From Durban to Wiehahn: Black Workers, Employers, and the State in South Africa during the 1970s

NOTE: apologies for the somewhat misleading title. This paper, a follow up to one presented at a History Workshop conference at Wits a few years ago, looks more at the *outcome* of these struggles than the process of struggle during the 1970s itself. In that earlier paper I argued that between 1973 and 1980 Black workers proved able to use the feeble state reformist structures in a changing industrial relations regime—namely the works and liaison committees—to further their own ends. As this paper shows, that experience profoundly shaped the way the nascent Black trade union movement responded to the post-1979 re-working of South African labour law and industrial relations.

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On May 1st, 1979, South Africa's Commission of Enquiry on Labour Legislation —better known as the Wiehahn Commission, after its Chairman, Prof. Nicolas Wiehahn—released its initial set of recommendations (the first of six reports) on the revamping of the apartheid state's industrial relations. Over the course of eighteen months, from August 1977 through early 1979, the Commission had heard testimony from 184 witnesses and pored over written submissions from 255 further respondents, including trade unions, employers' associations, labour officials, businessmen, activists, and even the Bureau of State Security(BOSS). By a slim majority, Wiehahn and the 13 commissioners urged the government to grant *all* South African workers the unequivocal right to join trade unions, to dismantle once and for all the system of job reservation that had long barred Africans from certain positions, and to extend to all unions, regardless of racial composition, the opportunity to be incorporated into South Africa's complex, corporatist industrial relations machinery. "For the first time," liberal industrial relations expert DWF Bendix claimed, the apartheid state "has dropped the doctrine of the temporary sojourner and the so-called White economy and has accepted urban Blacks as a permanent, integral part of South African society."(79)

Despite the enthusiasm of Bendix, business-oriented liberals, and other *verligte* ["enlightened"] Afrikaners, there were at the time, many objections to the Wiehahn Commission's report, from both right and left. Those committed to apartheid, and workers in the exclusive white unions of the South African Confederation of Labour (SACOL) in particular, recognized that the Commission's recommendations breached a fundamental rampart of "separate development" in labor markets, union organization, and the country's collective bargaining regime. They reacted with barely suppressed fury. Even before the hearings began, C.P. Grobler, Secretary General of SACOL, warned that his organization remained "firmly opposed to Black trade unions", which they feared would undercut white workers and become a

"political football."(171) Moreover, Grobler reached for the excuse that apartheid labor planners had relied on for more than 25 years: "Blacks, generally speaking, have not yet reached that standard of responsibility which is a prerequisite to trade unionism"(171), he claimed. ["A White Trade Unionist's Viewpoint", 1976] Upon its release, Arrie Paulus, of the Afrikaner-dominated Mine Workers Union, denounced the Wiehahn Commission's report as the "greatest treachery against the white employes of South Africa since 1922, when hundreds of miners were shot because they opposed the Chamber of Mines who tried to force them to share their work with blacks." On the left, the ANC, the South African Communist Party, the National Union of South African Students, and their allies in the emergent black trade union movement regarded Wiehahn as a transparent effort to placate foreign investors without making a fundamental change in the status of black workers. As the *African Communist* put it, Wiehahn's report was best dismissed as a "State Plan to Shackle African Trade Unions." A slightly more sophisticated critique observed that by offering black unions official recognition, but requiring that they "register" with the government, the Commission actually sought to increase control over what by the end of the 1970s had become a fractious, unruly, and politicized black working class at the grassroots. In a paper published by SALDRU after the Report and White paper had been released, the activists centred on the *South African Labour Bulletin(SALB)* and Durban's Institute of Industrial Education (IIE) concluded that the purpose of the Commission proved to be "the extension of control over unregistered unions, in a unitary system which can be sold abroad." [also in *SALB* Aug. 1979, p. 53]

This latter view, of course, was accurate, notwithstanding Prof. Wiehahn's strenuous denial that he or his commission had responded to "outside" pressure. Industrial peace, international legitimacy, and the preservation of the free enterprise system were the Commission's stated goals; for the liberal members of the Wiehahn Commission, if achieving them entailed dismantling some previously fundamental aspects of apartheid (such as enforced job reservation) this was certainly a price worth paying, even at the cost of losing the support of the most intransigent sectors of the white working class. As the report put it, "South Africa should actively promote economic participation and freedom of competition within the South African labour system….The existing system will have to be modified in such a way that legal restrictions do not stand in the way of an individual's freedom to participate and compete in accordance with his abilities." The degree to which such market-based liberalism departed from business as usual can be measured by the dissenting reservation from the report filed by Commissioner Arthur Nieuwoudt. Speaking for the right-wing white trade unions he represented, Nieuwoudt insisted that new labour policies must be "formulated in accordance with present policy" and that "the historical and traditional rights of and interests of specific population groups in specific areas should be recognised, protected and respected."((7-8) Indeed, in sharp contrast to the majority report, Nieuwoudt's impassioned dissent expressed the unbending position that "Black workers be prohibited from joining any trade union in South Africa, whether such a union is registered or not."(3.154.1, p. 84)

Despite its many flaws, in retrospect it seems hard to deny that Wiehahn did in fact mark a fundamental rupture in South African industrial relations and radically altered the terrain upon which black workers conducted their struggle for workplace and broader social rights. As the dean of Afrikaner historical scholarship, Hermann Giliomee puts it, the Wiehahn Commission "granted industrial citizenship to blacks before extending political citizenship. Almost inevitably

it would mean that unions would use their muscle to fight for political citizenship." Certainly the right-wing recognized this at the time, but it is not as obvious that reformers or employers did so as well.

In this paper, however, rather than adjudicate whether Wiehahn represented the first step down the road of reform or the last effort to shore up apartheid, I want to examine closely a specific fissure in South Africa's industrial relations system considered in great detail by the Commission—that between the *shop-floor power* sought by the increasingly militant independent black trade unions the Commission and Government sought to tame, and the corporatist Industrial Council (IC) system that had long-governed South African labour relations at a highly centralized level of negotiation, but which had historically excluded African workers and their unions. This tension between what the industrial relations policymakers in South Africa called "levels of bargaining" had a profound effect on the trajectory of labour organizing in the final years of apartheid, the shape of the trade union movement that emerged from that struggle, and the labor conflicts raging today in post-colonial/post-apartheid South Africa.

In the process of its massive undertaking, the Wiehahn Commission investigated every aspect of South African industrial relations. Their final report(s) offered recommendations on work reservation and the colour bar, the closed shop, the rights of migrant workers, apprenticeship procedures, workplace segregation, stop-order dues payments, the structure of trade unions, collective bargaining procedures, the creation of an industrial court, and many other issues. One of the most pressing overarching tasks identified by the Commission, however, was the integration of the two, distinct systems that had grown up around the segregated South African industrial relations regime. Such "dualism" was, of course, first and foremost a division by race, since African workers legally did not constitute "employees" with the rights, protections, and status conferred by the state on that legal category. But dualism went beyond that, cutting to the core of the employer-employee relationship in South African manufacturing establishments. White workers—or, to be more precise, non-African workers—had access to the Industrial Council system, a corporatist arrangement that had for half a century facilitated national-level, industry-wide pattern bargaining between registered trade unions and regional or national-level employers' associations. The parallel and subordinate system for African workers, first instituted in 1953 by the Native Labour (Settlement of Disputes) Act, permitted only *plant-specific* committee-based arrangements, which failed to provide any statutorily protected collective bargaining mechanisms. Moreover, even in 1977 the existing legislation continued to deny African workers direct access to the corporatist bargaining arrangements at the Industrial Council level (though they were often covered by Industrial Council agreements reached by white unions in their industry, without their input). As the Wiehahn Commission's report put it, South African labor relations rested on "two systems of inverse composition existing side by side within the same economy—industrial councils representing an industry-level superstructure with little or no statutory infrastructure at the plant or factory level, and the committee system representing an enterprise-level infrastructure with little or no statutory infrastructure at the industry level."(3.10, 24)This dualism both excluded black workers from participation in industry-wide agreements, even while it encouraged them to shop-floor activism that might run counter to corporatist bargains struck at a more centralized level.

The 1973 Durban strikes by unorganized African workers, to which the Wiehahn

Commission constituted a belated response, unleashed a sharp struggle over the nature of the anemic in-plant committee structures to which black workers had access. At the time, only a handful of works committees had been established by Black workers after two decades of enabling legislation. Surprised by the apparently spontaneous mass strikes, employers and the state had sought to enhance "communication" in the workplace by expanding the number and scope of what, until then, appeared to be limited and ineffective works committees. But would these be worker-elected structures empowered to negotiate, or the far tamer instrument of newly invented so-called "liaison committees," which required the employer to appoint half of its members? Who would initiate these committees, workers or management? Would black workers dismiss these nascent shop-floor structures as stooge committees? Or would they, in fact, be open to penetration by militant shop-floor activists and serve as a Trojan horse for independent black unions?

Liberal industrial relations reformists, like Bendix and his colleagues at UNISA's Institute of Labour Relations (ILR), acknowledged that the legislation passed in the wake of the `73 strikes was designed "not only to prevent the formation of black trade unions, but also to block the development of the all of a sudden dangerous works committees." By 1979, however, this impulse appeared to stand in the way of a necessary "two-tier" system of Industrial Councils and shop-floor units, because employers remained resistant to empowering the latter in any meaningful way. (86-87)

I have argued elsewhere that works committees often served as embryonic shop-steward committees, and contained within them the seeds of a worker-control orientation for the independent unions that emerged after 1979 in the Federation of South African Trade Unions (FOSATU), at the exact same moment the Wiehahn Commission issued its first report. Bendix himself, whose views appeared broadly representative of the liberal, market-oriented industrial relations experts who backed the Wiehahn process, noted in the *SAJLR* in 1978 that "From an initial rejection of works, but particularly liaison committees, by the black unions these institutions have become accepted by the latter as a relatively effective generator of black workers' consciousness. There is also no doubt," he concluded, "that works committees are in the process of assuming plant union character, a fact not appreciated by management in many instances."

In seeking to integrate the Industrial Council and committee structures into a unitary system, the Wiehahn Commission's report precipitated a renewed struggle over the sources of shop-floor organization and power. In particular, employers, personnel experts, white unions, and state labour managers began to recognize the dangers inherent in the shop-floor control potentially embedded in the committee system if its power were to be transferred to the independent black unions. The threat, as ILR pundits saw it was that "The eventual possible recognition of black trade union rights in addition" to the power granted at shop floor level to committees would "place black labour in a power position unequalled by labour in any other industrial relations system."

Indeed, much of the initial testimony before the Wiehahn Commission by representatives of the South African business community expressed a good deal of anxiety about empowering black workers on the shop floor. Various business organizations, representing a wide range of

employers and multiple economic sectors, expressed this attitude. The Transvaal Chamber of Industries, for example, claimed in in their submission that "Works Committees…are in effect entrenched groups even more powerful than Trade Unions and that they could be very dangerous indeed from the employers point of view." They hoped the more easily dominated liaison committees could be opened to all races, diluting the power of African workers while extending managerial shop-floor control over non-African workers as well in the name of a more "equal" and unitary system. Similarly, the Durban Chamber of Commerce urged the Commission to recommend a tripartite system, resting at the plant level on local multiracial "Works Councils" modeled after the liaison committees—that is, with 50% employer membership. While the national association of chambers of commerce, ASSOCOM, supported non-racial trade union structure and collective bargaining at the national level, they continued to see a place for local committees in-plant, provided "representatives of employees on such committees must be in the employ of the company", not outsiders, effectively keeping independent unions off the shop floor.

E.P. Drummond, Director of SEIFSA, the steel and iron industry's trade association, told Wiehahn that "we might have a little bit of both," participation of Black unions at the IC level and the continuation of the committee system at plant level. "I don't mind a little bit of both because I can play the one off against the other. The system should be very flexible," he said. The Motor Industry Manufacturers Association, representing 111 plants with nearly 7000 black employees, testified that the existing legislation in fact "functions well mainly because liaison committees are gradually being accepted by Bantu employees." True, as workers "become more sophisticated" perhaps they should be admitted to the negotiating machinery of the Industrial Conciliation Act, but "to allow Black unions now may very well create confusion and there is the possibility that they could be used by activists to upset the political equilibrium of the State." Several employers expressed disquiet with the fact that potential committee members were receiving training from the wrong people, namely the activists grouped in the TUACC, the IIE, and the UTP, who they believed had a "leftist tilt" that emphasized "conflict of interest between employer/employee." [NCI]They hoped that the ILR or else the moderate, segregated (as opposed to exclusionary) white-led unions grouped in Trade Union Council of South Africa (TUCSA), which had long cultivated paternalistic relations with parallel black unions, might take the lead on training African committee members. [In fact, the Wiehahn Commission and subsequent government White Paper on labour legislation recommended "strong restrictions on industrial relations training."] For their part, TUCSA unions like the Garment Workers' Union also proved anxious about the potential for a "revolutionary Black trade union movement" emerging from penetration of the committee system. As Anna Scheepers told the Commission, under the system set up after 1973 "the workers in conjunction with advocates of [racial] polarisation, were manipulated to plan for works committees."

None of this resistance to the empowerment of Black unions should come as a surprise. A good deal of nonsense has been written about the eagerness of South African employers to invite African trade unions into their factories. To be sure, in the late apartheid era, management sought new "human relations" mechanisms and personnel policy improvements to quell endemic shop-floor conflict, to stabilize industrial relations, and to rationalize workplace negotiation made unwieldy by the dualistic system. Above all, as J.D. Farrell, one of Bendix's close colleagues at the Institute of Labour Relations, pointed out, employers confronted "*A real need*

of more communication between management and workers." But they hardly wanted to encourage their black workers join powerful, independent, militant shop-floor unions. Even deliberately cautious and explicitly "non-political" workers' aid societies, like the Urban Training project (UTP), found themselves stymied by employer intransigence. The UTP reported with frustration in 1975 that "There has been no improvement in the attitude of employers…the opposite is more often the case. Management generally appears to have forgotten the …1973 strikes and is assuming it can work through the [liaison] committee system." As Duncan Lowry of the UTP notes in his memoir, during the 1970s, rather than accept unions, "many employers tried to retain the coercive practice of the past, while others attempted to introduce disempowering improved human relations, with the state encouraging them to do this."{Lowry, p. 97}

Indeed, as Farrell observed, most employers imagined that in *their* firm, black workers had decent conditions, were paid enough, and remained satisfied with committee system, even while these things might not be the case in the larger social order. Based on a 1977 survey he conducted of nearly 1600 firms, employing over 200,000 black workers-- sent to one-third of all manufacturers in South Africa—Farrell found that 2/3 of respondents remained satisfied with current industrial relations system and 80 percent of the participants believed that "black workers in general are satisfied with their wages." Most significantly, Farrell concluded that "There is no doubt that employers are strongly against the official recognition of *black trade unions*"(12)—even though many acknowledged that such resistance "may have a negative influence on labour relations."

With the important exception of the independent Black unions and their allies in various "training projects" and worker education centers like IIE and UTP, most of the participants in the Wiehahn process envisioned a reformed system that, while eliminating the most egregious forms of *racial* dualism, would continue to throw up a firewall between organization at the plant level and corporatist structures of collective bargaining in the Industrial Councils. Faced by 1979 with the inevitability of official state recognition of Black trade unions, reformers hoped that once they acceded to government oversight by registering with the government, the Black unions would gain full access to the IC system, where they would be easily overpowered by the well-established white-led unions. At the same time, while the in-plant committees would now be legally integrated into a single, non-segregated industrial conciliation act, the revamped system would reproduce the ability of management to use the liaison committee structure to outflank black unions and to thwart shop-floor power, now under the guise of "works councils" open to all races. As the editors of the *SALB* recognized in their stinging critique of Wiehahn, under this arrangement "the policing and interpretation of the Agreements and all management-worker issues arising in the company would be the ambit of the Workers' Council structure not of trade union shop floor organisation." "There can be little doubt that managements faced by independent trade unions will make every effort to seal the factory against trade union organisation by promoting in-company Workers' Council structures,"(7) the editors of the journal concluded. As Eddie Webster of the *SALB* put it, 'If this were the case, in a whole range of day-to-day issues, which are the bread and butter of active trade unionists, trade union officials and shop stewards would be completely shut out with the unavoidable consequences of losing touch with the rank and file." As he concluded, "the implications of this proposal may well lead the registered unions to become mere benefit societies."

Yet, at first glance, the Wiehahn Commission's recommendations seemed at least to admit a significant place for the shop-floor based committee system, recommending that the existing structures be "welded or integrated into one uniform system"(3.118, p. 74) along with the centralized structures of pattern bargaining at the IC level. While this approach certainly promised to eliminate a dualistic industrial relations apparatus, it did not necessarily entail the empowerment of black workers at the point of production, In fact, by folding into the system the existing committees, the Commissioners were no doubt aware that employer-dominated liaison committees—now confusingly renamed "works councils"—far outnumbered the worker-led and more democratic works committees. Indeed, by their own figures, at the time of the report they counted 2626 of the former and only 302 of the latter, representing 690,000 and 74,000 workers respectively. (3.19, p. 27). Not surprisingly, the subsequent government "White Paper" enunciating proposed policies in response to the Commission's report, agreed that "the committees which already exist [should] be an important growth point for the development of the modified system," precisely because of the predominance of the liaison committees.(6.7.3, p. 136 in *Complete Wiehahn Report*).

From the point of view of the independent Black unions grouped in the newly formed Federation of South African Trade Unions (FOSATU) after its founding in 1979, this amounted to an effort to muscle aside the shop-floor structures they had struggled to build since 1973. These unions faced a difficult choice: accept the devil's bargain of registering with the government, and thus gaining access to Industrial Councils where they might easily be outflanked by white unions, or remain in what Wiehahn now called disingenuosly "the unorganised sector." If they chose this path, the new unions would find themselves competing with committees empowered to "negotiate and enter into statutory agreements"(74), an option many employers surely preferred to in-plant union recognition. As the *SALB* editors pointed out, the new dispensation would interdict the "informal", non-state sanctioned agreements that the unregistered unions had been making with employers. Only registered unions, the Commission proposed, would have the right to negotiate and conclude agreements. Thus, by allowing black unions to "join" the country's industrial relations system, the Commission actually hoped to undercut the very independence they had gained by virtue of the fact of being excluded from that system in the first place. In much the same way, the apparent expansion and deeper recognition of the liaison committees—now to be called works councils—was in fact designed to "remove from unions many of their traditional shop floor functions." "Once the Works Council is formally recognized," the *SALB* concluded, "management will have a powerful argument and institution with which to keep trade unions at bay."(68) Even non-radicals like Bendix had to concede that these committees remained "house trade unions—the trade union by the grace of the boss and for the boss."(Quoted in CCSA, *Speaking Out*, p. 62).

In a subsequent report (part 5), released November 15, 1980, the Commission went into much greater depth on the dynamics of industrial relations. Released with more than a year of experience with the revised system, this final part of the report expressed concern that some independent Black unions continued to operate outside of the new rules of the game, having refused registration. Some, the commission complained, had gone so far as to "embark on direct industrial action wholly in conflict with well-tested procedures for mediation, arbitration, and conciliation"(p. 454 of Complete). Indeed, the commissioners cautioned against "a new form of

dualism" (455) that seemed to be emerging with independent black union action outside the ambit of the state.

Surprisingly, part 5 of the Wiehahn report admitted that the committee structure "cannot be said to enjoy adequate independence (from either the State or the employer) or a sufficient power base for the collective bargaining rights that have been conferred on them"(461). If decentralisation was going to work, then the committees "will have to be transformed into workers' organisations meeting the criteria set for organisations at other levels."(462) But in their current state, hampered as they were by managerial domination and their lack of power to call a strike, the committees "cannot be said to constitute collective bargaining" mechanisms(509-10). Nevertheless, the hedge was that "collective bargaining be conducted at the highest level of organisation to which the employer and employees are parties"(513), namely the Industrial Councils, and that committee members would have to receive proper IR training. Moreover, the government "White Paper" published in response to Part 5 a few months later remained distinctly non-committal on this question, simply referring the matter of the power of works councils and committees to the newly created National Manpower Commission. (642)

Meanwhile, FOSATU, the IIE, and other allies of the independent Black trade union movement regarded the new industrial relations system with deep suspicion, a hostility only confirmed by the efforts of employers to bend the system to their own advantage. SEIFSA, for example, wasted little time before sending out guidelines on "the development and participation of black workers in trade unions" to its 5000 member firms, who together employed half a million workers, 80 per cent of them African. Not only was the metal, steel, and engineering sector crucial to setting bargaining patterns in South African manufacturing, it also was the sector with one of the best organized and most militant independent African unions, MAWU, which by 1980 represented 10,000 black workers (Webster, 15). Thus SEIFSA's response to the Wiehahn recommendations would very much set the tone for how employers would seek to work with the new order. (17)

The metal employers' vision of the new industrial relations regime appeared disappointingly narrow, at best. For starters, SEIFSA did not even bother to consult with the metal trades unions, black or white, representing workers in the industry, before issuing the guidelines. First, SEIFSA's circular made clear that recognition should only be granted to unions that chose to register with the government and gained entry into an existing Industrial Council. The first requirement was by no means a path chosen by all Black unions, and the second often came up against the objections of white workers, who retained the veto power to block admission to Industrial Councils. As Loet Douwes Dekker of the Urban Training Project put it, this requirement marked "a denial of freedom of association" and "denies the dynamics involved in workers adopting the new status of trade union membership and aims to postpone union recognition."(18) As Eddie Webster later remarked, "It is not surprising then that the attempt by Wiehahn to incorporate black workers into the Industrial Council by excluding them from the shop floor was seen by MAWU as a "direct threat to the principles of democratic trade unionism," since SEIFSA advised "its members that they should have no dealings whatsoever with unions other than through the employers' association at Industrial Council level." As Webster noted, "employers were warned not to negotiate with shop stewards at plant level and not to grant unregistered unions stop orders."

Moreover, the SEIFSA guidelines denied black trade union organizers access to the plants, noticeboards, or meeting facilities, limiting their approach to workers, hamstringing their organizing efforts, and making them vulnerable to police. While the guidelines did promote the formation of workplace committees, there was no effort to distinguish the old, employer-dominated committee structure from genuine trade unions. As Douwes Dekker concluded, the SEIFSA guidelines implied "that trade unions should not be given or acknowledged a role in the place of work," an approach sure to reinforce Black workers' hostility to the committee system, and obviously designed to thwart MAWU's growing shopfloor organizational strength.

Workers proved well aware of their employers' continued preference for the committee system. "If they had a positive attitude to the union, the first thing they'd have done would have been to allow them to come into the company and talk to the people. And that isn't allowed," one Black metalworker interviewed in 1980 observed. Another worker chimed in, "That's the reason they've set up the employees [works] council, to force the union out of the way….The fact that union workers have to stand outside the doors in order to talk to people, is sufficient to make the workers wary and wonder—why don't they come inside? There must be something wrong with them.(CCSA, 48) ….The workers are quite frankly afraid of being spoken to at the door. They want people to come into the company to talk. And that's just what management won't allow," he concluded.

At the national level, as Douwes Dekker saw it, the push to centralized, pattern-bargaining embedded in Wiehahn had the unfortunate by-product of lulling employers into the conclusion that "the trade union as organised expression of collectivity has no role or responsibility for the interaction between management and the union members in the place of work."(20, emph mine) For those employers who sought to minimize the localized effect of the new unions, Dekker feared that "the committee system is seen as a viable alternative to exclude the trade union from the workplace"(21) which rested on a paternalistic "human relations policy" that ignored the basic conflict interest between workers and employers. He bemoaned the fact that the Wiehahn process had "reinforced rather than questioned the beliefs expressed by the Institute of Labour Relations, which employers now endorse, regarding the exclusion of the trade union in the place of work,"(23) since the management-dominated committee structure favored by employers lacked legitimacy among black workers. As Douwes Dekker bluntly pointed out, the Wiehahn Report "is silent on legitimate union activities in the plant and the linkage between unions and committees."(23) Sadly, the old goal of using the committee structure, embedded in the 1953 Act, to blunt shop-floor organization remained in place.

Douwes Dekker complained that "Certain employers and the State" seemed to think trade union negotiations at the centralized IC level would suffice to industrially enfranchise the black working class.(25) But without a constant presence in the workplace, how would new members be recruited? How could unions function democratically? How could local grievances be heard? In essence, the vision of trade-unionism that had developed at the grassroots among Black workers in the wake of the 1973 strikes differed substantially from the centralized, corporatist system into which the Wiehahn process promised to induct them. As he observed, "the black trade union movement in its organising campaigns, also found that workers perceived the

disciplinary nature and strength of the trade union expression i*n the place of work*."(27, my emph).

Douwes Dekker was no radical however, and his view remained distinct from those in FOSATU and the IIE who continued to see shop-floor power as a crucial component of revolutionary unionism and a vehicle for socialist political transformation. His perspective might be characterized as a de-politicized syndicalism, which regarded shop-floor power as the path to economistic trade unions that would remain sheltered from political action and co-optation by the radicals, even while they served as a training ground for a democratic proceduralism that could eventually spread to South African society as a whole. Indeed, many in the liberal industrial relations establishment saw deradicalized African trade unions as the best guarantee of a peaceful transition to a more liberal South Africa. As a management personnel textbook published at the time observed, "if one accepts that the white man's present powers and privileges must and will inevitably diminish…, then it could be argued that the danger lies not in recognizing African trade unions but in failing to do so."[1] Such a view rejected the hard-liners' insistence that Black workers were not "ripe" for unionism, and thus could easily fall prey to agitators. At the same time, the IR reformers hoped to divert the independent Black unions away from participation in the radical, socialist-based politics of social transformation pursued by many activists, particularly those grouped within the newly created FOSATU.

In the 1981 labor legislation that finally emerged from the reform process that began four years earlier, the state did grant African workers (including migrant workers) the unequivocal right to join registered unions. Nevertheless, as the editors of the *SALB a*nd others recognized, the new LRA "still represents an intention on the part of the state to extend control over the unions." When it came to the question of worker representation at the plant level, the new act dissolved works committees and the liaison committees were given statutory authority, thus entrenching the worst aspect of the previous system, what were essentially company unions on the shop-floor.

While the government touted its new labor code abroad as a radical restructuring, naturally the consequences were far less revolutionary than they claimed. As John Brand and Martin Brassey pointed out in the pages of the *Industrial Law Journal,* strong doubts could be entertained about the fairness of the Industrial Council system, which had always worked against Black interests because the councils were dominated by white unions. Even under the new act, they concluded, "Industrial councils are likely… to remain unrepresentative and employees who are not actually represented are likely to be suspicious of their conciliatory and negotiating role." FOSATU unions continued to struggle for shop-floor negotiating rights as preferable to absorption into the Industrial Councils. The Chemical Workers Industrial Union, for instance, said that while "not opposed to representative bargaining on an industry wide level," it refused to "give up its right to negotiate wages and working conditions at the factories where it is representative." Employers "want workers to negotiate at a place where they are weak, and not in individual factories, where they are strong," *FOSATU Worker News* concluded. ["Industrial Councils: Union Struggle Continues,"] Indeed, FOSATU's 1982 Congress debated whether its unions would refuse to enter IC's "on terms which are to their disadvantage," and would seek instead to "negotiate a system of plant-based industry-wide bargaining."[*FWN*, April 1982].

1 Orpen, *Productivity & Black Workers in SA,* 45.

Much of the legal and bureaucratic struggle over the level—in the corporatist Industrial Councils or in shop-floor bargaining-- at which the new Black unions would be permitted to exert their newfound power took place within the new state apparatuses created in response to Wiehahn, the National Manpower Commission (NMC) and the Industrial Court. While bemoaning the conservative makeup of the NMC ("the Minister it seems is not to have a single advisor with any known sympathy to the non-racial trade union movement"), the leadership of FOSATU reassured its members that "labour relations aren't determined by manpower Commissioners whispering in the Minister's ear. They grow out of factory struggles and FOSATU is better represented on the factory floor."(*FWN,* Aug. 1980, p. 5).

Indeed, it wasn't long before the NMC, established to investigate all aspects of the country's new industrial relations dispensation, began to express frustration at the Black unions' determination to pursue shop-floor power rather than be absorbed politely into the Wiehahn Commission's corporatist blueprint. In its first annual report, the NMC complained that "Some employee organisations are also as yet too often inclined to use their bargaining power outside the formal system and also to depend more on negotiation at shop floor level."(1981, xi). A year later, things had only gotten worse. At the end of 1982, the NMC reported that "the past year… more than previous years, was characterised by a greater measure of activity outside the statutory system in labour relations, so much so that such activities are at present considered to be a fundamental part of the country's labour relations practice."(1982, p. 108) Some of the new Black unions "indicated that the industrial council/conciliation board system is not considered suitable to deal with the problems of the workers at the lowest levels (undertaking/workshop levels) and that they are therefore not prepared to become part of the system."

As an illustration of this development, the NMC pointed to the existence of more than 200 local "recognition agreements" outside of the new statutory mandate, negotiated between the new Black unions and their employers without state oversight or the imprimatur of an Industrial Council agreement. By 1983(p. xx), the NMC concluded that these in "many cases, were actually the only de facto means of formalising relations between employers and unions." Much to the Commssion's dismay, "bargaining at the local level is developing into an established part of the country's labour relations system." This development flew in the face of the strenuous efforts of employers and the state to prevent exactly this from happening. Indeed, the NMC complained that the bargaining conducted at the Industrial Council level (where white unions continued to predominate) was supposed to govern local agreements, but "certain people would prefer to reverse the order and claim that the former in fact supplement the latter!" Fearing a complete upending of the labor system they were at such pains to construct, the NMC insisted that "It is of great importance for the maintenance and promotion of industrial peace" that industrial relations be "regulated by a unitary system and for the Government to do everything possible to make the formal or statutory machinery …so attractive that most of the parties concerned, including the newer [Black] trade unions, will join it."

So concerned was the NMC about this development that during the mid-1980s they issued a pair of special reports on "levels of collective bargaining." Together, these reports reveal a great deal about the strategy pursued by the new Black unions, as they sought to build their power factory by factory rather than submit to a centralized industrial relations regime designed

to discipline and subsume them. In its initial special report, released in 1984, the NMC continued to raise concerns about the recalcitrance of Black workers and their unions to avail themselves of the new bargaining mechanisms made available to them. The report acknowledged that between 1924 and 1979 most Black workers, excluded from what the NMC regarded as an otherwise sound system of labor relations, could not "effectively give expression to their needs—at any rate not through the statutory institutions provided for them."(vi) With the post-Wiehahn changes in labor legislation, however, "it was expected that they would possibly enter the system in order to be able to express their needs more clearly." With some head-scratching, the special report observed that Black workers and their new unions "apparently have objections to various aspects of the statutory system, and as a result some of them do not as yet want to register or still shy away from participation in industrial councils."(vi)

Black workers had good reason to be wary of the Industrial Councils, of course. For many, this was alien territory, long a bargaining table to which they had been barred access and where, at best, white employers and white workers had struck deals that included Blacks without representation or consultation. Not only did the new Black unions fear the suffocating embrace of the state, but they correctly recognized that incorporation into the IC system would leave them as junior partners to established white unions, which hardly had their interests at heart. In fact, at the insistence of the white-dominated unions, under the new LRA a single union could veto the entrance of a new Black union into the ranks of Industrial Council bargaining partners. Finally, as the NMC observed, many Black workers were primarily "concerned with job security which could be better negotiated at factory or plant level." Above all, the new trade unions saw the long-established IC system as too cumbersome, "undemocratic and bureaucratic," nothing more than "an ideal system for reactive, lazy, good-for-nothing [white] trade union leadership."(118). This was both a racial critique and a tactical evaluation of what unions might be able to do at the shop-floor level. Black unions were organized from the ground up, and had begun "exercising their power base at this level."(119) As one Black trade union leader put it, "The Black trade union movement does not have power, in the majority of cases, at Industrial Council level. It is evident, therefore, that it will continue to bargain at plant level."

By 1986, the NMC estimated that between 400,000 and 500,000 Black workers were covered by over 500 factory-based agreements struck between unions and employers outside the established statutory process.(13) In some instances, these agreements supplemented collective bargaining agreements governing wages and basic conditions developed at the IC level; in others, they had displaced them altogether. Most of these local agreements, which tended to cover black workers in unskilled and semi-skilled categories, included grievance procedures, election and recognition of stewards, access to the factory, dues check-off, the right to in-plant meeting and notice-boards, and a no-strike clause. They often governed seniority, health and safety, disciplinary and lay-off procedures as well--in other words, all those procedural matters falling beyond the scope of wages and basic conditions of employment, and touching on shop-floor control.

The NMC made a close examination of 55 of these agreements, and found that well over half of them applied to workers already covered by Industrial Council agreements and/or Wage Board recommendations. They concluded that Black workers and their unions pushed for this additional local level bargaining because they "feel more at home at this level…, possibly

because they feel that they have a strong following at this level"(109). There was "a feeling among Black workers that they are not treated by their employers with respect for their human dignity," and local bargaining was seen as the best way to rectify this. By contrast, Blacks felt that "the IC system was designed and is managed and run by Whites for Whites and is of no advantage to the Black worker…." Despite its growing liberal sympathy for organized Black workers, the NMC dismissed this sentiment because "this objection has a political basis and cannot be regarded as a weakness in the system as such."

Even while members of the NMC expressed anxiety about this reconstituted dualism, other observers judged the entire effort to reinvent the apartheid state's labor laws a failure. By 1985, after four years under the new labour law, William Vose, who had served as an exceptionally well-informed British labour attache in Pretoria during the 1970s, concluded that the Wiehahn process had done little to dismantle labour apartheid and less to make Black workers full partners in industrial relations in South Africa. "As genuine labour `reforms'," Vose concluded bluntly, "the measures taken by the Government have clearly failed."(462) Nor was the ILO, which had for years monitored South Africa's repressive labor relations, much impressed.

One ironic result of the new legislation, as Vose noted, had been increased industrial unrest, the very thing Wiehahn-prompted reforms had been designed to rein in. On the one hand, Black trade union membership had increased rapidly since the new legislation of 1981, so that it had become "larger than the total figure for the three other population groups."(452) At the same time, since many Black unions resisted incorporation into the industrial council system, and preferred "to deal directly with employers at plant level," shop floor conflict had become endemic(453) and led to increased police repression of workers. As the NMC itself carefully documented, the number of strikes rose rapidly during these years, from 200 in 1980, to over 400 in 1984, to nearly 800 by 1986. As the Commission remarked in its 1986 report, "Black workers are more and more aware of their powerbase in the economy through the withholding of their labour."(iv) Unlike South Africa's reformist businessmen and IR experts, however, Vose recognized that under the velvet glove of new opportunities for Black trade unions laid the mailed fist of the security services. Bannings, arrests, and extra-judicial killings had taken their toll on the leadership of the new unions during these same years, most notoriously in the death in detention of Neil Aggett of FOSATU's Food and Canning Workers Union. In the two years between April 1981 and April 1983 at least 400 trade unionists and workers were detained, including thirty union organizers and officials ["Black Workers Under Siege}As the ILO 1985 report on South Africa put it, while "racial measures may be less overt in certain areas of the labour field, control over the Black labour force and its trade unions is now applied through security legislation, influx control, and the `homelands' system."(4). During a massive two-day work-stoppage on the Rand in November 1984, the ILO reported, the security police detained 50 trade unionists, including Chris Dlamini, president of FOSATU. (ILO, 1985, p. 13), and deported hundreds of others back to the Bantustans. Five trade union leaders were eventually charged with "economic subversion" under the Internal Security Act for organizing the mass stayaway. Labor actions deemed by the state to be "political" continued to lie outside the new legal regime governing industrial relations and permitting Black trade union action.

Still, even the NMC admitted that when legally permitted to strike under the new LRA workers needed to be "protected against prosecution and conviction under other laws and

regulations, such as security laws."[NMC, AR, 1986, p. 92]. The problem, of course, was that under the rigid provisions of the new labor law, "virtually all of the strikes in the RSA in the past five years have been illegal, though few have been prosecuted in terms of the LRA for such action,"(70) the NMC observed in its 1986 report.

Nevertheless, workers had found another new legal outlet for their grievances in the recently established Industrial Court. If employers continued to resist the formation of truly independent unions inside their workplaces (notwithstanding their protestations to the contrary), the Industrial Court created by the legislation might have promised an avenue for black workers to protest against "unfair labour practices." As Vose pointed out, any fair body was bound to "give rulings in favour of Black workers and their trade unions." Workers brought 399 cases to the Court in 1984, 801 in 1985, and 2042 in 1986, ranging from objections to unfair dismissals, to demands for union access to factory premises, to the enforcement of recognition agreements. Yet, as Vose observed, since industrial justice might "run counter to the system of apartheid itself" and overturn "what employers have come to regard as their inalianable prerogatives" the Government and employers have concluded that "its decisions should not be allowed to alter significantly the influence or status of Black labour."(455)

An important Industrial Court ruling in 1985 lent credence to Vose's growing skepticism, when the Court ruled against MAWU's contention that shop floor agreements might supercede Industrial Council negotiations.[2] In South Africa's metal industry, the NMC observed, (p. 8) "[SEIFSA] adopted a policy of encouraging the new trade unions to participate in the industrial council on the one hand and strongly opposing shop-floor bargaining on issues included in the industrial council agreement on the other." Meanwhile, however, unions in this sector "pressed for shop-floor bargaining over and above the industrial council agreements"(8). Seeking to give legal weight to the many shop-floor agreements metalworkers had forced on recalcitrant employers since the creation of FOSATU, the union argued unsuccessfully before the Industrial Court that "bargaining at industry level was directed towards establishing minimum conditions of employment while bargaining at plant level was concerned with actual conditions determined by the circumstances of the particular employer."(479) The Court preferred to endorse SEIFSA's contention that "agreements on substantive matters such as wages, overtime rates, and hours of work should be negotiated at industrial council level. Attempts by trade unions to bargain on these matters at company level should be resisted by employers."(481) The many cases brought before the Court notwithstanding, "Conditions of employment and social security have remained much the same for Blacks as before the setting up of the Wiehahn Commission," Vose concluded bitterly in 1985.(461) But this should not have come as a surprise, he claimed, since the true purpose of labor reform all along had been "to benefit the White economy, maintain White privileges…and damp down international criticism of South Africa."(462) It was onto this ambiguous terrain that the powerful new union federation, COSATU, entered the fray when it emerged in 1986.

Despite its profound limitations and the ongoing effort to divert union power away from the shop floor, Wiehahn helped set the stage for the important role an unshackled black trade union movement would play in the final push towards liberation. By simultaneously encouraging and legitimating black trade union organization while trying to limit its radical shop-floor

2 A comprehensive reading of IC cases between 1981 and 1985 may reveal a more complex picture however, as workers' claims often did get a fair hearing and resulted in rulings that strengthened Black unions on the shop floor.

contestation, the reforms placed a deep imprint on the character of the South African labour movement. The new dualism inadvertently introduced by the Wiehahn process insured that when the unions did emerge in the late 1980s, they retained their deep suspicion of the state, their intense commitment to democratic procedure, and their desire for workers' power in the factories. The August 2012 Marikana Massacre of platinum mine workers engaged in a wildcat strike, however, suggests that the ability of COSATU to preserve these syndicalist elements as part of the tripartite Alliance in post-apartheid South Africa remains in doubt. As Martin Brassey, still a labor attorney in South Africa, recently observed in response to Marikana, "Now the emphasis is on central bargaining, union officials and full-time shop stewards are well paid, the union head office makes decisions on behalf of the membership, and there is nothing to fight over but money….Eliminate the struggle and the unions become (if you'll forgive the expression) corrupt, lazy and complacent. So it has proved."