible for appointment as judicial members of the Commission after they acquire the necessary experience and expertise. Others could aspire for membership in the non-judicial wing.

The functions relating to certification of unions will vest with a separate wing of the National/State IRC.

The Commission may provide arbitrators from amongst its members/officers in case parties agree to avail of such services.

The Commission may permit its member to serve as Chairman of Central/State Wage Boards/Committees, if chosen by the appropriate Government for such appointment.

After negotiations have failed and before notice of strike/lock-out is served, the parties may agree to voluntary arbitration and the Commission will help the parties in choosing a mutually acceptable arbitrator. Alternatively, either party may, during the period covered by the said notice, approach the Commission for naming a conciliator within the Commission to help them in arriving at a settlement.

In essential industries/services, when collective bargaining fails and when the parties to the dispute do not agree to arbitration, either party shall notify the IRC with a copy to the appropriate Government, of the failure of negotiations whereupon the IRC shall adjudicate upon the dispute and its award shall be final and binding upon the parties.

In the case of non-essential industries/services following the failure of negotiations and refusal by the parties to avail of voluntary arbitration, the IRC after the receipt of notice of direct action (but during the notice period) may offer to the parties its good offices for settlement. After the expiry of the notice period, if no settlement is reached, the parties will be free to resort to direct action. If direct action continues for 30 days, it will be incumbent on the IRC to intervene and arrange for settlement of the dispute.

When a strike or lock-out commences, the appropriate Government may move the Commission to call for the termination of the strike/lock-out on the ground that its continuance may affect the security of the State, national economy or public order and if after hearing the Government and the parties concerned the Commission is so satisfied, it may, for reasons to be recorded, call on the parties to terminate the strike/lock-out and file their statements before it. Thereupon the Commission shall adjudicate on the dispute.

It should be possible to arrange transfer of cases from the

National IRC to the State IRC and *vice versa* under certain conditions.

(a) The Commission will have powers to decide to pay or withhold payment for the strike/lock-out period under certain circumstances. (b) If during the pendency of the strike or thereafter, the employer dismisses or discharges an employee because he has taken part in such strike, it would amount to unfair labour practice, and on proof of such practice, the employee will be entitled to reinstatement with back wages.

All collective agreements should be registered with the IRC.

An award made by the IRC in respect of a dispute raised by the recognised union should be binding on all workers in the establishment (s) and the employer (s).

Labour Courts

(a) Standing Labour Courts should be constituted in each State. The strength and location of such courts will be decided by the appropriate Government. (b) Members of the Labour Court will be appointed by Government on the recommendations of the High Court. Generally, the Government should be able to choose from a panel given by the High Court in the order in which the names are recommended.

(a) Labour Courts will deal with disputes relating to rights and obligations, interpretation and implementation of awards and claims arising out of rights and obligations under the relevant provisions of law or agreements as well as disputes in regard to unfair labour practices and the like. (b) Labour Courts will thus be the Courts where all disputes specified above will be tried and their decisions implemented. Proceedings instituted by parties asking for the enforcement of rights falling under the aforesaid categories will be entertained in that behalf. Appropriate powers enabling them to execute such claims should be conferred on them.

Appeals over the decisions of the Labour Court in certain

clearly defined matters may lie with the High Court within whose jurisdiction/area the Court is located.

Unfair Labour Practices

Unfair labour practices on the part of both employers and 'workers' unions should be detailed and suitable penalties prescribed in the industrial relations law for those found guilty of committing such practices. Labour Courts will be the appropriate authority to deal with complaints relating to unfair labour practices.

Works/Joint Committees

(a) Workers committees may be set up only in units which have a recognised union. The union should be given the right to nominate the worker member of the works committee. (b) A clear demarcation of the functions of the works committee and the recognised union, on the basis of mutual agreement between the employer and the recognised union, will make for a better working of the committee.

Joint Management Councils

When the system of union recognition becomes an accepted practice, managements and unions will be willing to extend cooperation in matters they consider to be of mutual advantage and set up a Joint Management Council. In the meanwhile, wherever the management and the recognised trade union in a unit so desire, they can by agreement enhance the powers and scope of the works committee to ensure a greater degree of consultation/cooperation. The functions of the two in this latter situation can as well be amalgamated.

Code of Discipline

The Code worked in its initial stages with a certain measure of success and then fell into disuse. With the removal of the important provisions relating to recognition of unions, setting up of grievance machinery and unfair labour practices from the Code

and incorporating them in the proposed legislation, the Code will have no useful function to perform.

Grievance Procedure

Grievance procedure should be simple and have a provision for at least one appeal. The procedure should ensure that it gives a sense of (i) satisfaction to the individual worker, (ii) reasonable exercise of authority to the manager, and (iii) participation to unions. A formal grievance procedure should be introduced in units employing 100 or more workers.

A grievance procedure should normally provide three steps: (i) submission of a grievance by the aggrieved worker to his immediate superior, (ii) appeal to the departmental head/manager, (iii) appeal to a bipartite grievance committee representing the management and the recognised union. In rare cases where unanimity eludes the committee in (iii), the matter may be referred to an arbitrator.

Dismissal/Discharge

The Industrial Disputes (Amendment) Bill, 1966 (Bill No. XVIII of 1966) as it stands should be enacted without delay. To minimise delays in adjudication proceedings and further delay in appeals, adoption of the procedure which obtains in the Small Causes Courts and abolition of appeals to higher courts may be provided. To make the procedure more effective, the following provision should be made:

- (i) In the domestic enquiry the aggrieved worker should have the right to be represented by an executive of the recognised union or a workman of his choice.
- (ii) Record of the domestic enquiry should be made in a language understood by the aggrieved employee or his union.
- (iii) The domestic enquiry should be completed within a prescribed period, which should be necessarily short.
- (iv) Appeal against employer's order of dismissal should be filed within a prescribed period.
- (v) The worker should be entitled to subsistence allowance during the period of suspension as per agreement in the tripartite.