



GOVERNMENT OF MAHARASHTRA

REPORT
OF THE
**COMMITTEE ON UNFAIR
LABOUR PRACTICES**

JULY 1969

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**REPORT OF THE COMMITTEE ON UNFAIR
LABOUR PRACTICES**

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THE COMMITTEE

Chairman

Justice V. A. NAIK.

Members

1. Shri Adam Adil, M.L.A.
2. Dr. K. S. Basu.
3. Shri S. W. Dhabe.
4. Shri George Fernandes, M.P.
5. Shri C. L. Gheewala.
6. Shri L. C. Joshi.
7. Shri V. B. Karnik.
8. Shri M. G. Kotwal.
9. Shri Raja Kulkarni.
10. Dr. S. K. Mukherjee.
11. Dr. Prantlal Patel.
12. Shri R. D. Pusalkar.
13. Shri B. N. Sathaye.
14. Shri G. Sundaram.
15. Shri N. M. Vakil.

Member-Secretary

Shri P. J. OVID.

CHAPTER I

PRELIMINARY

1. *Our Constitution.*—We were constituted a Committee by the Government of Maharashtra, through its Resolution (Appendix-1), Industries and Labour Department, No. IDA. 1367-LAB-II, dated 14th February 1968. We are happy to note that the appointment of our Committee was generally welcomed in all quarters. This is apparent from the keen interest evinced by the parties concerned in the work of our Committee. Since the appointment of our Committee, quite a few knowledgeable persons were prompted to write articles in the press on the subject of “unfair labour practices”. Seminars, discussions and talks were organised on the question of “unfair labour practices” by some institutions. This goes to show how public interest was aroused in the work of our Committee, and we must say, we were greatly benefited through these learned articles and considered discourses.

Our enquiries lead us to believe that our Committee is perhaps the first Committee of its kind in India, which has been set up by the Government, for systematically and comprehensively enquiring into the subject of “unfair labour practices”. We are no doubt aware that the National Commission on Labour appointed by the Government of India is presently enquiring into all labour problems and that its enquiry would obviously embrace the subject of “unfair labour practices” as well. However, having regard to the scope of work of the National Commission on Labour, which covers the entire sweep and range of industrial relations on an all-India basis, perhaps the Commission may not be able to deal with the subject of “unfair labour practices” in an exhaustive manner. In fact, our enquiries with the National Commission on Labour reveal that the Commission would be pleased to consider our recommendations, in case they are ready before it submits its Report to the Government of India. Our Committee, is, therefore, the first State-level body of its kind, for investigation into the subject of “unfair labour practices”.

2. *Our Composition.*—The personnel of our Committee is as follows :—

Chairman

1. Shri V. A. Naik, President, Industrial Court, Maharashtra Arun Chambers, Tardco, Bombay-34.

Members

1. Shri Adam Adif, M.L.A., 51/4, Dockyard Road, Bombay-10.
2. Dr. K. S. Basu, Director, Jamanlal Bajaj Institute of Management Studies, Dadabhai Naoroji House, 164, Backbay Reclamation, Road No. 3, Bombay-1.

3. Shri S. W. Dhabe, President, Maharashtra I.N.T.U.C., Ayachit Road, Circle No. 9, Itwari, Nagpur.
4. Shri George Fernandes, M.P., 204, Raja Ram Mohan Roy Road, Bombay-4.
5. Shri C. L. Gheewala, Secretary, The Indian Merchants' Chamber, Lalji Naranji Memorial Indian Merchants' Chamber Bldg., 76, Veer Nariman Road, Churchgate, Bombay-1.
6. Shri L. C. Joshi, Labour Advisor, Bombay Chamber of Commerce and Industries, Makinnon Mackenzie Building, Ballard Estate, Bombay-1.
7. Shri V. B. Karnik, Director, Labour Education Service, 127, Mahatma Gandhi Road, Bombay-1.
8. Shri M. G. Kotwal, Secretary, Transport and Dock Workers' Union, P. D'Mello Bhavan, 2nd floor, P. D'Mello Road (Frere Road), Carnac Bunder, Bombay-1 (BR).
9. Shri Raja Kulkarni, President, Petroleum Employees' Union, Ismail Building, Golanji Hill Road, Sewree, Bombay-15.
10. Dr. S. K. Mukherjee, General Manager, The Fertilizer Corporation of India Ltd, Trombay Unit, Bombay-74 AS.
11. Dr. Pranalal Patel, Technical Director, Malleable Iron and Steel Castings Company (Pvt.) Ltd, Tulsipipe Road, Lower Parel, Bombay-13.
12. Shri R. D. Pusalkar, Director, Ruston and Hornsby (India) Ltd., Chinchwad, Poona-19.
13. Shri B. N. Sathaye, Organising Secretary, Maharashtra Vij Mandal, Kamgar Sangh, Rajan Building, Poibawadi, Parel, Bombay-12.
14. Shri G. Sundaram, General Secretary, Petroleum Workers' Union, Shrama Jeevi Avaz, 34, Sewree Cross Road, Bombay-15.
15. Shri N. M. Vakil, Secretary, The Employers' Federation of India, Army and Navy Building, 148, M. G. Road, Bombay-1.

Member-Secretary

Shri P. J. Ovid, Deputy Commissioner of Labour, Bombay.

3. *Our terms of Reference.*—Our terms of reference, as contained in the Government Resolution, dated 14th February 1968 (Appendix-1) are as under :

(i) " to define which activities on the part of employers and workers and their organisations should be treated as unfair labour practices ; and

(ii) to suggest what action should be taken against the employers or the workers or their organisations, as the case may be, for committing such unfair labour practices ".

Apparently, our terms of reference seem to be simple and, therefore, fairly easy to deal with. However, our experience has been otherwise. This is so because the subject of "unfair labour practices", being a part of the wider subject of "industrial relations", is a very much flexible concept capable of being stretched too far or limited within narrow confines. Naturally, it is a problem which is delicate and difficult to deal with. This would be borne out, when we narrate our experiences on the various questions pertaining to "unfair labour practices" in the succeeding Chapter of our Report.

4. *Our Procedure.*—In making our enquiries and arriving at our findings and conclusions, we have generally followed the usual procedure adopted by previous Committees appointed by the Government, for investigation into various other labour problems. We issued Questionnaire to the parties concerned, eliciting data and views from them on the task assigned to us. We also sought Memoranda from the parties concerned on the problems to be tackled by us. Further we recorded oral evidence from such of the parties, who expressed a desire to appear before us and elaborate or elucidate some of the points made out by them in the replies furnished by them to our Questionnaire or in the Memoranda submitted by them to us. We also on our own, examined all the available Indian and Foreign Literatures on the subject of "unfair labour practices". In locating such literature, we were very much helped by the parties concerned, for pointing out to us the sources thereof in their replies to our Questionnaire or in their Memoranda to us. Finally, we also gave publicity to the work of our Committee, through issue of official Press Notes, from time to time, in the local Newspapers. We must record here that the co-operation and response from the parties concerned towards our work was very encouraging, as would be seen from the paragraphs that follow.

5. *Our Meetings.*—We held a number of meetings for holding our deliberations. The dates on which we met, the places at which we met and the number of Members who attended the Meetings are given in the table set out below :—

TABLE

Serial No.	Date of Meeting	Place of Meeting	No. of Members who attended
1.	20th April 1968 ..	.. Bombay	.. 7
2.	27th July 1968 ..	.. Bombay	.. 7
3.	2nd November 1968	.. Bombay	.. 9
4.	2nd December 1968	.. Poona	.. 8
5.	23rd April 1969 ..	.. Bombay	.. 12
6.	14th May 1969 ..	.. Nasik	.. 7
7.	7th June 1969 ..	.. Bombay	.. 10
8.	18th June 1969 ..	.. Bombay	.. 13
9.	26th June 1969 ..	.. Bombay	.. 11
10.	3rd July 1969 ..	.. Bombay	.. 6
11.	12th July 1969 ..	.. Bombay	.. 11

6. *Principal decisions taken by us during our Meetings:*—Our First Meeting was of a preliminary nature. Here, we first fixed up the quorum for our Meetings at six Members, including the Chairman and the Member-Secretary. We also decided that we would, as far as possible, aim at unanimity in arriving at our decisions, failing which we would record majority decisions (the Chairman having a casting vote), permitting the disagreeing Members to record Minutes of dissent. We then generally considered our terms of reference and chalked out a tentative programme of work. We decided to draw up a suitable Questionnaire, based on our terms of reference, for issue to the parties concerned, eliciting data and opinions from them in regard to our task. We also decided to invite Memoranda from the parties concerned on the problems relating to our investigations. We also decided to record oral evidence from such of the parties, who desired to appear before us and elaborate or elucidate the points made out by them in their replies to our Questionnaire or in their Memoranda to us. We further decided to issue official Press-Notes in the local Newspapers, giving publicity to our work and seeking co-operation from all the parties concerned. We also decided to find out from the Labour Commissioners of the other States in India as to whether any Committee of this kind had been constituted in their States and, if so, to call for necessary literature in respect thereof from them. Finally, as our secretarial work was considered to be heavy, we also decided to move the State Government for sanction of necessary staff, for attending to our clerical work.

In our 2nd Meeting, we reviewed and noted the action taken by Member-Secretary on the decisions taken by us in our earlier Meeting. We noted, in particular, that our Questionnaire had been drafted and finalised by the Member-Secretary, in consultation with the Chairman and that the same had already been issued by him to the parties concerned. In this Meeting, we decided to constitute a small Sub-Committee comprising a few Members and the Member-Secretary, for studying the available Indian and Foreign literature having a bearing on the scope of our work. We further decided to also call for Memoranda from eminent independent persons and Research Institutions in the field of labour on the subject of "unfair labour practices". Finally, we also decided in this Meeting to call for available literature in regard to "unfair labour practices" from the I. L. O. Headquarters at Geneva as well as from its Regional Branch at New Delhi.

In the 3rd Meeting, we noted that we had by then reached the oral evidence recording stage. We, therefore, chalked out a tentative oral evidence recording programme and decided to embark on this task forthwith. In the Fourth Meeting, we again reviewed the progress made by us in our work.

In our 5th Meeting, we considered the replies received to our Questionnaire and the Memoranda submitted to us, the oral evidence recorded by us, the various notes and statements prepared by the Member-Secretary and our staff, based on the material received by us from the parties, as also the available Indian and Foreign literature on the subject of "unfair labour practices". In our 6th Meeting, we formulated our tentative findings, conclusions and our recommendations to Government.

In our 7th Meeting, we considered and finalised the first two Chapters of our draft Report to Government. In our 8th and 9th Meetings, the Third and Fourth Chapters of our draft Report to Government were considered and finalised by us. In our 10th Meeting, the remaining Chapters of our draft Report were deliberated upon and finalised. In our last Meeting, we signed our Report. Our Report is signed by only fourteen of us. The remaining Members, viz. Dr. K. S. Basu, Dr. S. K. Mukherjee and Shri George Fernandes failed to attend even a single Meeting of the Committee.

7. *Our Questionnaire.*—Our Questionnaire (Appendix 2) to the parties has been short and simple. It consists of only 10 questions, based on our terms of reference. We issued our Questionnaire to 302 parties, comprising central organisations of employers, employers organisations, individual employers, Public Sector Undertakings and Municipal Corporations, central organisations of workers, individual trade unions, eminent independent persons and Research Institutions. So far as individual employers and trade unions were concerned, we issued our Questionnaire only to such of the parties from whom specific requests for the same were received by us. We received in all 61 replies to our Questionnaire, including Memoranda, from the different parties concerned. The relevant details regarding the number of parties to whom our Questionnaire was issued and the number of replies, including Memoranda, received by us are summarised in the table set out below:—

TABLE

Serial No.	Party	No. of Questionnaire issued	No. of replies received (including Memoranda).
1	Central Organisations of Employers	2	2
2	Employers' Organisations	89	17
3	Individual Employers	82	15
4	Public Sector Undertakings	21	4
5	Municipal Corporations	4	2
6	Central Organisations of Workers	6	5
7	Individual Trade Unions	67	9
8	Eminent Independent Persons	30	6
9	Research Institutions	1	1
		302	61

A statement showing the names of the parties who replied to our Questionnaire and/or submitted Memoranda to us is given at Appendix 3 to our Report.

We must say here that having regard to the experience of other Committees appointed by the Government, the response to our Questionnaire from the parties concerned was encouraging. Further, the material contained in the replies of the parties to our Questionnaire, apart from being of a high standard, represented a fair cross-section of the views of all the parties concerned, viz. the employers, the employers' organisations, the trade unions, the Research Institutions and independent persons, on the problems relating to the complex subject of "unfair labour practices".

8. *Oral Evidence.*—In all, 31 parties appeared before us for tendering oral evidence, which was recorded by us at different places in the State. The relevant particulars of the oral evidence recording sessions held by us, the parties who tendered evidence before us, etc. are summarised in the table set out below:—

TABLE

TABLE

		Parties Invited									
	1	Evidence Recording Session.									
	2	Central Organisations of Employers.									
	3	Organisations of Employers.									
	4	Individual Employers.									
	5	Public Sector Undertakings.									
	6	Municipal Corporations.									
	7	Central Organisations of Workers.									
	8	Individual Trade Unions.									
	9	Research Institutions.									
	10	Independent Persons.									
I	..	2	12	..	..	..	..	3	1	..	..
II	..	..	3	..	..	..	..	1	..	..	..
III	..	..	4	10	..	..	..	1	2	1	5
IV	..	..	1	..	..	..	..	..	1	..	..
V	..	..	4	6	1	..	..	1	4	..	1
Total	..	2	24	16	1	..	..	6	8	1	6

Note—

- I .. 20th and 21st December 1968 (Bombay) ;
 III .. 7th and 8th February 1969 (Bombay) ;
 V .. 5th April 1969 (Bombay).

Parties appeared

11	Central Organisations of Employers.	2	6	..	..	..	2	1	..	..
12	Organisations of Employers.	..	2	..	..	..	1	..	..	..
13	Individual Employers.	..	1	4	..	..	1	1	..	4
14	Public Sector Undertakings.	..	..	..	..	..	..	1	..	..
15	Municipal Corporations.	..	1	2	1	..	1	..	..	..
16	Central Organisations of Workers.	..	1	..	..	..	..	..	..	..
17	Individual Trade Unions.	..	..	..	..	..	..	..	..	..
18	Research Institutions.	..	..	..	..	..	..	..	..	..
19	Independent Persons.	..	..	..	..	..	..	..	..	..
2		10	6	1	..	5	3	..	4	

II .. 2nd January 1969 (Poona);
 IV .. 27th February 1969 (Nagpur).

A statement showing the names of the parties who tendered oral evidence before us is given at Appendix "4" to our Report.

We find that the oral evidence recorded before us by the parties concerned was also of a high order, besides reflecting a reasonable cross-section of the opinions of all the interested and affected parties concerned with the subject of "unfair labour practices."

9. *Indian Case Law on "Unfair Labour Practices"*.—We have examined all the available and relevant Indian Case Law on the subject of "unfair labour practices" and have taken the same into consideration, while arriving at our findings and conclusions. We find that the Indian Case Law on the subject of "unfair labour practices" is very much limited and that the same is mainly confined to the subject of "victimisation", which is only one of the branches of "unfair labour practices". A summary of the Indian Case Law examined by us is given at pages 41-45 of Chapter IV of our Report.

10. *Literature on "Unfair Labour Practices"*.—We have perused the available literature—both Indian and Foreign—that we could lay our hands on the subject of "unfair labour practices" and have taken, wherever necessary and expedient, the material contained therein into consideration, while formulating our conclusions. A Bibliography of the Indian and Foreign literature perused by us is given at Appendix "5" of our Report.

11. *Our Staff*.—As decided in our First Meeting, we had moved the State Government to sanction us staff comprising two Senior Labour Investigators, one Senior Clerk, one Stenographer and one Peon, for assisting us in our secretarial work. The State Government was, however, pleased to sanction us staff comprising only one Senior Labour Investigator and one Stenographer, for our secretarial work. The Commissioner of Labour and Director of Employment, Bombay, was however, kind enough to help us in executing our secretarial work by sparing us some staff from his office, for undertaking our clerical work, which they willingly did, in addition to their own duties, even by sitting late hours and working on Sundays and Holidays.

12. *Time-limit for submission of our Report*.—As per the Government Resolution, dated 14th February 1968 (Appendix-1), we were required to function for a period of one year, in the first instance. However, having regard to the voluminous, complex and delicate nature of our work we were unable to complete our work within the initially stipulated time-limit of one year. We were, therefore, compelled to move the State Government for grant of extension of time-limit, upto the end of June 1969. The State Government was pleased to grant us the extension of time-limit asked for and to allow us to submit our Report by the end of June 1969—*vide* its Resolution, Industries and Labour Department, No. IDA-1367/109303/Lab-II, dated 13th March 1969 (Appendix-6).

CHAPTER II

HISTORICAL SURVEY

Genesis of the concept of unfair labour practices.

The concept of unfair labour practices arose out of a long-drawnout struggle waged by the trade unions in the West for establishing and stabilising the practice of collective bargaining. The emergence of the practice of collective bargaining marks a distinct mile-stone in the progress of the trade union movement. The unfair labour practices have arisen in the process of collective bargaining. They cannot, therefore, be considered in isolation and away from the context of collective bargaining. In fact, they indicate the various measures required to be taken for removing the obstacles in the way of collective bargaining. It would, therefore, be useful to say a few words about the important developments, which led to the practice of collective bargaining.

1. *Collective Bargaining.*—The phrase ‘collective bargaining’ was coined by Mr. Sydney Webb, the principal founder of the Fabian Society, whose activities led to the formation of the British Labour Party. The process involved in this type of bargaining that goes on between the employers on the one hand and the trade unions on the other is radically different from the usual mode of contract making between two parties. In the words of Mr. Van Dusen Kennedy, “collective bargaining is an unusual decision making process in that it requires agreement between two organisations, a union and a firm, that have many reasons to disagree. Since they must compromise their differences in some fashion, in order to reach decisions and prevent complete breakdown of their relationship, there must be some force potent enough to make them compromise. This force is the workstoppage. Usually, the desire of the parties to avoid its costs is enough, but occasionally they must experience the pressures of an actual stoppage.” Earlier, the same author observes, “an orderly and rational environment is essential to the growth and practice of collective bargaining as one part of the larger system of decision making in a democracy.” Again at page 102 of his Book styled as “Unions, Employers and Government”, the writer makes the following observations: “What it needs is an environment in which the incidental causes of uncertainty are kept to a minimum, that maintains general rules designed to further bargaining as an orderly process but otherwise throws the parties on their own resources to develop their relationships and workout solutions to their problems. Government policy and administrative practice have an important role to play in helping to create this kind of environment.” The above passages describe the process of collective bargaining in its broad outline.

The rise of the practice of the collective bargaining has played an extremely important role in the history of industrial relations. Karl Marx had predicted that there would be an increasing pauperisation of workers, which would lead to polarisation of forces. The workers and the industrialists will be poised for a final struggle, which would be in the nature of violent convulsions resulting in a revolution, which will usher in a proletarian rule. Specifically, he identified Great Britain and Germany, which were the two most industrially advanced countries in Europe, as being ripe for a proletarian revolution.

*[The Marxian prophesy that proletarian revolution would take place in the industrially advanced countries of the West, and particularly in U.K., was belied largely because in U.K., which was the cradle of Industrial Revolution and which had become the work-shop of the World before Industrialisation could make significant advance in other countries, the practice of collective bargaining gradually developed and became a potent force in stabilising industrial relations. In U.K., the practice of collective bargaining was developed to a considerable extent. On the one hand, the collective bargaining stemmed the tide of surging revolution and on the other hand, it gave a fillip to expansion of the industries by putting more and more purchasing power in the hands of the workers, who formed the bulk of the population in the industrially advanced countries. The progress of collective bargaining was not, however, smooth and there were many ups and downs. The path had, therefore, to be necessarily zig-zag. In U.K., no legislative provisions were devised for removing the impediments in the way of collective bargaining. As in other spheres, the British preferred the way of conventions and compromises, even though that meant muddling through.]

(A) U.S.A.

On the other hand, in U.S., particularly after the great economic depression of the nineteen thirties, the need for specific legislative protection was felt and this need was translated into definite and clear-cut legislative provisions. The provisions which were intended to remove the hurdles in the way of collective bargaining were summed up in the phrase "unfair labour practices". Unfair Labour Practices were spot-lighted and provided for by the Wagner Act of 1935, which has been regarded by the American workers as their "Magna Charta".

2. *Precursors of Wagner Act.*—The first outright support to collective bargaining by the U.S.A. Federal Government came during World War I. In 1918, President Wilson had established the National War Labour Board to deal with disputes which arose in Defence production. The Board's policy statement advocated collective bargaining in strong and clear terms. The employees were to have complete freedom to elect representatives of their own choosing and the employers were directed to bargain with these representatives. President Wilson supported the policy of his Board, placing under Government control plants, which refused to abide by the Board's suggested solution to their labour disputes. In 1926, the U.S. Congress passed legislation dealing with collective bargaining on the railroads. That means that for the first time, the Congress enunciated a policy in favour of collective bargaining, even though it was for only one segment of industry. In 1933, the U.S. Congress passed the National Industrial Recovery Act—a legislation designed to change the whole fabric of the economy for the purpose of lifting the industries from the quagmire of economic depression. One of the important provisions of the Act† stated that employees shall have the right to

*Mr. Sundaram disagrees with these statements.

†Section 7(a)(1) of the National Industrial Recovery Act—LABOUR ECONOMICS AND INSTITUTIONS—Butler.

organise and bargain collectively, through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labour, or their agents, in the designation of such representatives or in self-organisation or in other concerted activities for the purpose of collective bargaining or other mutual aid or protections.

President Roosevelt created the National Labour Board, and later the National Labour Relations Board, to enforce the principles enunciated in Section 7(a). The National Industrial Recovery Act, 1933 was, however, declared unconstitutional by the Supreme Court in 1935. The experience of collective bargaining in U.S.A. discloses that the main problem in the way of collective bargaining is the designation of the true representative unions and the vesting in them with the sole power of carrying on collective bargaining with the employer.

Undeterred by the judicial veto, the U. S. Congress proceeded in 1935 to pass a comprehensive enactment known as the National Labour Relations Act, 1935, which is popularly known as the Wagner Act. This Act set out in detail certain malpractices resorted to by the employers for preventing the smooth passage of collective bargaining. These provisions were named as "unfair labour practices" and the employers were enjoined not to have recourse to them.

3. *General policy of the Wagner Act.*—The preamble of the Wagner Act stated that the "refusal of the employer to accept collective bargaining causes strikes and other forms of industrial strife or unrest, which have the effect of burdening or obstructing commerce". It further stated that the inequality of bargaining power between employers and employees caused low wages, which in turn led to depressions because of inadequate purchasing power of the workers. The Supreme Court upheld the validity of the aforesaid Act in 1937.

Unfair labour practices under the Wagner Act

Employers are forbidden—

(1) to interfere with, restrain or coerce employees in the exercise of their rights to organise and to bargain collectively ;

(2) to dominate or interfere with formation or administration of any labour organisation or contribute financial or other support to it ;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labour organisation (but the union shop is allowed provided certain conditions are satisfied) ;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act ;

(5) to refuse to bargain collectively with the representatives of his employees ; and

(6) to enter into "hot cargo" agreements, except under certain circumstances in the construction and clothing industries.

4. *The Taft-Hartley Act.*—The period between 1935 and 1947 saw an unprecedented rise in the membership of the trade unions in U.S.A. Their power of bargaining also had risen very high. There was, however, a feeling in certain political circles that the trade unions were abusing the powers, which came into their hands on account of the benign provisions of the Wagner Act. The number of strikes started steadily rising immediately after the conclusion of the Second World War. The loss of mandays came to staggering proportions. Some of the strikes were in the nature of show of strength or of trial of strength. In 1947, the composition of the U. S. Congress also changed and the Congress was dominated by Republican majority. Under the inspiration of the Republican majority, the Congress passed a legislation known as the “Labour Management Relations Act, 1947”, popularly called the “Taft-Hartley Act”. This Act repealed the Wagner Act. At the same time, it incorporated all the provisions of the Wagner Act relating to the unfair labour practices on the part of the employers. On its part, it made detailed provisions listing the unfair labour practices on the part of the trade unions. Under these provisions, the unions or their agents are forbidden—

(1) to restrain or coerce employees in the exercise of their rights to organise and bargain collectively, or not to organise and bargain collectively ;

(2) to restrain or coerce an employer in his selection of representatives for collective bargaining or the adjustment of grievances ;

(3) to cause or attempt to cause an employer to discriminate against an employee ;

(4) to refuse to bargain collectively with an employer, provided he is the representative of his employee ;

(5) to engage in, induce, or encourage a strike or concerted employee refusal in the course of their employment to use manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities (secondary boycott) with the object of—

(a) forcing or requiring any employer or self-employed person to join any labour or employer organisation ;

(b) forcing or requiring any person to cease dealing in the products of or doing business with any other person ;

(c) forcing or requiring any employer to recognize or bargain with a labour organisation as the representative of his employees, if another labour organisation has been certified as the representative of his employees ;

(d) forcing or requiring any employer to assign particular work to employees in a particular labour organisation or in a particular trade, craft, or class, unless such employer is failing to conform to an order or certification of the N. L. R. B. determining the bargaining representative for employees performing such work (jurisdictional strike) ;

(6) to require of employees fees which the N.L.R.B. finds excessive or discriminatory under all the circumstances ;

(7) to cause or attempt to cause an employer to pay or deliver any money or other thing of value, in the nature of an exaction for services which are not performed or not to be performed (feather bedding) ;

(8) to engage in recognition and organizational picketing with certain exceptions ; and

(9) to enter into " hot cargo " agreements, except under certain circumstances.

The Taft-Hartley Act was intended to remove the imbalance in the relations between the employers and employees. It was complained that the Wagner Act loaded the dice heavily against the employers. Whereas under the Wagner Act there was an obligation on the part of the employers to bargain with the unions, there was no corresponding obligation on the part of the unions. Such an obligation was laid down in the Taft-Hartley Act.

The effect of the Taft-Hartley Act, which incorporated the provisions of unfair labour practices on the part of the employers given in the Wagner Act and added new provisions for unfair labour practices on the part of the unions, was to put the employers and employees on equal footing so far as the collective bargaining is concerned. The demands of the unions for increases in the wages of the employees, backed up as they were by the provisions of the Wagner Act, had set up a wage-price-spiral and, it was felt, that the provisions of the new Act would put an end to this vicious inflationary spiral.

5. *The Machinery for Enforcement.*—The National Labour Relations Board was created for the purpose of administering the Wagner Act. This Board had the power to interpret the Act, to resolve questions concerning the representation of employees for the purposes of collective bargaining and to prevent and prescribe remedies for unfair labour practices. The National Labour Relations Board is an independent agency consisting of 5 members, who are appointed by the President, with the advice and consent of the Senate. Any member of the Board may be removed by the President for neglect of duty or malfeasance in Office, but for no other cause. Within the Board is a General Counsel appointed by the President, who exercises general supervision over all Attorneys employed by the Board. The Board maintains offices for different regions into which the country is divided, which are responsible for conducting hearings and investigations. The complaints of unfair labour practices are initially filed with the office of the General Counsel. The Office of the General Counsel investigates into these complaints. If it finds that there are grounds for proceeding with the charges, it files a formal complaint before the National Labour Relations Board. If the National Labour Board, after an enquiry according to the elaborate rules and procedure laid down under the Act, is satisfied that the unfair labour practices are committed by either of the parties, it has the power of ordering the guilty party to "cease and desist" from continuing the unfair labour practices. In addition, the Board may grant such affirmative relief as it considers appropriate, including the reinstatement of employees who had been dismissed and payment of back wages. This is an important aspect, which distinguishes unfair labour practice proceedings from ordinary judicial proceedings and also from arbitration proceedings.

The Board has discretion to apply to the United States District Court for an appropriate temporary injunction. The Court has power to grant to the Board such temporary relief or restraining order, as it deems just and proper. If the final order passed by the Board is not complied with, the Board is authorised by the Act to file a petition with the United States Circuit Court of Appeal. If the Court of Appeal issues a decree enforcing the Board order, failure to comply may be punishable by fine or imprisonment or contempt of court. The U. S. Supreme Court may review a decision of the Circuit Court of Appeals particularly where there is a conflict in the views of different Courts for the same important problem. Apart from the investigations and decisions relating to the complaints of unfair labour practices, the principal function of the Board is to carry out elections for the purposes of finding out the collective bargaining agents. Elections are conducted under the auspices of the Board, where voting takes place by secret ballot. The power of voting is not confined to workers who are members of one or another union. Every worker, irrespective of whether he is a member of a union or not, has a right to vote. The union securing the majority votes cast by secret ballot in these elections is certified by the Board as the exclusive or sole bargaining agent. The Board also has a right to decertify the union, if it finds at a later stage that the representative or the certified union has lost its majority and it may certify another union as the sole bargaining agent. Certification is binding for one year and a petition for another election for the purpose of decertification can be filed not more than 60 days before the end of 12 months period and the election can be held only after the 12 months' period expires.

It will thus be seen that the responsibility for remedying the unfair labour practices has been divided between the two offices, viz., the National Labour Relations Board and the General Counsel. The Board acts in the capacity of a judge and the General Counsel acts both as a prosecuting attorney and a grand jury. When an unfair labour practice is alleged to have been committed, the aggrieved employee, employer or union files a charge with the regional office of the National Labour Relations Board. The regional representative of the General Counsel conducts an investigation of the charge. During the course of his investigations, he generally attempts to bring about an informal settlement between the two parties. The overwhelming majority of the cases are terminated at this point. However, if a settlement is not reached and the General Counsel's representative believes the charge has merit, he files a formal complaint with the N.L.R.B. After the formal complaint has been issued, the case is heard by the trial examiner. The trial examiners are full time employees of the Board and bear a similar relation to the N. L. R. B. as a lower Federal Court bears to the Supreme Court. The representative of the General Counsel argues the complaint and the offending party is permitted to explain why he believes he has not committed an unfair labour practice. The trial examiner then issues his decision, and if within ten days no exception is filed to his ruling, it becomes binding on the parties. Either party may appeal over the decision, and, likewise, the General Counsel's office may take the case to the N. L. R. B. The Board then studies the evidence and issues its decision, reversing, modifying or affirming the trial examiner's decision. If the party which is deemed to have

committed an unfair labour practice does not appeal to the Federal Court, the decision becomes binding. If he feels that the Board has exceeded its jurisdiction or has decided incorrectly on the basis of the preponderance of evidence, he may file an appeal in the matter before the Federal Court of Appeals. If, after the trial, examiner's decision becomes binding, or the Board's decision becomes binding, one or both parties continue the unfair labour practice, the Board itself may go to the Federal Court of Appeals. If the Court decides that the Board's decision is correct, it issues a court* order directing the parties to comply. Failure to obey the court order makes the offender subject to action for contempt of court. It is not until this point that the commission of the unfair labour practice makes the party subject to a fine or imprisonment. The decisions of the Board are directed to the party who has committed the unfair labour practice and orders him to cease and desist from the action and to take the appropriate remedy, e.g., to hire the person discharged for union activity and pay him back wages, or to cease coercing employees. The party which committed the unfair labour practice must display prominently, for sixty days, a notice that it will cease engaging in such activity. This can be most humiliating.

(Note.—The machinery created under the Wagner Act was kept intact by the Taft-Hartley Act.)

6. *The Landrum-Griffin Act, 1959.*—This statute introduced a new concept in labour laws; viz. the direct intervention by the Federal Government into the internal structure and affairs of labour unions. The law guarantees a bill of rights to union members in the conduct of union affairs. Periodic secret elections of union officers, free speech, rights of assembly and submission of detailed financial statements by labour organizations are prescribed as rights of union members.

It is not necessary to deal with all the provisions of this enactment and it would be sufficient to notice that this Act adds one more unfair labour practice to the list of union unfair labour practices laid down under the Taft-Hartley Act, as follows :—

“ Organizational picketing—picketing designed to organise employees and compel the employer to recognise the union, where the firm does not now have a contract with the union. ”

The Act placed limitations on organizational picketing because some unions had used this technique to harass employers into signing contracts, even when their employees were indifferent or opposed to unionization. The picketed employer may be forced to capitulate because customers refuse to cross in front of the marching signcarriers or because teamsters refuse to service the company. It becomes an unfair labour practice when a union —

(1) pickets an employer who has recognised another union ;

* Labour Economics and Institutions—Butler—pp. 277-278.

(2) pickets within twelve months after losing a National Labour Relations Board election to determine bargaining representation at the firm ; or

(3) continues the picketing for more than thirty days and does not petition for a representation election, if it disrupts services at the employer's place of business.

(B) OTHER COUNTRIES

This, in broad outline, is the legal position relating to the collective bargaining and unfair labour practices prevailing in the U.S.A. In a number of countries such as Argentina, Canada, Ethiopia, Ghana, Japan and the Phillipines, provisions for dealing with unfair labour practices and collective bargaining have been made, more or less on the lines indicated by the provisions of the U. S. Laws. The position obtaining in the above countries is set out briefly in the paragraphs that follow. These paragraphs are based on the material contained in the Note furnished to us by the ILO Headquarters at Geneva.

1. *Special procedures.*—The concept of unfair labour practices and their prevention through special procedures, differs from those of a wholly administrative or judicial character, or from those normally followed for the settlement of industrial disputes originated in the United States. The system in this country has served more or less as a model in other countries, where similar type of procedure has been established.

However, in adopting the main idea underlying the concept of unfair labour practices, these countries have made adjustments to suit their particular conditions and policies. Thus, the procedures in these countries differ in certain significant respects from those in the United States and the system in each country contains its own peculiar features.

2. *Bodies concerned with Unfair Labour Practices.*—The Bodies dealing with unfair labour practices in the different countries differ in regard to their status, composition, functions, organisations and staffing.

In Argentina, the body mainly concerned with unfair labour practices is the seven-member National Industrial Relations Council (two representatives of the employers, two representatives of the workers and three of the Government). The employers' and workers' representatives are nominated by the Government on proposition of the most representative organisations. But the Ministry of Labour and Social Security and the industrial associations with trade status have functions in the preliminary examination of complaints. For administrative purposes, the Council is under the Ministry of Labour and Social Security, which is responsible for administering Act No. 14455 of 1958. In certain cases, an appeal against the decisions of the National Industrial Relations Council may be lodged with the National Court of Appeal for Labour Cases.

In Canada, the Labour Relations Board, composed of a Chairman and an equal number of workers, and employers' representatives, deal with questions involving refusal to bargain collectively, while it is the Department of Labour which is concerned with unfair labour practices affecting the right to organise. No prosecution for an offence under the Industrial Relations and Disputes Act, 1947 (including unfair labour practices) shall be instituted without the consent of the Minister of Labour. The Board is linked for administrative purposes to the Department of Labour. The Director of the Industrial Relations Branch of this Department serves as Chief Executive Officer of the Board.

In Ethiopia, a Labour Relations Board is established within the Ministry of National Community Development. It consists of five members and a number of deputy members who are impartial persons, although employers' associations, and labour unions may be invited to nominate candidates for appointment as members and deputy members of this Board. In addition to this body, the Minister is authorised to establish Boards in different parts of the country and assign to them duties equivalent to those of the Labour Relations Board.

In Ghana, the Industrial Relations Act of 1965 provides for the establishment of an Unfair Labour Practices Tribunal, consisting of a Chairman, appointed by the Chief Justice, a member nominated by the Trade Union Congress, a member nominated by the National Employers' Organisation, and two members nominated by the Minister of Labour. The members of the Tribunal are under the administrative authority of the Minister of Labour, while the Chairman is under authority of the Chief Justice. The Tribunal has a Registrar appointed by the Chief Labour Officer and the other staff of the Tribunal are appointed by the Minister.

In Japan, there is a system of Labour Relations Commissions ; a Central Commission under the Minister of Labour, a Central Seamen's Commission under the Transportation Minister, Prefectural Labour Commissions under the Prefectural Governors and Local Seamen's Commissions also under the Transportation Minister. These Commissions are tripartite commissions, composed of an equal number of members representing employers, workers and the public interest. Each Commission is provided with its own staff.

In the Phillipines, a Court of Industrial Relations was set up by an Act approved in 1936, under which it operated mainly as a compulsory arbitration tribunal. It consists of impartial members and has the status of a Court, with the same independence as the ordinary Courts. The Industrial Relations Law of 1953 introducing provisions concerning unfair labour practices did not establish a new body to deal with these questions, but instead assigned them to that Court.

Finally, it may be noted that the Council in Argentina, the Tribunal in Ghana and the Boards in Canada and the United States are highly specialised bodies, whose functions concern only unfair labour practices and related questions but who do not perform duties in the settlement of disputes by way of conciliation, fact finding or arbitration. On the other hand, the Board in Ethiopia,

the Commissions in Japan, and the Court of Industrial Relations in the Philippines also exercise functions in relation to the settlement of disputes. In Japan, however, only public members participate in the adjudication of unfair labour practice cases, although the employer and worker members may take part in hearings prior to decision.

3. *Filing of complaints.*—In Argentina, all complaints of unfair labour practices shall be submitted (by any interested person) within 90 days of the act of the circumstances which give rise thereto. The regulation in the United States also provides for a prescriptive period (six months), after which no charge or complaint of unfair labour practices will be entertained.

The regulations in Argentina, as those in the United States, make provision for a preliminary examination of charges or complaints before cases are presented to the competent body. In Argentina, a complaint is first submitted to the Ministry of Labour and Social Security or to any industrial association with trade status and is then transmitted to the Counsel, if considered to be well founded.

It appears that in Ethiopia, Ghana, Japan and the Philippines, complaints are directly filed with the competent body by the aggrieved parties. This also appears to be the position in Canada with regard to the initiation of proceedings before the Labour Relations Board.

It may be noted that there is a fundamental difference as to the nature of subsequent proceedings between the situation in the United States, where formal complaints before the Labour Relations Board are made by the office of the General Counsel, and in the other countries, where the parties concerned submit the complaints in their names. In the United States, the Office of the General Counsel acts in a similar capacity to that of public prosecutors in criminal cases and carries the burden of proving the allegations of the complaint. In the other countries, where the aggrieved parties are directly the complainants, they have the burden of proving their allegations, as in the case of adversary Civil proceedings.

4. *Investigations and Hearings.*—The competent bodies in Canada, Ethiopia, Ghana, Japan and the United States are authorised to establish the rules governing their procedures, but in Ghana, these rules are subject to approval by the Chief Justice. In Japan, the Central Labour Relations Commission has authority to formulate and promulgate the rules for the Prefectural Commissions. In the Philippines, special provisions governing the procedure of the Court of Industrial Relations are to be found in Commonwealth Act No. 103 (1936), which authorises the Court to adopt its own rules of procedure. In Argentina, the proceedings before the Commission are governed by Regulations under the Act No. 14455 of 1958 and are presumably established by the Minister responsible for administering the Act. Except for the United States, there is little available information, in addition to legislative provisions, on the rules of procedures for conducting investigations and hearings. Generally, however, they would contain provisions on certain essential procedural steps normally found in judicial procedures, such as the period for filing answers, bringing in

all necessary parties, previous notice of hearings etc., except that the rules would invariably minimise, to the extent possible, the formalities and technicalities of judicial procedures, in order to avoid delays and to give the competent body a wide latitude in ascertaining the facts and issues.

The Rules and Regulations and Statements of Procedure of the National Labour Relations Board in the United States relate to the various functions assigned to it and are fairly elaborate and detailed, reflecting the high degree of sophistication, which characterises administrative law and procedure in that country, in general. However, the more basic provisions give some indication of the essential elements for a more simplified body of rules of procedure.

In the Phillipines, the Court of Industrial Relations appears to have followed the practice in the United States of shortening the proceedings and minimising as much as possible resort to formal hearings, by encouraging the parties to enter into agreed statement of facts so that formal hearings are confined to a minimum of disputed issues. Thus, in certain cases, where the essential facts are admitted by the parties, an agreed statement of facts may obviate the need for extended hearing.

The question where investigations and hearings shall be conducted is of practical importance in countries where there is only one national body concerned (or in countries with a large territory). This body will have its seat at the national capital, while cases arise in other parts of the country, and it will be costly to bring the parties to the national capital, if the hearings are to be held there.

As indicated earlier, the Board in the United States has regional offices which are responsible for conducting investigations and hearings, in cases arising within their territorial limits. Where the parties have no objections to the report and recommendations of the Hearing Officers, the case may on questions of substance be practically terminated at the regional office.

This procedure is followed, to some extent, in the Phillipines. While the Court of Industrial Relations does not have regional offices, it has a staff of Commissioners for hearing cases in any locality. A case is originally assigned to a judge of the Court, who may himself conduct hearing or assign this work to a Commissioner. In Argentina, the National Industrial Relations Council may appoint representatives in different localities to obtain information and evidence.

It may be noted that while, in general, the procedures in unfair labour practice cases have a remedial and not a punitive object, in Canada unfair labour practices are penalised as offences. However, criminal prosecution is intended as a last resort and other procedure exist for the prevention of unfair labour practices. A complaint alleging violation of the provisions concerning unfair labour practices is filed with the Minister of Labour, who may appoint an Industrial Inquiry Commission or require a Conciliation Officer to investigate and make a report on the alleged violation.

5. *Decisions and Judicial Review.*—Generally, decisions are taken by majority vote of the members of the Body concerned. However, in the Phillipine a Judge of the Court to whom a case is assigned renders a decision thereon, on the basis of the evidence taken by him or a Commissioner. This decision becomes final, if accepted by both or all the parties concerned. When a party is dissatisfied with the decision, the case goes to the full Court.

It has already been pointed out, but it is worthwhile repeating, that, in the United States, a party found to have committed an unfair labour practice is ordered "to cease and desist" therefrom. In addition, the Board may grant such affirmative relief as it considers appropriate, including the reinstatement of employees, who have been dismissed and payment of back wages to them. This is an essential aspect, which distinguishes unfair labour practice proceeding from ordinary judicial proceedings and from arbitration proceedings. Courts of law have jurisdiction to order payment of damages but not to grant affirmative relief like the reinstatement of workers, who have been unjustifiably dismissed. An arbitration tribunal usually determines rights and conditions of employment but the arbitral function does not normally extend to the making of orders requiring a party to desist from doing something.

The kind of decisions that the National Labour Relations Board in the United States can make has been followed under specific legislative provisions in Argentina, Ghana, Japan and the Phillipines. In Ethiopia, the Labour Relations Board is empowered to prohibit any unfair labour practice and to direct any party to abstain therefrom.

Provisions for judicial review of the decisions of the competent bodies exist in Argentina, Ethiopia, Japan, the Phillipines and the United States; but generally findings of fact are deemed to be conclusive and judicial review is confined to questions of law only. In Ghana, an order of the Unfair Labour Practices Tribunal can be subject to appeal before the High Court, on the ground of lack of evidence or lack of jurisdiction (and the High Court may vary or rescind the order), while in Canada, a decision or order of the Labour Relations Board is final and conclusive.

(C) INDIA

Since Independence, the Government of India has been playing an important role in the shaping of industrial relations in the country. The trade union movement in India, however, is much older than the birth of free India. It would be worthwhile to take account of the provisions of three important pieces of Central legislation, before India achieved her independence and embarked upon a new labour policy of its own.

1. *The Trade Unions Act, 1926.*—The first is the Trade Unions Act, 1926, an outmoded piece of legislation, which still remains in force. Under this Act, registration of a Union can be done by any 7 or more members by applying to the Registrar. The only protection a Union acquires through registration is immunity for its members and officers from criminal conspiracy proceedings and from civil suits growing out of trade disputes. Not more than one half of the total number of officers of a Union may be outsiders.

2. *The Industrial Employment (Standing Orders) Act, 1946.*—The second piece of legislation is the Industrial Employment (Standing Orders) Act, 1946. This Act requires every industrial establishment employing 100 or more persons to have a set of certified standing orders defining the conditions of employment to be maintained in the establishment. The conditions to be defined are prescribed in the Act and may be added to by administrative regulations. They include such matters as classification of workmen, shift schedules, attendance rules, tardiness, leave and holidays, discipline for misconduct, termination, grievance procedure and age of retirement.

The Trade Unions Act, 1926 undoubtedly helped the growth of trade unions in that it gave immunity to the members and officers of unions from criminal conspiracy proceedings and also from civil liability arising out of trade disputes. It was some advance over the position that prevailed before the enactment of the Act. At the same time, its principal provision, namely that 7 persons can come together and form a trade union indirectly helped the rise of small trade unions who could start functioning side by side with other unions, which claimed sizeable number of workers as its members. The Industrial Employment (Standing Orders) Act, 1946 conferred certain advantages on the workmen by insisting upon standardised rules laying down terms and conditions of service. Agreements relating to terms and conditions of service are usually hammered out in the course of negotiations for collective bargaining. By giving a set of model terms and conditions of service, the Act discouraged collective bargaining agreements, although in an indirect way.

3. *Industrial Disputes Act, 1947.*—The Third Act is the Industrial Disputes Act, 1947. This Act came into force from 1st April 1947. The Act permits a union of any size to make demands on any employer and to carry the resulting dispute in conciliation and, at Government discretion, to have it adjudicated upon by a Labour Court or Tribunal. The result is that many small and weak unions are kept in business by this system of toleration and indirect assistance. The Act does not even mention the concept of exclusive bargaining rights or representative status for a union. It gives no preference to majority unions. It places no limit on minority unions. A union, no matter how small it is, no matter how many other unions there may be in the same bargaining unit, has equal access to the protection and labour relations rights provided by the Act. In other words, the Act does nothing to introduce order into union-employer relations other than to provide machinery for settlement of disputes. In the context of fragmentation of the labour movement and the existence of multi-unionism, the provisions of the Industrial Disputes Act have the effect of encouraging its dis-organised development. The only way of introducing order is to change the provisions and indicate and enforce new rules in their stead. The first need is to ensure that there is only one bargaining agent in the bargaining unit.

4. *The Bombay Industrial Relations Act, 1946.*—This is an Act of the State Legislature of the then Bombay State. It is important in that it seeks to give exclusive bargaining rights to the unions that qualify for representative status. This Act, however, applies to only a few selected industries in the State.

The Act has been amended, from time to time, but the provisions relating to the grant of sole bargaining rights to a representative union have remained almost unchanged. A union, which has a membership of not less than 25 per cent. of the total number of employees employed in any industry in any local area, may apply for registration as a representative union for such an industry in such a local area. If in any local area, no representative union has been registered in respect of an industry, a union which has membership of not less than 5 per cent. of the total number of employees employed in such an industry in the said local area may apply for registration as a qualified union for that industry in that local area. Again, if in any local area, neither a representative union nor a qualified union has been registered in respect of an industry, a union having a membership of not less than 15 per cent. of the total number of employees employed in any undertaking in such industry in the said area and complying with the provisions of Section 23 of the Act may apply for registration as a primary union for that industry in that local area. Two points require special notice. One is that, if there is a representative union for an industry in any local area, then there is no question of registration of either a qualified union or a primary union. Again, if there is a qualified union in any industry in any local area, then it will exclude the primary union. The second point is that where there are two or more unions, which satisfy the requirements of the requisite percentage for qualifying as a representative union, the union which has a larger membership is entitled to have a representative status. Any union may apply to the Registrar for being placed on the list of approved unions. The Union seeking status of an approved union has to satisfy certain conditions laid down in Section 23 of the Act. Four of these conditions are relevant for our purposes. One is that the union should not give a call for strike without following the other methods provided in that Act for the settlement of industrial disputes. The second is that the union should not direct the employees to resort to a stoppage of work, which is illegal under the Act. The third is that the union should not direct the employees to resort to any "go slow". The fourth is that every industrial dispute in which a settlement has not been reached by conciliation shall be offered to be submitted by the union for arbitration and that the arbitration shall not be refused by it in any dispute, if asked for by the employer. Certain rights have been conferred upon the approved unions under the Act. For instance, the right to collect sums payable by membrs to the union on the premises where wages are paid to them, the right to put a notice board on the premises of the undertaking, the right to hold discussions on the premises of the undertaking with the employees concerned or the members of the union, the right to meet and discuss with the employer or any person appointed by him the grievances of its members employed in the undertaking, the right to inspect, if necessary, any place in any undertaking wherein any member of the union is employed. The approved union is also entitled to appear before a Labour Court in the proceedings for determining whether a strike, lockout, closure, stoppage or change is illegal or before the Industrial Court in a proceeding involving, in the opinion of the Court, important questions of law and fact. Section 30 of the Act confers the privilege of exclusive bargaining capacity to the representative union, qualified union or primary union, as the case may be, in the order of preference. The aggrieved union, who is denied the registration, may prefer an appeal,

within a specified time, to the Industrial Court, for reviewing the order of the Registrar. Further, the Registrar can cancel the registration of a union, in certain contingencies, such as the fact that the membership of the union has fallen below the minimum required, etc.

It is equally important to note that there is a special provision (Section 101 of the Act) imposing penalties for certain acts, which are in the nature of unfair labour practices, although that expression has not been used in the Section.

Section 101 of the Act provides—

(1) no employer shall dismiss, discharge or reduce any employee or punish him in other manner by reason of the circumstances that the employee—

(a) is an officer or a member of the registered union or a union which has applied for being registered under the Act ; or

(b) is entitled to the benefit of a registered agreement or a settlement, submission or award ; or

(c) has appeared or intends to appear as a witness in, or has given evidence or intends to give evidence in a proceeding under the Act or any other law for the time being in force or takes part in any capacity in, or in connection with a proceeding under the Act ; or

(d) is an officer or a member of an organisation, the object of which is to secure better industrial conditions ; or

(e) is an officer or a member of an organisation which is not declared unlawful ; or

(f) is a representative of employees ; or

(g) has gone on or joined or instigated a strike, which has not been held by the Labour Court or the Industrial Court to be illegal under the provisions of the Act.

Sub-section (2) of Section 101 of the Act provides—

(i) no employer shall prevent any employee from returning to work after a strike arising out of an industrial dispute, which has not been held by the Labour Court or the Industrial Court to be illegal, unless the employer has offered to refer the issues on which the employees had struck work to arbitration under the Act and the employees have refused arbitration ; or

(ii) the employees not having refused arbitration, have failed to offer to resume work within one month of a declaration by the State Government that the strike has ended.

Sub-section 2 (a) of Section 101 of the Act provides—

No employer shall dismiss, discharge or reduce any “protected employee” save with the express permission in writing of the Labour Court.

By ‘protected employee’ is meant any employee, who being an office bearer of a union connected with the industry, is recognised as such in accordance with the rules made under the Act.

These provisions represent an attempt, imperfect though it may be, to introduce some order in industrial relations in a situation where there are more than one union functioning in an industry.

There are also other State legislations about recognition of unions in Madhya Pradesh, Gujarat and old areas of Madhya Bharat and the Vidharbha area of Maharashtra. The C.P. and Berar Industrial Disputes Settlement Act, 1947 was in force in the Vidharbha area of Maharashtra State up to 1st May 1965. It provided for recognition of unions, under Sections 3 and 4 of the Act, to the exclusion of other unions. There was no provision for primary and qualified unions under that Act. Section 42 of the Act, however gave protection to workmen for trade union activities.

5. *New trend in the thinking of the Government after Independence.*—It seems that the considerations set out above, in evaluating the effect of the Industrial Disputes Act, 1947, entered into the thinking of the new Government and the Parliament passed a law, in 1947, in the form of amendments to the Trade Unions Act, 1926. The Act is known as the Trade Unions (Amendment) Act, 1947. The provisions embodied therein represent a clear break between the two postures adopted in the Act and the earlier frame work. These amendments were obviously inspired by the Wagner Act of 1935. In substance, the Act gave the unions basic protections against certain types of employer practices. It also prevented the unions from indulging in certain types of activities. Both types of activities were termed as “unfair practices”. The Act provided for compulsory recognition of representative unions by employers and for arbitration of disputes over certification of unions. The provisions of the Act, in so far as they are relevant for our purposes, are set out below.

Section 28-D.—lays down the condition for recognition of trade unions by an order of the Labour Court and sets out certain conditions, which must be fulfilled before recognition is accorded to the Union.

Section 28-E.—relates to application for grant of recognition to Trade Unions by a Labour Court.

Section 28-F.—enumerates the rights of the recognised unions.

Section 28-G.—provides for the withdrawal of recognition of unions.

Section 28-H.—relates to applications for fresh recognition of unions.

Chapter III-B.—is the most important part of the amendments and relates to unfair practices (it is noteworthy that the expression used is not “unfair labour practices” but “unfair practices”)

Section 28-J.—lays down the unfair practices on the part of the recognised trade unions. They are as follows:—

- (a) for a majority of the members of the trade unions to take part in an illegal strike ;
- (b) for the executive of the trade union to advise or actively to support or to instigate an irregular strike ;
- (c) for an officer of the trade union to submit any return required by or under the Act containing false statements.

Section 28-K.—The following shall be deemed to be unfair practices on part of an employer, namely:—

- (a) to interfere with, restrain, or coerce his workmen in the exercise of their rights to organise, form, join or assist a trade union and to engage in concerted activities for the purpose of mutual aid or protection ;
- (b) to interfere with the formation or administration of any trade union or to contribute financial or other support to it ;
- (c) to discharge, or otherwise discriminate against any officer of a recognised trade union because of his being such officer ;
- (d) to discharge or otherwise discriminate against any workman because he has made allegations or given evidence in an enquiry or proceedings relating to matters such as referred to in sub-section (i) of section 28-F ;
- (e) to fail to comply with the provisions of section 28 F :

Provided that the refusal of an employer to permit his workmen to engage in trade union activities during their hours of work shall not be deemed to be an unfair labour practice on his part.

Unfortunately, however, these amendments never came into effect because the executive branch of Government did not issue a Notification for bringing them into effect. No official explanation for this executive veto seems to have been given. It is not, however, difficult to find out the reasons for the above. The Amendment Act introduced a new definition of 'industry'. According to this definition 'industry' means "any business, trade, undertaking manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or vocation of workmen." This definition is too wide and would take in its ambit not only unions of civilian employees of the Government but even the unions of the Police and the Armed Forces. The Government must have, therefore, felt that the rules governing the conduct, service, punishment, etc. of the Government servants, which are framed under the provisions of the Departmental Rules might come in conflict with the definition of "unfair practices" by employers contained in the 1947 Amendment Act. For instance, it would be an unfair practice on the part of the employer to interfere with, restrain or coerce his workmen in the exercise of their rights to engage in concerted activities for the purposes of mutual aid or protection. The Government had never admitted the right of civil servants to go on strike. If it enforced this ban, it might have been guilty of an unfair practice under the Amendment Act of 1947.

6. *Industrial Truce Resolution of 1947.*—The new policy of the Government is reflected in the Resolution on Industrial Truce adopted in December 1947 in the Industries Conference, comprising representatives of Government (Central, Provincial and Indian States), employers and workers. The Resolution was adopted unanimously. The Resolution enunciated the following principles :

(1) That the employers must recognise the proper role of labour in industry and the need to secure for labour fair wages and working conditions ;

(2) That the labour for its part must give equal recognition to its duty in contributing to the increase of the national income without which a permanent rise in the general standard of living cannot be achieved.

(3) That mutual discussions of all problems common to both and determination to settle all disputes without recourse to interruption in or slowing down of production should be the common aim of employers and labour.

The Resolution recommended—

(a) That fullest use should be made of statutory and other machinery for the determination of industrial disputes in a just and peaceful manner ;

(b) That machinery should be established for the study and determination of fair wages and conditions of labour ; and fair remuneration for capital ;

(c) That Works Committees, representing the management and duly elected representatives of labour, should be constituted in each industrial undertaking ; and

(d) That immediate attention should be paid to the problems of housing of industrial labour.

The Conference, after adopting the above mentioned principles and laying down the abovementioned procedure, called upon the labour and management to agree to maintain industrial peace and to avert lock-outs, strikes or slowing down of production during the succeeding three years.

7. *Two Bills of 1950.*—It appears that the decision not to put the Amendment Act of 1947 into effect did not mean a final rejection by the Government of the ideas incorporated in the Amendment Act. For, the Central Ministry of Labour was soon at work on legislation that proposed even more drastic departures from the pre-1947 pattern. By 1950, two new bills had been drafted : (1) the Labour Relations Bill and (2) the Trade Unions Bill. These were designed as comprehensive pieces of legislation that would replace the existing laws relating to industrial relations. They purported to reinstitute the 1947 Amendment Act provisions for compulsory recognition of unions and basic protections against unfair practices. Recognised unions were given such rights as collecting subscriptions and holding meetings on employer's premises. Employers could be ordered to recognise unions by Labour Courts. Collective bargaining was made compulsory for both employers and unions under stipulated conditions. Labour Courts were empowered

to certify unions as falling into one of three categories of bargaining agents, depending on whether each union's membership fell between 25 and 50 per cent of employment in its type of bargaining unit. Unions so certified received exclusive bargaining rights in their units. The conclusion of written agreements to be registered with the appropriate Government office was declared to be the purpose of collective bargaining. All agreements had to provide for final settlement, without work stoppage, by arbitration or otherwise, of all questions arising under such agreements. The prevailing provisions for conciliation of disputes and for their reference to Tribunals for adjudication were retained.

The approach indicated in the above provisions represented a complete break from the past. It is interesting to note that the proposed changes again drew heavily on American practice. This was reflected both in the use of such terminology as "collective agreement", "certified bargaining agent" and "unfair labour practice" and in the definition and prohibition of employer unfair labour practices, much of which were taken verbatim from the corresponding Section of the Wagner Act.

The draft Bills were referred to a Select Committee, which studied them, made minor alterations and reported them back to Parliament, in December 1950, recommending their passage. No action was taken on them, however, and the Bills lapsed along with the Parliament, prior to the 1951-52 general elections. The unions other than the INTUC strongly opposed the Bills on the main ground, among others, viz., the exclusion of Government employees. Apprehension was expressed by the Union leaders that the elaborate procedures provided by the Bills to foster peaceful collective bargaining would unduly restrict the right to strike. The real stalemate, however, occurred at the Cabinet level, where the Ministries in charge of the Railways, Defence Establishments and Posts and Telegraphs strongly opposed extending the compulsions of the new legislation to their own labour relations. The INTUC, generally, expressed its support to the Bills. In any case, they did not oppose the Bills. It, however, had objections to certain provisions of the Bill. One of its objections was that the provision contained therein for recognition of a trade union by mutual agreement with the employer might accelerate the growth of the Company unions, which was very injurious to the healthy development of trade unionism. In consequence, the Bills were not pursued and they were never enacted into law.

At this stage, we may refer to the I.L.O. convention No. 98 of 1949 (Right to Organise and Collective Bargaining Convention). The implementation of the Trade Unions (Amendment) Act, 1947 would have been in accordance with the provisions of the said Convention. Article I of that Convention says that workers shall enjoy protection against acts of anti-union discrimination in respect of their employment. The protection is, in particular, directed in respect of acts calculated to (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership and (b) cause the dismissal of, or otherwise prejudice, a worker by reason of union membership or because of participation in union activities

outside working hours. These provisions were largely but not wholly covered by clauses (a) and (c) of Section 28-K of the Trade Unions (Amendment) Act of 1947 dealing with unfair practices by employers. Article 2 of the Convention lays down that the workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other. In particular, the establishment of workers' organisations under the domination of employers and the supporting of workers' organisations by financial or other means are prohibited. These very provisions were contained in clause (b) of Section 28-K of the Amendment Act of 1947. The other provisions of the Convention are also in line with the spirit of the Act of 1947.

It appears that India has not yet ratified the above Convention. In case India wants to give effect to the I. L. O. Convention, she will have to pass legislation similar to the Amendment Act of 1947. It appears to us that it was because of this anxiety to fall in line with the I.L.O. Convention that the Labour Relations Bill and the Trade Unions Bill were introduced, to which a reference has already been made earlier. It has also been pointed out earlier that these Bills were not pursued because of certain internal difficulties and differences of opinion at the Cabinet level.

8. *First Five-Year Plan.*—There were two contradictory ideas, which have been expressed in the Labour Chapter of the First Five-Year Plan. One was that the State should have legal powers to refer the disputes for settlement by arbitration or adjudication. At the same time, it was also stated that the State should all along encourage mutual settlement, collective bargaining and voluntary arbitration to the utmost extent. The other idea was, to borrow the words of the Planning Commission, "the worker's right of association, organisation and collective bargaining is to be accepted without reservation as the fundamental basis of the mutual relationship". At a later stage, the Commission said, "a legal framework may be created to determine the appropriate bargaining agency and to fix the responsibility for the enforcement of collective agreements. For the success of collective bargaining, it is essential that there should be a single bargaining agent over as large an area of industry as possible. Separate unions for industrial establishments in the same industry in a local area are inimical to the growth of a strong and healthy trade union and their existence may be justified only in very exceptional circumstances". The Planning Commission also suggested the setting up of permanent tripartite Wage Boards to deal with wage problems. They also declared that disputes over wages and other working conditions should be settled by voluntary arbitration. They also recommended the setting up of a systematic grievance machinery. It would appear that the Plan did not commit the Government to a definite course of action for giving effect to these principles.

During the short period when Shri V. V. Giri was Minister for Labour between 1952-54, considerable emphasis was laid on collective bargaining. He was in favour of getting a legislation passed, on the lines of the 1950 Bills, for the development of collective bargaining. With that end in view, he secured the tripartite Standing Labour Committee's approval of the principles of the Bills and did his level best to get the Bills re-introduced in Parliament.

This phase, however, was short-lived and the succeeding Labour Minister Shri Khandubhai Desai, voiced the Government's opposition to get a Bill introduced in Parliament by a private member in 1955, seeking to bring into force the 1947 Amendments to the Trade Unions Act.

9. *Second Five-Year Plan.*—The Labour Chapter of the Second Five-Year Plan reflected the decision of Government against basic legislative changes. Emphasis was laid on increased association of labour with management by providing for councils of management, consisting of representatives of management, technicians and workers. In August 1955, the Labour Ministry had submitted a proposal to the Labour Panel of the Second Plan to the effect that “closed shop” and “union shop” practices should be provided for the purpose of development of a healthy trade union movement. The security devices were to be linked with arrangements for recognising one representative union in a bargaining unit on the basis of its having a certain percentage of membership in good standing. The proposal, in fact, was to bring into general application a principle laid down in the Bombay Industrial Relations Act of 1946. The linking up of the protection devices with the suggestion of a representative union aroused the suspicion of many labour unions. Whatever the reasons, the fact remains that the Labour Panel did not approve the Labour Ministry's proposal. Therefore, all that the Second Plan suggested was that the State should make some statutory provision for recognition of unions, keeping in mind the desirability of having one union in an industry.

10. *Summing up.*—Taking an over-all view of the period under review, it can be said that during this period, Government considered that it was its responsibility to protect the industrial workers and to fix their important conditions of employment and, in the process, to maintain industrial peace by preventing strikes and adjudicating disputes. In this view of things, collective bargaining was not pursued as an unwavering goal of Governmental policy; indeed it occupied a very insignificant place in the scheme of things.

11. *1957-1964.*—During this period, Government seems to have abandoned the idea, which was uppermost in their mind during the early years of Independence, viz., to strengthen collective bargaining by legislative provisions. Instead, they contemplated to pursue the objective of industrial peace by non-legislative means. The new approach was to re-shape the Indian labour relations by securing from the parties mutual agreement on and voluntary compliance with a set of principles and rules, whose observance, it was believed, would produce orderly and effective labour relations. The Third Five-Year Plan emphasises the voluntary and moral basis of this new approach. The document says, “a new approach was introduced to give a more positive orientation to industrial relations, based on moral rather than legal sanctions.” The machinery used by the Ministry consisted mainly of the annual Indian Labour Conference and its smaller body, viz., the Standing Labour Committee, which meets between Conference sessions. Both these are tripartite bodies. They bring together the principal representatives of employers and trade union organisations, along with Labour officials of the Central and State Governments.

12. *Code of Discipline*.—Certain general principles of discipline in industry were agreed upon by the participants at the 15th Indian Labour Conference and a tripartite sub-committee was created to study additional questions and develop the materials in the form of a Code. The final form of the Code of Discipline was approved at the 16th Indian Labour Conference, in May 1958. The Code of Discipline has become the key-stone to the arch of the Government's labour policy.

The Code of Discipline, *inter alia*, consists of three sets of principles to be observed by the parties in industrial relations. The first set binds both the Managements and Unions. The second set applies to only the Managements and the third set applies only to the Unions. The first set obligates both the parties not to take unilateral action but to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration ; to renounce coercion, intimidation, victimization, go-slow, litigation, sit-down and stay-in-strikes and lock-outs; and to establish mutually agreed grievance procedure. The second set enjoins the Managements not to increase the work-loads, unless agreed upon or settled otherwise ; not to support or encourage any unfair labour practices. Here we notice that the protections to unions contemplated in the 1947 Amendment Act and the 1950 draft Bills have become finally a part of a voluntary Code. Under this set of rules, the Managements are to recognise unions in accordance with a set of criteria appended to the Code. These provide that to qualify for recognition, a union must observe the Code and must have a membership in good standing of at least 15 per cent of the workers concerned. Where there are more than one union, the largest should be recognised provided it has been functioning for at least one year. A union may claim recognition as the representative union for workers in an industry in a local area, if it has a membership of at least 25 per cent of the work-force. But if a different union has membership of 50 per cent or more of the workers in one of those establishments, it may represent its members in purely local matters, such as grievances. The third set of obligations which are applicable to the unions provide as follows :—

The unions are not to engage in physical coercion or rowdyism and unpeaceful acts in demonstrations. There should be no union activity during working hours, unless permitted by law or agreement. Such practices as negligence of duty, careless operation, damage to property, interference with work and insubordination should be discouraged. Settlements and awards will be implemented promptly and officers and members who violate the spirit of the Code will be disciplined.

13. *Code of Conduct*.—Soon after the 16th Indian Labour Conference at which the Code of Discipline was agreed upon, the Labour Minister convened a meeting of representatives of the four Central Trade Union Organisations to discuss the problem of inter-union rivalries. The meeting agreed on a Code of Conduct by which the Officers present committed themselves and their unions to the observance of the following principles :—

- (1) Every worker shall be free to join a union of his choice without coercion ;

(2) there shall be no dual membership of unions ;

(3) Unions will function democratically and hold regular elections of Officers and executive bodies ;

(4) Unions will not exploit, the backwardness of workers, make excessive demands, appeal to caste, communal or provincial prejudice or use violence, coercion or personal abuse in inter-union dealings ;

(5) The formation or continuance of Company unions will be opposed.

14. *Verification of Trade Union Membership.*—The Indian Labour Conference of 1958 recommended that the procedure for verifying the strength of membership of unions and determining the representative character of unions be strengthened and that participation in the process by representatives of the Central trade union organisations be provided for. It may be recalled that the Code of Discipline aimed at an industrial relations system based on one representative union to an establishment and that representative status, as between two or more rival unions, goes to the union with the largest membership.

Thus, the securing of reliable information on union membership is of great importance in maintaining order and security in labour relations, in the face of bitter union rivalries. It was suggested that the verification procedure should be administered by the Labour Commissioner of the Central Government and his Regional Commissioners. Provision is made for submitting both the original membership claims put in by the four Central union organisations and the verified figures returned through the Labour Commissioner's machinery to the union organisations for their objections. These objections are reviewed and resolved, if possible, by a Committee representing the union organisations. In the course of verification, the Regional Labour Officers make spot checks of membership and they may make further investigations to check objections of rival organisations. The State Governments are expected to follow similar procedure in so far as the industries in their spheres are concerned.

15. *Third Five Year Plan.*—The Labour Chapter of Third Five Year Plan of 1961 has highlighted the importance of the Code of Discipline. It says that the Code of Discipline has stood the strain and the stress during the previous 3 years. The Plan also laid emphasis on the need for the extension of the scheme of "Joint Management Councils" to new industries and units, "so that in the course of a few years, it may become a normal feature of the industrial system."

16. *Wage Boards.*—Although the Report of the Committee on Fair Wages had recommended the establishment of Industrial Wage Boards, as far back as 1949, the first Wage Board was set up only in 1957 and this was for the Cotton Textile Industry. Between 1957-60, five more Wage Boards came to be established. In 1964, 10 more Wage Boards came to be established. Although these Wage Boards have only recommending power, the Government and the parties appeared to increasingly look upon their recommendations as binding and the Government seemed to be disposed to use its influence to obtain compliance, it being recognised on all sides that legislation is a potential means of enforcement.

It may incidentally be mentioned that till 1964 the recommendations of the Wage Boards used to be generally unanimous, but since 1964 that trend seems to have changed and increasing disagreements are coming to the surface. Thus, it may be possible that the Government may accept the majority recommendations of a Wage Board, and, where the industry does not fall in line with the decision of the Government, the Government may enforce its decision by an appropriate legislation.

17. *Industrial Truce Resolution of 1962.*—After the Chinese invaded India's borders in 1962, the Labour Minister called a meeting of employers and unions, on 3rd November 1962, to consider its implications for industry and industrial relations. The parties drew up and pledged themselves to a Resolution on Industrial Truce. The main themes of this Resolution are the paramount need to maximise production and the duties of the parties to exercise restraint and forbearance. With reference to labour relations, it was declared that "under no circumstances shall there be any interruption in or slowing down of production and that there should be maximum recourse to voluntary arbitration, especially for all complaints pertaining to dismissal, discharge and retrenchment of individual workers." In the spirit of this Resolution, Government urged the parties to create Joint Emergency Production Committees in each enterprise; and over 800 such Committees were set up. The spirit generated by the emergency arising out of the Chinese invasion waned as soon as the threat of fresh invasion receded to the background. In the 21st Indian Labour Conference held in July 1963, the Labour Minister had to acknowledge that "the spirit generated by the emergency had waned somewhat".

CHAPTER III

NEED FOR LEGISLATIVE PROVISIONS FOR STRENGTHENING THE PROCESS OF COLLECTIVE BARGAINING

From the broad survey of events made in the previous Chapter, it will appear clear that the Government of India had, in principle, accepted the goal of development of a strong, well-organised, responsible, and independent trade union movement and a genuine system of collective bargaining that required the minimum of Governmental intervention. The evolution of the above policy has passed through three distinct phases. In the first phase, arising in the wake of Independence, the Government had kept before them the model of legislative provisions prevailing in the U.S.A., for strengthening the process of collective bargaining and for prohibiting unfair labour practices which would hinder that process. The 1947 Amendment Act and the two abortive Bills of 1950 indicate the approach which Government wanted to adopt. The second phase was marked by ambivalence and the policies oscillated between making clear-cut legislative provisions for the protection of the unions right to engage in collective bargaining and laying emphasis on the need for getting disputes settled by third party coupled with the threat of benevolent intervention by Government, when necessary. In the third phase, the emphasis clearly shifted from the approach of having protective legislative provisions to a new approach, which was called a moral approach which meant that industrial relations should be governed by voluntary agreements between concerned parties. The Code of Discipline was expected to supplant the need of elaborate legislative provisions.

The first question that has to be considered is whether the Code of Discipline, which is based on moral sanctions, has been effective in strengthening the process of collective bargaining and preventing unfair labour practices. The Code of Discipline has helped to a certain extent in shaping industrial relations on proper lines. At the same time, it must be conceded that the effectiveness of the Code is not equal to the seriousness of the problems at which it is aimed. General experience shows that strong interests prevail over the moral sanctions in motivating human conduct. In all union-employer relations, as also inter-union affairs, strong interests as well as strong sentiments tend to operate and determine the course of action. A voluntary Code would not be effective in the adoption of a particular course of conduct by the employers or unions. There is abundant evidence to show that the non-observance of the Code of Discipline is wide-spread and serious. It follows that more effective sanctions are needed. The American experience has highlighted the need for three kinds of protections to the workers and their unions—

(1) Workers need to be protected against interference, restraint and coercion by employers in their union and bargaining activities. Amongst other things, Law should prohibit employers from victimising or discriminating against employees because of their union activities.

(2) The unions need to be protected against controls and interference by employers.

(3) The unions need protection against employers' refusal to bargain with them, when they qualify for bargaining.

American experience also shows that the unions should also be under an obligation to bargain in good faith with the employers. This was the protection that was devised by the Taft-Hartley Act for the employers by making the obligation to bargain collectively mutual.

It is our considered view that only the majority unions should qualify for bargaining and for the protections mentioned above. The fact that, in the Indian trade union movement, there is fragmentation and inter-union rivalries emphasises the need for only majority unions acquiring the qualification to be accredited with the right of the sole bargaining agency. In multiple union situations, care must be taken in placing limitations on the activities of trade unions, excepting the most representative union in a unit or industry. The recent Code of Discipline moved a step in this direction. It provides that to qualify for an employer's recognition, a union must have membership of at least 15 per cent. of his workers; that to qualify for recognition as the representative union throughout an industry in a local area, a union must have at least 25 per cent. of the work force in its membership and that, where two or more unions exist in an establishment, the employer should recognise the largest. But these limits are only voluntary standards, having no legal sanction. As a matter of fact, the legal rights and responsibilities of the parties are still governed by the Industrial Disputes Act, which places no limits at all on minority unions. It would thus be clear that there is a conflict between the provisions of the Code of Discipline, which has only a moral basis, and the provisions of the Industrial Disputes Act, which are enforceable. It is necessary to note that the Industrial Disputes Act permits a union of any size to make demands on an employer, carry the resulting dispute in conciliation and, at Government discretion, have it adjudicated by a Labour Court or a Tribunal. The only remedy for this situation is to amend the Industrial Disputes Act to deny industrial relations rights to all unions that do not represent more than the required minimum of the workers in their respective units.

We feel that a large number of small and weak unions would be weeded out, if bargaining rights are given to the majority unions. These unions, some of whom may even be paper organisations, are kept going either at the sufferance of the employers or because of the present conciliation and adjudication system. One possible objection to limiting the rights of minority unions is that many workers could be deprived of an opportunity of representation and for getting their grievances redressed. The reply is that there need not be any restrictions on the existence of the minority unions as such, but these minority unions should not have the right of participation in decision making and bargaining. Just consider the plight of an employer who has to deal with a number of rival unions. The employer who negotiates with one union cannot, in good

conscience, refuse to deal with the second union, a third and so on. The two or more unions are rivals trying to gain the better of each other or to drive each other out of the unit. Each wants to win the best terms or the biggest victory from the employer. The employer cannot afford to grant terms to one union that he will not give the other. And yet the employer and each union are afraid to close a bargain for fear of what the other union may do. The Indian experience clearly proves that bargaining between the employer or group of employers and two or more rival unions in the same bargaining unit is not workable.

Conclusions.—The main reasons why the Code of Discipline has not achieved the desired results are:—

(1) the principles enunciated are voluntary principles with no more force than that the parties are willing to give them; and

(2) The labour relations rights created by Industrial Disputes Act take precedence over the Code. This Act does not even mention the concept of exclusive bargaining rights or representative status for a union. It gives no preference to majority unions. It places no limits on minority unions. A registered union, no matter how small it is, no matter how many other unions there may be in the same bargaining unit, has equal access to the protections and labour relations rights provided in the Act. In other words, the Act does nothing to introduce order into union-employer relations other than to provide machinery for settlement of disputes. On the contrary, in the context of fragmentation of the Indian labour movement, the provisions of the Act have the effect of encouraging disorganised development. The only way, therefore, of introducing order is to change the old rules and introduce and enforce new rules in their stead. The prime need is to ensure that there is only one bargaining agent in a bargaining unit.

What should be the method of designating the representative union?—There is considerable difference of opinion among the parties who gave evidence before us as to the method to be followed for selecting the sole bargaining agent. The Maharashtra units of A.I.T.U.C. and H.M.S., as also some employers, have advocated the method of election by secret ballot, giving the right to vote to all workers whether they are members of any trade union or not. The American practice endorses the method of election by secret ballot with a right to vote to all workers. The Maharashtra unit of the B. M. S. has advocated the method of election, but they say that the right to vote should be restricted to the members of the Unions only. On the other hand, some trade unions, particularly the I.N.T.U.C., have contended that, in the existing conditions, it would be unwise to advocate the method of election by secret ballot. They have expressed preference for the method of verification of membership of the trade unions, more or less on the lines of the provisions contained in the Bombay Industrial Relations Act. We need not express any opinion on this highly controversial issue. Firstly, for the reason that it is not an issue which directly arises from our terms of reference. Secondly, because much can be said on both sides. We, therefore, feel that it should

be left for the consideration of the Legislature. It is also possible that the National Commission on Labour might make certain suggestions on this important point. We have, therefore, come to the conclusion that we should not say anything on this question. Our suggestions in this behalf are, therefore, only confined to the need for locating the sole collective bargaining agent and to the consequences flowing therefrom.

The Authority for designating the collective bargaining agent.—If eventually the Legislature decides in favour of adopting the method of verification for designating the sole collective bargaining agent, we feel that, in place of the present verification machinery, viz. the Labour Commissioner's Office, an Agency which is independent and not a part of the Government machinery should be set up for the purpose. Such a machinery would also be needed, even if the Legislature opts for the method of election by secret ballot. But the need for a separate machinery would be more keenly felt, if the Legislature decides upon adopting the verification method. The present method is that the membership verification is carried out by the Labour Commissioner's Office. This is based on the provisions of the Bombay Industrial Relations Act in a few industries and in others, the provisions of Code of Discipline. The method of verification was first devised in India, under the provisions of the Bombay Industrial Relations Act. This method has been in vogue since 1947. There is reason to believe that the provisions of the Code of Discipline are modelled on the pattern of the provisions of the B. I. R. Act and the rules framed thereunder. The principal objection to the method of membership verification as a means of selecting representative unions are these—

(1) Since Government Officers do the work of verification, the unions apprehend that some unions would be favoured.

(2) There is lack of precision in the meaning of union membership. Many unions collect subscription as infrequently as every six months or once a year. Waiver of entrance fees and initial subscription payment is a common practice in enrolling new members. There is much laxity about striking delinquent members off the rolls. One of the witnesses told us how the union rolls are padded in the course of a contest between rival union by entering bogus names, enrolling workers without their consent, making cash payments for signatures and so on. It was suggested to us that, under these circumstances, one is entitled to doubt the reliability of membership figures, especially in intense union rivalry situations.

(3) The most serious objection is that it does not disclose what really requires to be found. The critical fact to know in deciding whether a union or which of the two rival unions is to represent a group of workers is what the majority of these workers want. There is often a big difference between the paid up membership and the majority of the workers. The objection to the present machinery for verification, whether adopted under the Bombay Industrial Relations Act or under the Code of Discipline, will be equally applicable in the case of designating the collective bargaining agent by secret ballot.

The first two objections would be met if the power of verification is taken away from the hands of the Labour Commissioner's Office and is vested in an independent agency. The third objection is of a more fundamental character; but then there are equally strong arguments against the introduction of the system of election. That is why we are not expressing any opinion on the issue as to whether the bargaining agent should be discovered by following the method of election or by following method of verification. We are not also suggesting detailed provisions as to how and under what conditions the verification method should be applied in practice nor are we suggesting minimum percentage of membership to qualify for representative status. All that we are suggesting is that an independent agency should be set up for the purpose of designating the representative union as a sole bargaining agent. At a later stage, we will suggest that the authority for investigating and enforcing unfair labour practices should also be conferred upon this same independent agency.

CHAPTER IV

WHAT ACTIVITIES CONSTITUTE UNFAIR LABOUR PRACTICES

Historically speaking unfair labour practices have arisen out of the efforts made for strengthening collective bargaining and the need felt for prohibiting or curbing the activities indulged in by the employers and/or the unions in putting hurdles in the way of the success of collective bargaining. The discovery that was made in the course of the search for making collective bargaining a success, was the need for designating the sole bargaining agent. The representative union vested with the right of sole bargaining was found to be the lynch-pin of the system of collective bargaining. The first question, therefore, was how to designate a particular union as the sole bargaining agent. In Chapter III, we have come to the conclusion that a union, which commands the support of the majority members has the right of being declared as a representative union, having the authority to bargain with the employer collectively to the exclusion of other unions. We have refrained from expressing any opinion as to which of the two methods, viz. the election by secret ballot or the verification of membership, is more desirable in the context of the present state of trade unionism in this country. We have also indicated that the authority or the machinery, which would be set up for designating the sole or the exclusive bargaining agent should be independent of Government control.

In India, the system of designating a representative union as a sole bargaining agent has not yet been legally accepted, *excepting in some State legislations, notably the Bombay Industrial Relations Act, which are applicable to a few selected industries located within the limits of the respective States.* The connection between unfair labour practices and the attempt to discover the sole bargaining agent was too close not to attract the attention of the Government and that is why in the Amendment Act of 1947 these two aspects were closely linked with one another. The same is the case in regard to the abortive Bills of 1950. Under the American practice, the expression 'unfair labour practices' has become a term of art. The expression 'unfair labour practices' has not always been used in this country to mean certain activities connected with collective bargaining and, in particular, as activities calculated to hinder the smooth passage of discovering the collective bargaining agent. The expression has been loosely used in decisions of the Industrial Tribunals, Labour Appellate Tribunals, High Courts and the Supreme Court. Generally speaking, unjust dismissals, unmerited promotions, partiality towards one set of workers, regardless of merits, and every form of victimization have been condemned as unfair labour practices in the judicial pronouncements. In the evidence recorded before us also, we find that the phrase has been used in a wider and looser sense, so as to cover several types of activities on the part of the employers and employees as amounting to unfair labour practices. At Appendix "7" of our Report we have listed several types of activities on the

part of the employers and their organisations, unions and also individual workers or groups of individual workers, which have been cited to us by the parties as illustrations of unfair labour practices.

After a careful scrutiny, we have selected only a few of them because we are of the view that the net of unfair labour practices should not be cast too wide.

Indian Decisions on Unfair Labour Practices.—Before proceeding further, we feel it would be useful for us to refer to a few important decisions of the Tribunals and High Courts, which have dealt with and condemned certain types of activities as unfair labour practices. Most of the unfair labour practices referred to in these decisions have nothing to do with the question of collective bargaining or the incidental question of the process of discovering the exclusive collective bargaining agent. This is because developments in industrial relations in India are taking place in a context and in circumstances different from the context and circumstances prevailing in the West. In the western countries, the employers and the unions went through a long history of collective bargaining, with the result that there is a greater sense of appreciation of mutual rights and responsibilities.

The relevant cases on the question of unfair labour practices and the *ratio decidendi* in these decisions are set out below :—

(1) In *Messrs. Cox & Kings (Agents) Ltd. and their employees* (1949-I-LLJ-page 796), it was held that the discharge of 118 men on 1st November 1947 was in consequence of an unfair labour practice of the Company in falsely implicating 10 of their employees in a case of theft on absolutely no evidence.

(2) In *Rawalgaon Sugar Farm Ltd. vs. Workmen employed under it* (1949-ICR-page 353), the Tribunal at pages 355-56 observed, “a presumption as to such unfair labour practices may fairly be drawn where an employee is found to have been dispensed with for no reason whatever or for a reason which is patently false or is proved to have been false, the true reason being an indirect or ulterior motive”.

(3) In *Turner Morrison & Co. Ltd. and their workmen* (1950-II-LLJ-page 122), it was held, “the terms ‘victimization’ and ‘unfair labour practice’ have not been defined anywhere The amended Trade Unions Act enumerates some instances of unfair labour practices. Those are in connection with trade unions. Cases enumerated in the amended Trade Unions Act cannot be an exhaustive list of unfair labour practices. ‘Victimization’ has been defined in an award given by Janab Niwaj Mohamed in the case of *Mazdoor Hargaon vs. Arjun Sugar Mill* as whatever injures or illegally affects an employee. In the case of *Coimbatore Cement Works*, Shri C. R. Krishna Rao, the adjudicator, has defined the term as the taking of some action prejudicial to the workers on some pretext other than the real reason. In my opinion, any order made in bad faith with an ulterior motive, arbitrarily or with harshness, is an instance of unfair labour practice. Some of the adjudicators appear to have taken a restricted view of the

term 'unfair labour practice'. They appear to have proceeded on the definition of the term given in the National Labour Relations Act of U.S.A. Trade unions are much more advanced in America than in India Trade unions in India are still in infancy. They have not as yet been able to command the same respect as those in America and other industrially-advanced countries. Very few of the employers in India are agreeable to recognise the unions of their employees. I do not propose to analyse the reasons. The fact remains that so far as the National Labour Relations Act of U.S.A. indicates that the Board is clothed with limited powers. It is to decide the disputes about representation of employees in matters of collective bargaining and to prevent unfair labour practice as defined in the Act. The whole policy of the Act is to protect the rights of employees to organise and bargain collectively The industrial disputes on other points have been left to collective negotiation and bargaining."

(4) In *J. K. Eastern Industries Ltd. and their workmen* (1951-I-LLJ-page 44) the Tribunal pointed out that to establish an unfair labour practice, it must be shown that the employee concerned was victimised for trade union activities or that the employer terminated the employment in bad faith with an ulterior motive or committed an encroachment on any natural, contractual, statutory or legal rights of the employees.

(5) In *the Singer Sewing Machines Co. and their workmen in Madras* (1951-I-LLJ-page 304), the Tribunal found that two of the employees were not promoted to higher posts in the Company in view of their union activities and the Tribunal directed their promotion with retrospective effect.

(6) In *Sri Janakiram Mills Ltd., Rajapalayam and their workmen* (1951-I-LLJ-page 357), the Tribunal held that the dismissal of the worker was an instance of unfair labour practice, being unjustifiable, and ordered reinstatement with compensation.

(7) In *India Cycle Manufacturing Co. Ltd. and their workmen* (1951-I-LLJ-page 390), the Tribunal held that it was open to the union to prove that the discharged employees indulged in trade union activities and may further show that the discharge was not *bonafide* or regular but it cannot show what exactly was at the back of the mind in discharging of employees. Once the initial burden was discharged, it was upto the Company to show that there was no evil motive behind the discharge and that the discharge was fair and square.

(8) In *Mahaluxmi Cotton Mills and their workmen* (1951-I-LLJ-page 498), it was held that the discharge of the President of the employees' union was an instance of unfair labour practice and his reinstatement was ordered.

(9) In *Eastern Plywood Manufacturing Co. Ltd. and their workmen* (1951-I-LLJ-pages 665-66), it was held that attempt to discharge a worker to avoid payment of compensation under the Workmen's Compensation Act as also discharge on unproved allegations of absence without leave are instances of unfair labour practices.

(10) In *the Bank Line (India) Ltd. and their workmen* (1952-I-LLJ-pages 215-16), the Tribunal found that the employers took advantage of the strike by the tally clerks to abolish the work of tally clerks, done directly under the Company and to delegate such work to the contractors ; that such action, in the circumstances, amounted to bad labour practice. The Tribunal directed the Company to resume the work directly under itself when the contract was terminated.

(11) In *India Paints, Colour and Varnish Co. Ltd. and their workmen* (1952-I-LLJ-page 410), it was held that the workers were victimised for trade union activity and reinstatement of the said workers was ordered. In the course of the award, the West Bengal Tribunal observed, "victimization and unfair labour practices are like twins who cling together. According to some, unfair labour practices can stand by itself but victimization must always keep company with unfair labour practices where punishment is inflicted on any employee for his trade union activities, we call it an instance of victimization."

(12) In *Indian Bank Ltd. and their workmen* (1953-I-LLJ-page 230), the Tribunal held that the attitude of the Bank was that the policy of the Directors, right or wrong, must be followed and cannot be questioned, even if it causes hardship and inconvenience to the staff or public and this by itself constitutes unfair labour practice and shows want of good faith.

(13) In *J. K. Cotton Spinning and Weaving Mills Co. Ltd. and their workmen* (1953-II-LLJ-page 257), the Labour Appellate Tribunal held "even if there was no technical violation of the standing orders, where the haste with which and the circumstances in which the orders dismissing workmen were passed show that the management's action is vindictive, perverse and capricious, it must be held that the standing orders were used as a cloak for unfair labour practice."

(14) In *Edward Keventer Ltd., Calcutta and S. C. Neogi* (1955-I-LLJ-page 568), it was held that the order of transfer was not *bonafide* and it amounted to unfair labour practice. The action of transfer was taken under the pretext of the implementation of the award, which provided that the Assisnt Secretary of the union, who had been dismissed by way of victimisation, should be re-instated.

(15) In *India Machinery Mazdoor Union and India Machinery Co. Ltd.* (1956-II-LLJ-page 408), some workmen of the Company staged a stay-in-strike under instructions from the President of their Union. Subsequently, the Management refused to give work to the participants in such strike, unless they signed a good conduct bond, which *inter alia* contained an admission that the strike was staged at the instigation of others, apparently referring to the President of the Union. The concerned workmen refused to sign such bond. "The insistence by the Management to get such admission from the workmen must be held to amount to unfair labour practice and hence the refusal by the concerned workmen to sign such bond must be held to be justified. Hence the refusal by the Management to give work to such workmen could not be held justified and they must be held to be entitled to compensation for the period of such forced unemployment."

(16) In *L. H. Sugar Factory and Oil Mills Private Ltd., Pilibhit and State of Uttar Pradesh* (1961-I-LLJ-page 686), Justice S. S. Dhavan of the Allahabad High Court observed, "it is a necessary corollary of this twin policy of industrial peace and economic justice that the State shall discourage any attempt by the employer to undermine the strength of the trade unions, which enable the workmen to negotiate with the employers from a position of equal strength. Without the trade unions, there can be no collective bargaining or settlement of industrial disputes by conciliation or arbitration.

The argument that there can be no unfair labour practice in the sphere of promotions, as no worker has a right to be promoted, is based on a complete misapprehension of the nature and purpose of unfair labour practice. An employer who is short-sighted enough to view the trade union of his workmen as an opponent may try to weaken it by purchasing the loyalty of some of the workmen by undeserved promotions or setting up a rival union and thus creating disunity in the labour ranks. Wrongful dismissal is not the only form of unfair labour practice which can take a variety of shapes, and it is not possible to define it or confine it within narrow limits. What is unfair labour practice or victimisation is a question of fact to be decided by a labour tribunal upon the circumstances of each case. Unjust dismissal, unmerited promotion, partiality towards one set of workers regardless of merits, are illustrations of unfair labour practice. If an employer deliberately uses his power of promoting employees in a manner calculated to sow discord among his workmen, or to undermine the strength of their union, he is guilty of unfair labour practice.

Hence, it must be held that a Labour Court or Tribunal could enquire whether a number of promotions made by an employer amounted to unfair labour practice or victimisation."

(17) In *Eveready Flash Light Co. and Labour Court, Bareilly and others* (1961-II-LLJ-page 204), Justice S. S. Dhavan of the Allahabad High Court observed "the meaning of the expression 'unfair labour practice' in the context of industrial law could not be restricted to cover the categories of conduct mentioned in the provisions of Section 28J of the Indian Trade Unions (Amendment) Act (XLV of 1947). The provisions of the said Act have not yet been brought into force. Even assuming that the said provisions reflected the mind of the legislature at the time of passing of that Act, it was intended to apply only for the purposes of that Act and no further. The purpose was to regulate the relations between the employer and the trade unions and it was provided that in his relations with the trade union the employer must not do anything which was calculated to weaken the trade union. But the definition of 'unfair labour practice' in Section 28K has no application in the matter of the employer's relations with his individual employees. The Act was not intended to regulate the employer's relations with the employees arising out of the terms of employment which is the purpose of the Trade Disputes Act.

Furthermore, the weight of authority is against the argument that unfair labour practice should be limited to any act discouraging trade union activities. It has been held in several cases that the employer who lays off workers with the object of depriving them of their legitimate dues, or makes his workmen sign on temporary contracts and compels them to work for years on permanent jobs, with the object of depriving them of the status and the privileges of permanent workers, is guilty of unfair labour practice. Unfair labour practice would arise even out of a single transaction and the Labour Court has power to give a finding even on the basis of one act of the employer. It is in the public interest that even a single act of an employer should be condemned, if it amounts to an unfair labour practice, for the policy of the legislature is to weed out any such practice before it has spread and become a danger to the industrial peace.

Further the dividing line between victimisation and unfair labour practice is very thin and what is unfair labour practice might also be a victimisation and *vice versa*.”

(18) *In Raza Textiles Ltd. and Kishorilal Sharma and others* (1966-I-LLJ-page 605), the Allahabad High Court held that victimisation is a question of fact. When on the existing facts Labour Court forms an opinion that there was victimisation, the High Court will not interfere with the findings under Article 226.

(19) *In Lakshmi-Saraswathi Motor Transport Company and Labour Court, Madras and another* (1967-II-LLJ-page 118), the services of a Motor-driver with seventeen years of service without any adverse remarks were terminated, after a domestic enquiry by the management. The charge against him was that he wantonly disobeyed the orders of his superiors in that there was one day's delay in transmitting a parcel containing a paper from a branch office of the company to the head office, a fault which he admitted from the very beginning and pleaded forgetfulness in extenuation. The Labour Court held that the punishment was grossly out of proportion and it amounted to victimisation. The Madras High Court held that the circumstances of this case warranted application of the principle laid down by the Supreme Court in *Hind Construction and Engineering Company Ltd. v. their workmen* (1965-I-LLJ-page 462), viz. “where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record, or is such as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment itself as showing victimisation or unfair labour practice”.

(20) *In the Firestone Tyre and Rubber Company of India Ltd., Bombay and Bhoja Shetty and another* (1953-I-LLJ-page 599), it was contended on behalf of labour that go-slow tactics were as much a recognised weapon as a strike for the purpose of compelling the employers to yield to their demands. The Labour Appellate Tribunal of India (at Bombay), however, observed that “this is a view which we cannot accept. Slowdown is an insidious method

of undermining the stability of a concern, and Tribunals certainly will not countenance it. In our opinion it is not a legitimate weapon in the armoury of labour. Furthermore, while the right to strike under certain conditions has been recognised by necessary implication under the Industrial Relations Act and is controlled by its provisions, go-slow has been regarded by labour legislation as a misconduct. It has been so designated in the model standing orders which have been appended to the relevant enactment, namely, the Industrial Employment (Standing Orders) Act, 1946, Section 3 (2) whereof requires the Standing Orders of a concern to be in conformity with the model standing orders as far as practicable."

(21) In *Bharat Sugar Mills Ltd. and Jai Singh and others* (1961-II-LLJ-page-644), the Supreme Court observed that "Go-slow", which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontented or disgruntled workmen sometime resort to. It would not be far wrong to call this dishonest. For, while thus delaying production and thereby reducing the output, the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, "go-slow" is likely to be much more harmful than total cessation of work by strike. For, while during a strike much of the machinery can be fully turned off, during the "go-slow" the machinery is kept going on at a reduced speed, which is often extremely damaging to machinery parts. For all these reasons "go-slow" has always been considered a serious type of misconduct".

(22) In *Jay Engineering Works Ltd. vs. State of West Bengal* (I.L.R. 343 of 1967), the Calcutta High Court observed that "a gherao is the physical blockade of a target, either by encirclement or forcible occupation. The target may be a place or a person or persons, usually of the managerial or supervisory staff. The blockade may be complete or partial but if it is accompanied by assault, criminal trespass, mischief to person or property, unlawful assembly and various other criminal offences used as a coercive measure on controllers of industry to force them to submit to the demands of the blockaders, such a gherao is violative of the provisions of the Constitution and is unlawful. All workmen who are guilty of wrongfully restraining any person belonging to management, or wrongfully confining him during a "gherao" are guilty under Section 339 or 340 of the Indian Penal Code and have committed offences for which they are liable to be arrested without warrant and punishable with simple imprisonment or fine, or both. Where there is concerted intention to commit an offence, it amounts to criminal conspiracy under Section 120-A of the Indian Penal Code and is not saved by Section 17 of the Trade Unions Act, 1926". The Calcutta High Court went on to say in the same case that "in our view to justify "gheraos" is to justify lawlessness. To justify "gheraos" on grounds of workers' grievances is to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order, which lie at the foundation of Society"

Comments on the decisions.—We have considered all the decisions that we could lay our hands on, relating to the instances which were held to amount to unfair labour practices or victimisation. It is only the principle enunciated in these cases, which need to be recognised by the legislation. The observations in some of the decisions, besides being *obiter dicta*, are too vaguely and widely worded. For instance, in *Eveready flash Light Co. v. Labour Court, Bareilly and others* (1961-II-LLJ-page-209), Justice Dhavan observed “it was not possible to give an exhaustive definition of the phrase ‘unfair labour practice’ and that each question must be considered according to its own circumstances.” Further, in the same case Justice Dhavan held that “It is not possible to lay down any exhaustive test of ‘unfair labour practice’ but as a working principle, I would hold that any practice which violates the principles of Article 43 of the Constitution and other articles declaring decent wages and living conditions for workmen and which, if allowed to become normal would tend to lead to industrial strife, should be condemned as an unfair labour practice”. While we are inclined to agree with the first part of these observations, we are unable to accept the latter part, viz. “that every practice that violates the principles of article 43 of the Constitution and other articles declaring decent wages and living conditions for the workmen must be condemned as an ‘unfair labour practice.’” This will make the description of the expression ‘unfair labour practice, too wide and imprecise. On the other hand, the observations of Justice Dhavan in *L. H. Sugar Factories and Oil Mills Ltd. v. State of Uttar Pradesh and others* (1961-I-LLJ-pages-687-88) to the effect that “Wrongful dismissal is not the only form of ‘unfair labour practice’ which can take a variety of shapes and, therefore, it is not possible to define it or to confine it within narrow limits. What is ‘unfair labour practice’ or victimisation is a question of fact to be decided by Labour Tribunals upon the circumstances of each case. Unjust dismissals, unmerited promotions, partiality towards one set of workers regardless of their merits are some illustrations of ‘unfair labour practice.’ If an employer deliberately uses his power to promote employees in a manner calculated to sow discord amongst his workmen, or to undermine the strength of the union of his workmen, he is guilty of committing ‘unfair labour practices’”, are relevant and deserve serious consideration. The passage contains some clear illustrations of unfair labour practices. We, however, do not consider that the list is exhaustive.

Under our terms of reference, we are expected.—

(i) to define which activities on the part of employers and workers and their organisations should be treated as unfair labour practices ; and

(ii) to suggest what action should be taken against the employers or the workers or their organisations, as the case may be, for committing such unfair labour practices.

How to define Unfair Labour Practices.—We propose to deal with second term of our reference in the next Chapter. So far as the first term of our reference is concerned, we must begin by pointing out that it is difficult to define the expression ‘unfair labour practice’. What is an unfair labour practice in one context

and in one set of circumstances may not amount to an unfair labour practice in a different context and a different set of circumstances. What would constitute an unfair labour practice would depend upon many factors such as.—

- (a) the state of trade union organisation ;
- (b) the capacity for collective bargaining;
- (c) the outlook of the management; and
- (d) the outlook of the trade unions.

Although in the U.S.A., the expression 'unfair labour practice' has acquired a technical meaning, in India, unfair labour practice would embrace a variety of circumstances and it could not remain confined merely to the questions of collective bargaining or to the incidental question of discovery of the collective bargaining agent. A reference to the judicial decisions makes it clear that the phrase "unfair labour practice" has been used in a general way and not as having a specific relation with the question of finding out a bargaining agent. In *Eveready Flash Light Co. v. Labour Court, Bareilly and others* (1961-II-LLJ-Page-204), it was argued before Justice Dhavan that the term unfair labour practice, should be given a restricted meaning. In support of this argument, reliance was placed on the definition of the term unfair labour practice as contained in the Indian Trade Unions (Amendment) Act, 1947. It was contended that the unfair labour practice, as defined under section 28-J and 28-K of the Act were exhaustive. Justice Dhavan in repelling this argument pointed out that in the first place, the Act had never come into force and in the second place that list of 'unfair labour practice' under the Act could not be considered as exhaustive, because the purpose of those provisions were to regulate the relations between the employers and the organised trade unions and it was in the context of their relations with the trade unions that the employer must not do anything which was calculated to weaken the trade union. He further observed that the definition of 'unfair labour practice' in the Act had no application in the matter of employer's relations with the individual employees and that the Act did not seek to regulate the employer's relations with his employees arising out of their employment, which was the purpose of the Industrial Disputes Act. He went on to point out that there is no valid decision by the Supreme Court of India on what may be regarded as 'unfair labour practice'.

It would appear from the above discussion that the law relating to unfair labour practice in India has grown out of the exigencies of the situation and the circumstances in specific cases and is, therefore, necessarily unsystematic. Time has, therefore, now come to systematise the law relating to unfair labour practice on sound and scientific lines and in the context of the conditions prevailing in this country. At the same time, it must be stated that it is not possible to define the expression 'unfair labour practice' with logical precision for the simple reason that it covers a large category of cases under its umbrella. Even so, it is necessary to give a workable description of the expression 'unfair labour practice' and to illustrate the same by giving examples. Since we are expected to make proposals for curbing the unfair labour practices and to suggest steps for remedying the circumstances created by such practices, it is necessary to describe

as clearly as possible the scope of unfair labour practices and to give specific illustrations for that purpose. As observed by Butler in "Labour Economics and Institutions" (Macmillan & Co.-New York, page 270), "Unfair labour practices are and must be written in a very broad language since they deal with such a dynamic area of human activity."

We are driven to the conclusion that it is not possible to give any logical or clear-cut definition of the expression 'unfair labour practice.' We must, therefore, content ourselves by describing 'unfair labour practices' with reference to illustrations*. With that end in view, we have prepared three lists of unfair labour practices, which are sufficiently exhaustive. The first list deals with unfair labour practices on the part of the employers or managements. The second list relates to the unfair labour practices on the part of the trade unions. The third list describes general unfair labour practices, which are not necessarily connected with collective bargaining but which have come to light in the course of experience and illustrated by judicial decisions.

Unfair labour practices shall mean and include the practices mentioned in the three lists, I, II and III below :

LIST NO. I

Unfair Labour Practices on the part of the employers.

1. To interfere with, restrain or coerce employees in the exercise of their right to organise, form, join or assist a trade union and to engage in concerted activities for the purpose of mutual aid or protection, that is to say.—

(a) threatening employees with discharge or dismissal, if they join a union

(b) threatening a lock-out or closure, if a union should be organised;

(c) granting wage increase at crucial periods of union organisation with a view to undermining the efforts of organisation.

2. To dominate, interfere with, or contribute support-financial or otherwise—to any union, that is to say—

(a) an employer taking an active interest in organising a union of his employees ; and

(b) an employer showing partiality or granting favour to one of several unions attempting to organise or to its members.

Note.—This will not affect rights and facilities, if any (arising out of the fact of recognition of recognised unions.

*The Chairman is reminded of the efforts of the Butler Committee appointed by the British Government in the 1930's to define "paramourncy". The Committee expressed their inability to do so and contented by saying "paramourncy must remain paramournt".

3. To establish employer sponsored unions.
4. To encourage or discourage membership in any union by discriminating against any employee, that is to say—
 - (a) discharging or punishing an employee because he urged other employees to join or organise a union ;
 - (b) refusing to reinstate an employee because he took part in a lawful strike ;
 - (c) changing seniority rating because of union activities ;
 - (d) refusing to promote employees to higher posts on account of their union activities ;
 - (e) giving unmerited promotions to certain employees, with a view to sow discord amongst the other employees or to undermine the strength of their union ;
 - (f) discharging office-bearers or active union members on account of their union activities.
5. To discharge or discriminate against any employee for filing charges or testifying against an employer in any enquiry or proceedings relating to any industrial dispute
6. To refuse to bargain collectively in good faith with the union certified as a collective bargaining agent.
7. To coerce employees through administrative measures, with a view to secure their agreements to "voluntary" retirements.

LIST No. II

Unfair Labour Practices on the part of the Trade Unions

1. For the union to advise or actively support or to instigate an irregular strike or to participate in such strike.

Note.—'An irregular strike' means an illegal strike and includes a strike declared by a trade union in violation of its rules or in contravention of its conditions of recognition or in breach of the terms of a subsisting agreement, settlement or award.

2. To coerce workers in the exercise of their right to self-organisation or to join unions or refrain from joining any union, that is to say—

- (a) for a union or its members to picket in such a manner that non-striking workers are physically debarred from entering the work-place ;
- (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workers or against managerial staff.

3. To refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of a bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions as will-full "go slow" or squatting on the work premises after working hours or "gherao" of any of the member of the managerial staff.
6. To stage demonstrations at the residence of the employers or the managerial staff members.

LIST No. III

General Unfair Labour Practices

1. To discharge or dismiss employees :—
 - (a) by way of victimisation ;
 - (b) not in good faith but in the colourable exercise of the employer's rights ;
 - (c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence ;
 - (d) for patently false reasons ;
 - (e) on untrue or trumped up allegations of absence without leave ;
 - (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste ;
 - (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to shockingly disproportionate punishment.
 - (h) to avoid payment of statutory dues.
2. To abolish the work being done by the employees and to give such work to contractors as a measure of breaking a strike.
3. To transfer an employee *malafide* from one place to another under the guise of following management policy.
4. To insist upon individual employees, who were on legal strike, to sign a good conduct-bond as a pre-condition to allowing them to resume work.
5. To show favouritism or partiality to one set of workers, regardless of merit ;
6. To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workers.
7. To encroach upon contractual, statutory, or legal rights of the other party, by either party.

Note.—The word "employee" used in the List No. III above does not include an employee whose duties are essentially managerial.

CHAPTER V

ENFORCEMENT OF THE PROVISIONS RELATING TO UNFAIR LABOUR PRACTICES

We now come to a discussion of the second term of our reference, *viz.* "to suggest what action should be taken against the employers or the workers or their organisation, as the case may be, for committing such unfair labour practices." We have suggested a comprehensive legislation for a two-fold purpose, *viz.*—

1. Granting recognition to a representative union, which would be clothed with the authority of exclusive bargaining rights. The provision for recognition of the representative union should also lay down the rights and obligations on both employers and trade unions concerned and specify the period, say two years for which such recognition should remain valid.
2. Describing by illustrations various unfair labour practices under three lists as follows.—
 - (i) List I—Unfair labour practices on the part of employers;
 - (ii) List II—Unfair labour practices on the part of the unions and group of workers; and
 - (iii) List III—Unfair labour practices of a general nature.

It is equally necessary that an appropriate machinery for the enforcement of both sets of rules under the Statute is devised.

There are two ways of declaring and recognising the representative union, which would be the exclusive collective bargaining agent. One is the method of election by secret ballot under which all the workers, irrespective of whether they are members of one union or the other, should have a right to vote and elect a representative union. The other is to follow the method of verification of membership strength, on the lines stated in Chapter III of the Bombay Industrial Relations Act, 1946 or the provisions of the Code of Discipline. In either case, the minimum percentage, which will entitle a union to secure the status of recognition will have to be laid down by law. The object being to find out a single representative bargaining agency, there should not be different unions with different status in the same bargaining unit. There should be one and only one union which acts as a sole bargaining agent on behalf of the workers. Therefore, it is enough if a minimum percentage is fixed for the purpose of finding out the representative union to be recognised as a sole bargaining agent.

Another question which will have to be considered is whether the representative status should be accorded to the union unit-wise or industry-wise. At present, in Maharashtra State, under the provisions of the Bombay Industrial

Relations Act, 1946, certain unions have been recognised as having representative status industry-wise. It is difficult to lay down as a general rule that in every local area recognition should be accorded to unions only on the basis of industry. There are some industries which are so heterogeneous and diversified that no standardisation is possible. In such cases, recognition will have to be granted unit-wise or plant-wise. Industries which are well organised and have a tradition of industry-wide settlements can be recognised as bargaining units for the purpose of collective bargaining. On the other hand, where there is a well-settled tradition of settling industrial disputes at the unit level, such unit can be recognised as a bargaining unit for the purpose of recognition. In the same way, a Company having a number of establishments can be taken as a bargaining unit, in accordance with the past practice, if any. We do not, therefore, propose to make any categorical suggestion as to on what basis recognition should be granted on the basis of industry or on the basis of unit or plant. This question will have to be left for the consideration of the Authority presiding over the machinery (which we are proposing) for granting recognition. Such a machinery would be necessary, where the method for selecting the representative union is that of secret ballot or verification.

We have pointed out that certain objections have been voiced from certain quarters to the method of verification. It is because of these objections that certain sections are not favourably disposed to the adoption of the verification method. We, therefore, feel that it is necessary to remove the grounds on which these objections are based. The best way of doing this is to devise a statutory machinery which will be independent from Government and free from its influence. Even for the purpose of election by secret ballot, similar type of machinery is needed, i.e. a machinery, which is independent of Government and owes its existence to a Statute. The analogy of Election Commission would be of considerable assistance. We also think that there should be one machinery for fulfilling the double purpose, viz. one for according recognition and the other for enforcing the provisions relating to unfair labour practices. This machinery should be statutory and must function as an autonomous body. It was suggested by some members that the function of according recognition, which is in the nature of administrative work should be entrusted to an Administrator and the work of enforcement of the provisions relating to unfair labour practices should be entrusted to a person of judicial experience and background. The majority of the Members, however, feel that, although the work of granting recognition partakes of administrative character, it is not purely of an executive type. In granting recognition the Authority has to weigh the pros and cons of the situation, has to analyse and sift facts and then draw certain conclusions. The nature of the work, therefore, would be both administrative and judicial. It would, therefore, be advisable to entrust both types of work to a statutory body presided over by an officer of judicial status. The general feeling was that this two-fold work should be entrusted to the President of the Industrial Court. It is the considered view of the Committee that the Presiding Authority to whom this work is to be entrusted should either be a sitting Judge of the High Court or a retired Judge of the High Court. Requisite staff with requisite experience, including experience in the management of industry and in the matter of verification or election (whatever it may

be) should be placed under the Presiding Authority who can be styled as the Chairman of the statutory body. The Presiding Authority should be given freedom to evolve the machinery and staff suitable to meet the requirements of the situation.

So far as the enforcement of the provisions relating to unfair labour practices is concerned, the machinery will naturally fall into two parts, one will be the investigating part and the other will be the decision making part. The work of investigation should be carried out by the members of the staff, who will be responsible to the Presiding Authority. The investigating staff would submit reports to the Presiding Authority. The procedure in the matter of investigation should be roughly as follows:

Proceedings would be initiated by a complaint. The complaint may be made either by a recognised union or by a registered trade union (with the permission of the Presiding Authority) or by the aggrieved employee or by the employer, as the case may be. The complaint would be made in the regional office in the area in which the unfair labour practice has taken place. An officer from the regional office may visit the plant, where the violation has allegedly taken place. He may be able to settle the case in an informal manner so that no further action may be needed. Again a case may be settled by adjustment, withdrawal or dismissal. The Committee hopes that overwhelming majority of cases would be terminated at this point and at this level. The Presiding Authority may evolve a suitable mechanism for investigation, settlement and/or for making a report. It may perhaps be advisable that for each regional office a person of legal background and administrative experience may be appointed for forming the view as to whether there is a *prima facie* case. If he is satisfied that there is a *prima facie* case he may submit a report to the Presiding Authority. The Presiding Authority should have the same powers as those of Civil Courts in trying charges relating to unfair labour practices. The Presiding Authority must also be given the power of granting temporary restraining orders (injunctions) in connection with unfair labour practices. He should also have powers to grant a direction to the offending party that the *status quo* should not be disturbed pending the hearing of the case, without the express permission of the Authority. The Presiding Authority, after taking such evidence and after giving a hearing to both the parties, should pronounce a decision, which would be binding on both the parties. At the end of the trial, the Presiding Authority may issue a mandate or direction calling upon the delinquent parties to "cease and desist" from the unfair labour practices committed by them and to issue such further orders, as it deems appropriate, in the circumstances of the case. If the party does not comply with the order within a specified time it would be open to the Presiding Authority to hold the delinquent party in contempt. If the Presiding Authority finds the party guilty of contempt, it may inflict such punishment, as it deems appropriate, including imprisonment to the extent of three months or a fine, which may extend to Rs. 5,000. The Presiding Authority should also be given the power of ordering reinstatement of a discharged worker with back wages, whenever found necessary. The decision of the Presiding Authority shall be final and there shall be no appeal therefrom.

Limitation for filing complaint in the Regional Office should be 180 days from the alleged commission of the act of unfair labour practice.

The above proposals should be put in a legislative form by a suitable enactment. The Act should make it clear that the remedy, which an aggrieved party may have under any of the existing provisions of law is superseded and the only remedy available to him is the one provided by the new Act. It is also necessary to make suitable amendments in the Industrial Disputes Act, 1947 and the Bombay Industrial Relations Act, 1946. Since the Industrial Disputes Act, 1947 is a Central Legislation and since labour is a subject falling in the Concurrent List, the amendments that would be proposed in consequence of the new enactment, as also some of the provisions of the new enactment, would require the assent of the President of India. The State Government, therefore, should recommend to Central Government to carry out necessary amendments in the Industrial Disputes Act, 1947 or the Trade Unions Act, 1926, as the case may be. The State Government should also recommend to the Central Government to pass a Legislation on the lines of the proposals made by us in this Report in respect of the recognition of a trade union as the sole bargaining agent and also in respect of the unfair labour practices, so that the law governing industrial relations would be uniform in the whole of India.

CHAPTER VI

SUMMARY OF RECOMMENDATIONS

1. The unfair labour practices have arisen in the process of collective bargaining. They cannot, therefore, be considered in isolation and away from the context of collective bargaining. In fact, they indicate the various measures required to be taken for removing the obstacles in the way of collective bargaining.

2. Time has now come to systematise the law relating to "unfair labour practices" on sound and scientific lines and in the context of the conditions prevailing in this country.

3. It is, however, not possible to define the expression "unfair labour practice" with logical precision for the simple reason that it covers a large category of cases under its umbrella. What is "unfair labour practice" in the context of one set of circumstances may not amount to "unfair labour practice" in a different context and in a different set of circumstances. Even so, it is necessary to give a workable description of the expression of "unfair labour practice" and to illustrate the same by giving examples.

4. "Unfair labour practices" shall mean and include the practices mentioned in the three Lists, viz. Lists I, II and III given at pages 49 to 51 of our Report.

5. A comprehensive legislation for a two-fold purpose, viz. :—

(i) granting recognition to a representative union, which should be clothed with the authority of bargaining rights; and

(ii) describing by illustration the various "unfair labour practices" under the three lists given at pages 49 to 51 of our Report should be enacted. Provision should be made in this legislation laying down rights and obligations on both the employers and the trade unions concerned and also specifying the period, say two years, for which the recognition should remain valid. A union which commands the support of the majority members should have the right of being declared as a representative union, having the authority to bargain with the employer collectively to the exclusion of other unions. A minimum percentage of membership should be fixed for the other purpose of finding out the representative union to be recognised as a sole bargaining agent.

6. We do not propose to make any categorical suggestion as to on what basis recognition should be granted to a union, i.e. whether on the basis of industry or on the basis of unit or plant. This question will have to be left for the consideration of the authority presiding over the machinery for granting recognition.

7. We think that a statutory machinery, which will be independent from Government and free from its influence, should be devised for according recognition to unions. This machinery should be statutory and should fulfill the dual purpose, viz. one for according recognition to unions and the other for enforcing provisions relating to unfair labour practices. This machinery must function as an autonomous body.

8. It is our considered view that the Presiding Authority of this machinery should be either a sitting Judge of the High Court or a retired Judge of the High Court.

9. Requisite staff with necessary experience in the matter of verification or election (whatever it may be) procedures should be placed under the Presiding Authority, who may be styled as the Chairman of the statutory body.

10. The Presiding Authority should be given freedom to evolve the machinery and the staff suitable to meet the requirements of the situation.

11. The statutory machinery will consist of two parts—one will be the investigating part and the other will be the decision making part. The work of investigation should be carried out by the members of the staff, who will be responsible to the Presiding Authority.

12. The procedure in the matter of investigation should be roughly as follows : Proceedings would be initiated by a complaint. The complaint may be made either by a recognised union or by a registered trade union (with the permission of the Presiding Authority) or by the aggrieved employee or by the employer, as the case may be. The complaint would be made in the Regional Office in the area in which the unfair labour practice has taken place. An officer from the Regional Office may visit the plant, where the violation has allegedly taken place. He may be able to settle the case in an informal manner so that no further action may be needed. Again, a case may be settled by adjustment, withdrawal or dismissal. The Presiding Authority may evolve a suitable mechanism for investigation, settlement and/or for making a report.

13. If the officer from the Regional Office is satisfied that there is a *prima facie* case, he may submit a report to the Presiding Authority.

14. The Presiding Authority should have the same powers as those of Civil Courts in trying charges relating to unfair labour practices. The Presiding Authority must also be given the power of granting temporary restraining orders (injunctions) in connection with unfair labour practices. It should also have powers to grant a direction to the offending party that the *status quo* should not be disturbed pending the hearing of the case, without the express permission of the Authority.

15. The Presiding Authority, after taking such evidence and after giving a hearing to both the parties, should pronounce a decision, which would be binding on both the parties. At the end of the trial the Presiding Authority

may issue a mandate or direction calling upon the delinquent parties to "cease and desist" from the unfair labour practices committed by them and to issue such further orders, as it deems appropriate in the circumstances of the case.

16. If the party does not comply with the order within a specified time, it would be open to the Presiding Authority to hold the delinquent party in contempt. If the Presiding Authority finds the party guilty of contempt, it may inflict such punishment, as it deems appropriate, including imprisonment to the extent of 3 months or a fine, which may extend to Rs. 5,000. The Presiding Authority should also be given the power of ordering reinstatement of a discharged worker with back wages, whenever found necessary. The decision of the Presiding Authority shall be final and there shall be no appeal therefrom.

17. Limitation for filing complaints in the Regional Office should be 180 days from the alleged commission of the act of unfair labour practice.

18. The legislation of unfair labour practices should make it clear that the remedy, which an aggrieved party may have under any existing provisions of law is superseded and the only remedy available to him is the one provided by the new legislation.

19. It is also necessary to make suitable amendments in the Industrial Disputes Act, 1947 and the Bombay Industrial Relations Act, 1946. Since the Industrial Disputes Act, 1947 is a Central legislation and since labour is a subject falling in the Concurrent List, the amendments that would be proposed in consequence of the new enactment, as also some of the provisions of the new enactment, would require the assent of the President of India.

20. The State Government should, therefore, recommend to the Central Government to carry out necessary amendments in the Industrial Disputes Act, 1947 or the Trade Union Act, 1926, as the case may be.

21. The State Government should also recommend to the Central Government to pass a legislation on the lines of the proposals made by us in respect of the recognition of a trade union as the sole bargaining agent and also in respect of the unfair labour practices, so that the law governing industrial relations would be uniform in the whole of India.

CHAPTER VII

ACKNOWLEDGEMENTS

We are grateful to all the employers, including the Public Sector Undertakings and the Municipal Corporations, Associations of Employers, all the Trade Union Organisations, including the individual Trade Unions, Central Organisations of Labour, Research Institutions and independent persons, who willingly responded to our request and sent in their replies to our Questionnaire and submitted Memoranda to us, giving their considered opinions and views on the various problems assigned to us and for furnishing us with the available and necessary data in regard thereto. We are thankful to the Indian Merchants' Chamber, Bombay and the Mahratta Chamber of Commerce and Industry, Poona, for allowing us the facilities of holding our Meetings and also our oral evidence recording Sessions in their premises and for their hospitality in making all the necessary arrangements in regard thereto. We are also thankful to the Commissioner of Labour and Director of Employment, Bombay in whose Office premises our Secretariat was housed, for sparing us additional staff from his Office, whenever required by us, to meet with the extra pressure on our Secretariat, and for making available to us the necessary stationery articles for the execution of our task. We must record here our deep sense of appreciation of the secretarial work done by the staff of the Office of the Commissioner of Labour and Director of Employment, Bombay, in connection with our assignment. We are profoundly grateful to these persons, viz., Sarvashri M. V. Saudikar, Government Labour Officer ; S. M. Bhade, Librarian; S. M. Rahim, Sr. Labour Investigator ; P. G. Pandit and Y. G. Darne, Jr. Labour Investigators; for processing and analysing the data received by us and preparing various statements and tables required by us in the execution of our job. Sarvashri R. D. Joshi, N. M. Sardar, A. J. Kulkarni, A. K. George and A. Premchandran, Stenographers did an extremely good job with their stenographic work, particularly Shri Kulkarni, who practically single handedly took down the entire dictation of our Draft Report and typed out the same. All these staff members willingly and untiringly worked for us throughout our tenure, even by sitting late hours and by working on Sundays and holidays, without expecting any reward. But for the sincerity, hard work and devotion to duties of these staff members, we would not have been in a position to complete our assignment, with the required degree of efficiency and speed within the stipulated time-limit.

Finally, we conclude our Report with the expression of the hope that, if our recommendations go even in a small way to bring about some orderliness in the present state of industrial relations and unfair labour practices, we feel that we will have more than fulfilled our expectations in regard thereto.

Sd./—

(V. A. NAIK)

Chairman

(Sd.)

(GEORGE FERNANDES), M.P.

(ADAM ADIL), M.L.A.

Member

Member

(DR. K. S. BASU)
Member

Sd./—
(V. B. KARNIK)
Member

(DR. S. K. MUKHERJEE)
Member

Sd./—
(C. L. GHEEWALA)
Member

Sd./—
(N. M. VAKIL)
Member

Sd./—
(L. C. JOSHI)
Member

Sd./—
(DR. PRANLAL PATEL)
Member

Sd./—
(G. SUNDARAM)
Member

Sd./—
(R. D. PUSALKAR)
Member

Sd./—
(M. G. KOTWAL)
Member

Sd./—
(S. W. DHABE)
Member

Sd./—
(B. N. SATHAYE)
Member

Sd./—
(RAJA KULKARNI)
Member

Sd./—
(P. J. OVID)
Member-Secretary

Bombay, dated 12th July 1969.

APPENDICES

APPENDIX

*Committee * on Unfair Labour
Practices :
Appointment of—*

GOVERNMENT OF MAHARASHTRA

INDUSTRIES AND LABOUR DEPARTMENT

Resolution No. IDA-1367-LAB-II

Sachivalaya, Bombay 32, dated 14th February 1968.

RESOLUTION

The Government of Maharashtra is pleased to appoint a Committee called ' the Committee on Unfair Labour Practices ' consisting of the following members :—

Chairman

Shri V. A. Naik, President, Industrial Court, Old Secretariat, Bombay-1.

Members

1. *Shri George Fernandes, M.P., 204, Raja Ram Mohan Roy Road, Bombay-4.*
2. *Shri Adam Adil, M.L.A., 51/4, Dockyard Road, Bombay-10.*
3. *Dr. K. S. Basu, Director, Jammalal Bajaj Institute of Management Studies, Dadabhai Naoroji House, 164, Backbay Reclamation, Road No. 3, Bombay-1.*
4. *Shri V. B. Karnik, Director, Labour Education Service, 127, Mahatma Gandhi Road, Bombay-1.*
5. *Dr. S. K. Mukherjee, General Manager, The Fertilizer Corporation of India Ltd., Trombay Unit, Bombay-74 AS.*
6. *Shri C. L. Gheewala, Secretary, The Indian Merchants' Chamber, Lalji Naranji Memorial Indian Merchants' Chamber Building, 76, Veer Nariman Road, Church gate, Bombay-1.*
7. *Shri N. M. Vakil, Secretary, The Employers' Federation of India, Army and Navy Building, 148, Mahatma Gandhi Road, Bombay-1.*
8. *Shri L. C. Joshi, Labour Adviser, Bombay Chamber of Commerce and Industries, Mackinnon Mackenzie Building, Ballard Estate, Bombay-1.*
9. *Dr. Pranlal Patel, Technical Director, Malleable Iron and Steel Castings Company (Pvt.) Ltd., Tulsipipe Road, Lower Parel, Bombay-13.*
10. *Shri G. Sundaram, General Secretary, Petroleum Workers' Union, Shrama Jeevi Avaz, 34, Sewree cross Road, Bombay-15.*

*The word "for" was substituted by the word "on"—*vide Government Corrigendum, Industries and Labour Department, No. IDA/1367/LAB-II, dated 29th January 1969.*

11. Shri R. D. Pusalkar, Director, Ruston and Hornsby (India) Ltd., Chinchwad, Poona-19.
12. Shri M. G. Kotwal, Secretary, Transport and Dock Workers' Union, P. D'Mello Bhavan, 2nd floor, P. D'Mello Road (Frere Road), Carnac Bundar, Bombay-1 (BR).
13. Shri S. W. Dhabe, President, Maharashtra I.N.T.U.C., Ayachit Road, Circle No. 9, Itwari, Nagpur.
14. Shri B. N. Sathaye, Organising Secretary, Maharashtra Vij Mandal Kamgar Sangh, Rajan Building, Poibawdi, Parel, Bombay-12.
15. Shri Raja Kulkarni, President, Petroleum Employees' Union, Ismail Building, Golanji Hill Road, Sewree, Bombay-15.

Shri P. J. Ovid, Deputy Commissioner } should act as the Member-Secretary to the
of Labour, Bombay. } Committee.

2. The terms of reference to the Committee should be to define which activities on the part of employers and workers and their organisations should be treated as 'unfair labour practices' and to suggest what action should be taken against the employers or the workers or their organisations, as the case may be, for committing such unfair labour practices.

3. The Head-quarters of the Committee will be at Bombay and the Committee should function for a period of one year in the first instance.

4. The Chairman and non-official members of the Committee should be eligible to draw travelling allowance and daily allowance for any journey performed by them in connection with the work of the Committee in accordance with the scale specified in Rule 1 (1) (b) in Appendix XLII-A, Section I to the Bombay Civil Services Rules, as amended from time to time.

5. The travelling allowance and daily allowance of the non-official members who are Members of Parliament and Members of the State Legislature should be regulated according to Government Resolution, Finance Department, No. TRA-1463/1024/XVIII, dated the 25th July 1967.

6. Shri Ovid, Deputy Commissioner of Labour, Bombay and the Secretary of the Committee should be the Controlling Officer for the purpose of travelling allowance and daily allowance bills of the Members of the Committee.

7. The expenditure involved should be debited to the budget head "38—Labour and Employment—A—Labour and Employment—A-12—Special Committee for Enquiry" and should be met from the sanctioned grants.

8. This Resolution issues with the concurrence of the Finance Department *vide*, that Department un-official reference No. 2916/349-VI-A, dated the 13th February 1968.

By order and in the name of the Governor of Maharashtra.

(Sd.).....

J. CARVALHO,
Under Secretary to Government,

APPENDIX 2
COMMITTEE ON UNFAIR LABOUR PRACTICES
 (Appointed by the Government of Maharashtra)
QUESTIONNAIRE

1. Name _____

2. Address _____

3. (i) If employer, state industry, nature of business, number of workers employed and names of trade unions, if any, representing the workers ;
 (ii) If worker, state the name of the concern in which working, the number of employees employed therein and the Union or Unions, if any, representing the workmen of the concern.
 (iii) If employers' organisation, state total membership ; name of Central Organisation, if any, and names of concerns (industrywise), from which membership is enlisted.
 (iv) If workers' organization, state total membership, affiliation, if any, to any central organization and names of concerns (industry-wise) from which membership is enlisted.
 (v) If independent person, state designation/status/profession and standing.
4. What do you understand by the term " Unfair Labour Practice " ? How would you attempt to define it ?
5. Is it possible to classify " Unfair Labour Practice " into the following four broad categories, viz :—
 (i) On the part of employers ;
 (ii) On the part of employers' organisations ;
 (iii) On the part of workers ; and
 (iv) On the part of workers' organisations.

If so, please give an exhaustive and precise list of the activities, which, in your opinion, would constitute " Unfair Labour Practices ", classified under the above-said four broad categories. Is it further possible to sub-classify the above said " Unfair Labour Practices " into " major " or " minor " " Unfair Labour Practices " ? If so, please sub-classify them accordingly in the detailed list of " Unfair Labour Practices " that may be given by you, in response to this question.

6. Have any of the " Unfair Labour Practices " listed by you under Question No. 5 above, been encountered by you in the past ? If so, please give, in brief relevant details in respect of each of such " Unfair Labour Practices " encountered by you in the past.

7. What action would you suggest should be taken against—

- (i) Employers ;
- (ii) Employers' Organisations ;
- (iii) Workers ; and
- (iv) Workers' Organisations,

for committing "unfair labour practices". What sanctions would you advocate in support of the action that may be suggested by you in this behalf ?

8. Would you like the field of "unfair labour practices" between the employers and labour to be regulated by legislation, as in certain foreign countries, or would you like the matter to be regulated between parties through a non-statutory code ? Please elaborate your ideas in this behalf and give a precise gist of the legislation or the code that you may have in mind.
9. Are you aware of any Indian or Foreign literature, including judgements or decision of Courts, having a bearing on the work of the Committee ? If so, kindly quote complete citations of the same.
10. Would you like to give oral evidence before the Committee ? If so, at which of the following centres in this State :—
Bombay, Poona, Shreerampur, Ahmednagar, Sholapur, Kolhapur, Jalgaon, Aurangabad, Nanded, Akola, Nagpur or Bhandara.

Signature
(Designation)

Place _____

Dated _____

APPENDIX 3

List showing the names of the parties (Classified) from whom replies to the questionnaire (including memoranda) were received by the Committee

Serial No.	Name of the Party	Place
1	2	3
I. CENTRAL ORGANISATIONS OF EMPLOYERS		
1	All India Manufacturers' Organisation	Bombay.
2	Employers' Federation of India	Bombay.
II. EMPLOYERS' ORGANISATIONS		
1	Association of Electrical Undertakings, Western and Central India.	Bombay.
2	Bombay Chamber of Commerce and Industries	Bombay.
3	Bombay Industries Association	Bombay.
4	Bombay Iron Merchants' Association	Bombay.
5	Bombay Piece-goods Merchants' Mahajan	Bombay.
6	Deccan Sugar Factories Association	Bombay.
7	Engineering Association of India	Bombay.
8	Indian Engineering Association	Bombay.
9	Indian Merchants' Chamber	Bombay.
10	Indian Motion Picture Producers' Association	Bombay.
11	Hotel and Restaurant Association	Bombay.
12	Mill Owners' Association	Bombay.
13	Multipurpose Merchants' Association, Parbhani	Aurangabad.
14	Organisation of Pharmaceutical Producers of India	Bombay.
15	Scientific and Surgical Instrument Manufacturers' and Traders Association.	Bombay.
16	Whole-Sale Cloth Merchants' Association, Karad, District Satara.	Satara.
17	Vidarbha Region Cotton Gin-Press Karkhandar Federation, Khamgaon.	Nagpur.

Serial No. 1	Name of the Party 2	Place 3
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III. INDIVIDUAL EMPLOYERS

1	Alcock Ashdown and Co. Ltd.	Bombay.
2	Bombay Electric Supply and Transport Undertakings	Bombay.
3	Burmah-Shell Oil-Storage and Distribution Co. of India Ltd.	Bombay.
4	Chemicals and Fibers of India Ltd.	Bombay.
5	Esso Standard Eastern Inc.	Bombay.
6	Glaxo Laboratories (India) Pvt. Ltd.	Bombay.
7	I.C.I. (India) Pvt. Ltd.	Bombay.
8	Johnson and Johnson of India Ltd.	Bombay.
9	Kores (India) Ltd.	Thana.
10	Kirloskar Oil Engines Ltd.	Poona.
11	Malleable Iron and Steel Castings Co. Pvt. Ltd.	Bombay.
12	National Machinery Manufacturers Ltd.	Thana.
13	National Rayon Corporation, Ltd., Kalyan	Thana.
14	Philips (India) Ltd.	Bombay.
15	Therejek Furnaces Pvt. Ltd.	Thana.

IV. PUBLIC SECTOR UNDERTAKINGS

1	Government Distillery	Ahmednagar.
2	Maharashtra Housing Board	Bombay.
3	Maharashtra State Electricity Board	Bombay.
4	Regional Provident Fund Commissioner	Bombay.

V. MUNICIPAL CORPORATIONS

1	Municipal Corporation of Greater Bombay	Bombay.
2	Nagpur Municipal Corporation	Nagpur.

Serial No.	Name of the Party	Place
1	2	3

VI. CENTRAL ORGANISATIONS OF WORKERS

1	Bharatiya Mazdoor Sangh	Bombay.
2	Bharatiya Mazdoor Sangh	Poona.
3	Hind Mazdoor Sabha	Bombay.
4	Indian National Trade Union Congress	Bombay.
5	Maharashtra Rajya Committee of All India Trade Union Congress.	Bombay.

VII. INDIVIDUAL TRADE UNIONS

1	All Marathwada Kamgar Union, Old Jalna	Aurangabad.
2	Beedi Labour Union	Aurangabad.
3	Bharat Barrel Employees Union	Bombay.
4	Cynamid Employees Union	Bombay.
5	Engineering and Metal Workers Union	Bombay.
6	Larson and Taubro Switch Gear and Powai General Workmen Union.	Bombay.
7	Marathwada Shet Mazdoor Union	Aurangabad.
8	Mill Mazdoor Sabha	Bombay.
9	Rashtriya Beedi Relai Kamgar Union, Tumsar	Bhandara.

VIII. INDEPENDENT PERSONS

1	Shri Acharya T.L.A.	Bombay.
2	Shri Kothari, M. G.	Bombay.
3	Shri Potdar, V. B.	Bombay.
4	Dr. Punekar, S. D.	Bombay.
5	Shri Shirgaonkar, M. V.	Bombay.
6	Shri Subramanian, K. N.	Bombay.

IX. RESEARCH ORGANISATION

1	Shri Ram Centre for Industrial Relations	New Delhi.
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APPENDIX 4

List showing the Names of the Parties (Classified) who Tendered Oral Evidence Before the Committee

SESSION : FIRST

DATE : 20th & 21st December 1968.

PLACE : Indian Merchants' Chamber, Bombay

Serial No.	Name of the Party	Names of the Representatives
1	2	3

CENTRAL ORGANISATIONS OF EMPLOYERS

- | | | |
|---|---|---|
| 1 | The All-India Manufacturers Organisation, Bombay. | 1. Shri Ram Agrawal.
2. Shri C. M. Shukla.
3. Shri G. L. Kothari.
4. Shri K. S. James. |
| 2 | Employers' Federation of India, Bombay.. | 1. Shri T. S. Swaminathan. |

ORGANISATIONS OF EMPLOYERS

- | | | |
|---|--|--|
| 1 | Bombay Piece-Goods Merchants' Mahajan, Bombay. | 1. Shri Navnitlal Shah.
2. Shri Dwarkadas Shah. |
| 2 | Bombay Industries Association, Bombay. | 1. Shri Mohanbhai Patel.
2. Shri J. J. Desai. |
| 3 | The Bombay Iron Merchants' Association, Bombay. | 1. Shri C. J. Ambani.
2. Shri A. T. Vasi.
3. Shri J. V. Doshi. |
| 4 | Indian Merchants' Chamber, Bombay .. | 1. Shri S. K. Ayer.
2. Shri N. Y. Gaitonde. |
| 5 | Engineering Association of India (Western Region), Bombay. | 1. Shri R. G. Kaulgi.
2. Shri T. S. Sehmi.
3. Dr. B. D. Daboo.
4. Shri P. S. Krishnan.
5. Shri T. S. Shetty. |
| 6 | Indian Motion Picture Producers Association, Bombay. | 1. Shri I. K. Menon. |
-

Serial No.	Name of the Party	Place
1	2	3

CENTRAL ORGANIZATIONS OF WORKERS

- 1 Bharatiya Mazdoor Sangh, Bombay .. 1. Shri Kishore Deshpande.
2. Shri M. P. Mehta.
3. Shri G. S. Naik.
4. Shri S. M. Dharap.
5. Shri P. R. Keluskar.
- 2 Hind Mazdoor Sabha, Bombay .. 1. Shri V. A. Khanolkar.
2. Shri Gandhi.
3. Shri Kale.
4. Shri Tawde.
5. Shri Sawant.
6. Shri Desai.

INDIVIDUAL TRADE UNION

- 1 Mill Mazdoor Sabha, Bombay .. 1. Shri D. G. Phatak.
2. Shri Kishan Tulpule.
3. Shri Bagaram Tulpule.

SESSION : SECOND

DATE : 2nd January 1969

Place : Maharashtra Chamber of Commerce and Industries, Poona

ORGANIZATIONS OF EMPLOYERS

- 1 The Deccan Sugar Factories Association, Bombay. 1. Shri J. A. Gumaste.
2. Shri H. S. Ganpule.
3. Shri R. Venkatraman.
4. Shri H. H. Walvekar.
- 2 The Kirloskar Group of Industries Poona. 1. Shri M. V. Mantri.
(On behalf of the Maharashtra Chamber of 2. Shri R. V. Gothoskar.
Commerce). 3. Shri B. N. Todwalkar.
4. Shri D. V. Gokhale.

CENTRAL ORGANIZATIONS OF WORKERS

- 1 Bharatiya Mazdoor Sangh, Poona .. 1. Shri P. S. Karmarkar.
2. Shri M. D. Kshirsagar.
3. Shri N. K. Kondhare.
-

Serial No. 1	Name of the Party 2	Place 3
SESSION : THIRD		DATE : 7th and 8th February, 1969
Place : Indian Merchants' Chamber, Bombay		
ORGANIZATIONS OF EMPLOYERS		
1	Bombay Chamber of Commerce and Industries, Bombay.	1. Shri P. C. Mehta. 2. Shri S V. Mokashi. 3. Shri C. Mendonca.
INDIVIDUAL EMPLOYERS		
1	Glaxo Laboratories (India) Pvt. Ltd., Bombay.	1. Shri H. C. Manchanda. 2. Shri Shanti Prakash. 3. Shri V. G. Rao.
2	Johnson and Johnson of India Limited, Bombay.	1. Shri S. A. Bhende. 2. Shri A. D. D'Souza.
3	B. E. S. T. Undertaking, Bombay ..	1. Shri F. P. Fernandes. 2. Shri D. S. Dandekar.
4	Therelek Furnaces Pvt. Ltd., Thana ..	1. Shri N. S. Ramkrishnan Iyer.
CENTRAL ORGANIZATIONS OF WORKERS		
1	Maharashtra Rajya Committee of the All-India Trade Union Congress, Bombay.	1. Shri Chitnis. 2. Shri K. N. Jogalekar. 3. Shri B. S. Dhume.
INDIVIDUAL TRADE UNIONS		
1	Cynamide Employees' Union, Bombay ..	1. Shri V. K. Shankarnarayan.
INDEPENDENT PERSONS		
1	Shri V. B. Potdar, Bombay ..	1. Self.
2	Shri K. N. Sumramaniam, Bombay ..	2. Self.
3	Shri G. M. Kothari, Bombay ..	3. Self.
4	Shri T. L. A. Acharya, Bombay ..	4. Self.
SESSION : FOURTH		DATE : 27th February 1969
Place : Ravi Bhuvan, Circuit House, Nagpur.		
INDIVIDUAL TRADE UNIONS		
1	Rashtriya Bidi Relai Kamgar Union, Tumsar, Bhandara.	1. Shri Shamlal Sonkusare. 2. Shri Narayan Badwai. 3. Shri Fakira Chaudhari.

Serial No.	Name of the Party	Place
1	2	3

SESSION : FIFTH

DATE : 5th April 1969

Place : Indian Merchants' Chamber, Bombay

ORGANIZATIONS OF EMPLOYERS

- | | | | |
|---|---------------------------|-------------------------|--|
| 1 | Multipurpose
Parbhani. | Merchants' Association, | 1. Shri Mohd. Azizuddin.
2. Shri Shaikh Umar.
3. Shri K. A. Rahim. |
|---|---------------------------|-------------------------|--|

CENTRAL ORGANIZATIONS OF WORKERS

- | | | |
|---|---|--|
| 1 | Indian National Trade, Union Congress,
Bombay. | 1. Shri N. S. Deshpande.
2. Shri H. N. Trivedi.
3. Shri Manesh Joshi,
4. Shri D. S. Salvi,
5. Shri S. V. Gole.
6. Shri S. Subbibrarian. |
|---|---|--|

PUBLIC SECTOR UNDERTAKING

- | | | |
|---|-------------------------------------|-------------------------|
| 1 | Provident Fund Commissioner, Bombay | 1. Shri M. M. Biwalkar. |
|---|-------------------------------------|-------------------------|

INDIVIDUAL EMPLOYERS

- | | | |
|---|--|--------------------------|
| 1 | Kores (India) Ltd., Bombay | .. 1. Shri J. M. Potdar. |
| 2 | Messrs. Melleable Iron and Steel Castings Co. Pvt. Ltd., Bombay. | 1. Shri S. M. Akerkar. |
-

APPENDIX 5

Bibliography of Literature perused by the Committee.

1. National Labour Relations Board Act (Wagner Act), 1946.
2. Taft-Hartley Act, 1947.
3. Landrum-Griffin Act, 1959.
4. Indian Trade Unions (Amendment) Act, 1947.
5. Code of Discipline and Code of Conduct.
6. Bombay Industrial Relations Act, 1946.
7. Industrial Disputes Act, 1947.
8. Industrial Employment (Standing Orders) Act, 1946.
9. *Labour Economics and Institutions*, by A. D. Butler.
10. An Introduction to Labour, By C. S. Dankert.
11. *Unions, Employers and Government*, By Van. D. Kennedy.
12. *The Law of labour Relations*, By Benjamin Werne.
13. *Labour Law*, By Nicholas, S. Falcone.
14. *Labour and Industrial Society*, By Abraham L. Gitlow.
15. *Labour Management Relations in India*, By K. N. Subramaniam.
16. *A Layman's Guide to Basic Law under the National Labour Relations Act* (Prepared by the Office of the General Counsel National Labour Relations Board). (U. S. Government Printing Office, Washington, 1964).
17. *What You Should Know about the Regional Offices of the National Labour Relations Board*, by Stuart Rothman. (General Counsel, National Labour Relations Board).

APPENDIX 6

Committee on Unfair Labour Practices :
Continuance of staff and Extension of the
period of —

GOVERNMENT OF MAHARASHTRA

INDUSTRIES AND LABOUR DEPARTMENT

Resolution No. IDA. 1367/109303/LAB-II

Sachivalaya, Bombay-32, dated the 13th March 1969.

Read : Government Resolution, Industries and Labour Department, No. IDA. 1367-LAB-II, dated the 14th February 1968.

Government Resolution, Industries and Labour Department, No. IDA. 1367-117926/LAB-II, dated 18th September 1968.

Endorsement No. CL/ULPC/PJO/1268/T, dated the 13th February 1969, from the Commissioner of Labour and Director of Employment, Bombay.

RESOLUTION:—Government is pleased to direct that the Committee on Unfair Labour Practices appointed under Government Resolution, Industries and Labour Department, No. IDA-1367/LAB-II, dated the 14th February 1968, should be given a further extension of time upto 30th June 1969 for submission of its Report. The Committee should however complete its work and submit its Report *definitely before the end of June 1969.*

2. Sanction is also accorded to the continuance of the following staff sanctioned under Government Resolution, Industries and Labour Department, No. IDA. 1367/117926/LAB-II, dated the 18th September 1968 for a further period upto 30th June 1969.

Designation	No. of posts	Scale of pay
1. Senior Labour Investigator.	One	Rs. 190—10—250—E.B.—10—300 (M)
2. Stenographer	.. One	Rs. 190—8—254—E.B.—8—270—10—320 (M).

3. The expenditure should be debited to the budget head, “(Demand No. 108)-38-A. Labour and Employment-A-Labour-A-I-Commissioner of Labour and Director of Employment,” and met from sanctioned grants thereunder for the current financial year.

4. This resolution issues with the concurrence of the Finance Department. *vide* its u.o. No. 17283/421/VI-A, dated 21st February 1969.

By order and in the name of the Governor of Maharashtra,

(Signed) S. A. VAIDYA,

Under Secretary to Government.

To

Shri V. A. NAIK,

President, Industrial Court, Bombay.

All Members of the Committee on Unfair Labour Practices.

The Commissioner of Labour and Director of Employment, Bombay.

The Accountant General, Bombay.

The Pay and Accounts Officer, Bombay.

The Resident Audit Officer, Bombay,

The Finance Department (Br. VI-A).

Budget Branch of Industries and Labour Department.

Lab. I, Branch of Industries and Labour Department.

APPENDIX 7

UNFAIR LABOUR PRACTICES

1. *On the part of Employers***A. Trade Union Matters.**

1. To interfere with, restrain, coerce, cajole or otherwise seek to influence exercise of the right of the workers to form, join or assist a trade union of their choice.
2. To interfere with, restrain or otherwise influence the workers from conducting their legitimate trade union activities.
3. To seek to dominate the activities of a trade union by lending to its support financially or otherwise.
4. To initiate and sponsor a Company-Union.
5. To take steps to break or liquidate the trade Union.
6. To undermine the strength of a recognised trade union by refusing to negotiate with it, in good faith or by denying it its legitimate trade union privileges.
7. To give discriminatory treatment to active trade union workers or office bearers of the trade unions by giving them favourable concessions and benefits or by denying them such benefits and concessions, with a view to discouraging the trade union movements.
8. To encourage inter-union rivalry by giving preferential treatment to one union as against the other.

B. Collective Bargaining Matters.

1. To refuse to recognise or to deal with trade unions or the representative of the employees having majority support of the workers for the purposes of collective bargaining.
2. To refuse to bargain in good faith with the recognised union or the recognised representatives of the employees.
3. To give recognition to the minority union of the workers as against the majority Union.
4. To negotiate with the minority union in respect of major collective bargaining issues and to enter into agreements with that union, with a view to breaking the majority union.
5. To negotiate with the workmen individually and to induce them to entering into individual contracts of service, with a view to breaking or liquidating the union or the workmen.
6. To restrain or coerce the workers from exercising their rights of bargaining collectively through the trade union or the representatives of their own free choice.
7. To take unilateral action in respect of collective bargaining matters.

C. Implementation of Labour Laws, Agreements, Settlements and Awards.

1. To fail to implement or to violate the provisions of the labour laws or terms of agreements, settlements and awards.
2. To delay the implementation of the provisions of the labour laws or the terms of agreements, settlements and awards on flimsy grounds.
3. To circumvent the provisions of labour laws or the terms of agreements, settlements and awards by finding out loop-hole therein.
4. To restrain or coerce the workers from exercising their rights to receive benefits and dues under the provisions of labour laws, or the terms of agreements, settlements and awards.
5. To fail to take action against managerial or supervisory staff for not implementing or violating provisions of labour laws or the terms of agreements, settlements and awards.

D. Recruitment.

1. To discriminate in the matter of recruitment or re-employment as between union members and non-union members.
2. To circulate Black List of discharged workers who are active trade unionists amongst other employers with a view to preventing them from getting employment and undermining the trade union movements.

3. To build up a sub-servent labour force by recruiting " company workers ".
4. To employ or hire gangster element with a view to terrorising the workers and keeping them restrained from legitimate trade union activities.
5. To solicit and procure from the workers, at the time of recruitment, authorisation for payment of subscriptions to the union of the employees.

E. Termination of Services.

1. To terminate the services of workmen for alleged misconduct without following the provisions of Standing Orders or the principles of natural justice.
2. To malafidely terminate the services of workmen by way of discharge simplicitor.
3. To victimise workmen for trade union activities by dispensing with their service.
4. To dispense with the services of a workmen with a view to avoid the payment to them of legal dues.
5. To deprive the workers, payments of their legitimate dues by causing artificial break in their services.

F. Terms of service.

1. To unreasonably deprive the worker, status and privileges of permanency by creating or by causing artificial breaks in their services or by taking them in service on temporary contracts or such other means.
2. To maintain disproportionately large labour force of temporary, casual or contract labour with a view to depriving them of their legitimate benefits under the provisions of labour laws, agreements, settlements or awards with a view to setting them against the permanent labour force, or with a view to keeping down the level of wages and other service conditions of the workmen.
3. To continue to designate workers as apprentices although they have completed their apprenticeship period, with a view to denying them the benefits under the provisions of labour laws or agreements or settlements or awards.
4. To engage unpaid apprentices through contractors with a view to denying them the benefits under the provisions of labour laws, agreements, settlements or awards.
5. To introduce contract system of labour, where it is not necessary with a view to avoiding observance of the provisions of the labour laws, agreements, settlements or awards and with a view to deny the said labour the benefits thereunder.
6. To enter into individual contracts of employment with the workers, with a view to preventing them from exercising their legitimate rights and denying them the benefits under the provisions of labour laws, agreements, settlements or awards.
7. To unilaterally introduce new systems of work with a view to depriving the workers the benefits under the provisions of labour laws, agreements, settlements or awards.
8. To procure authorisation of workers to schemes of prejudicially voluntary retirement.
9. To fail to classify the workers properly according to their respective scales or grades or to classify them improperly.
10. To pay the casual workers wages and other allowances at the rates lower than the wages and allowances of the regular workers.
11. To reduce the rates of wages or the terms of conditions of service on the ground that the concern is being run as an unemployment relief measure.

G. Promotions.

1. To discriminate between workmen in the matter of promotions, on the basis of caste, creed, religion, union membership or union activities.
2. To give unmerited promotions to certain workmen thereby giving cause for unnecessarily industrial unrest amongst other workmen.
3. To fill in promotion vacancies by recruiting outsiders even in cases where deserving candidates are available in the concern.

H. Transfers

To exercise the Managerial right to transfer the worker with a view to coerce the worker not to undertake trade union activities or with a view to victimise.

I. Punishment

1. To conduct a bogus domestic enquiry.
2. To disregard the principles of natural justice while conducting a domestic enquiry
3. To disregard the principles of natural justice while meting out punishment to the delinquent workers.
4. To victimise workers for trade union activities and for other actions prejudicial to the interest of the employer.
5. To avoid discriminatory punishment to workers on the basis of their union activities.
6. To exercise managerial powers such as promotions or transfers or with-holding the increments with a view to coercing or restraining union activities.
7. To fail to provide satisfactory machinery for the re-dressal of the grievance of the workers.

J. Strikes

1. To issue appeals to workers on strike, to resume work on promises of grant of concessions for higher benefits, with a view to breaking their strike.
2. To issue threats such as termination of services etc. to workers on strike, with a view to breaking their strike.
3. To refuse to negotiate or bargain with the trade union of the workers or the representatives on receipt of notice of strike from them unless strike notice is withdrawn.
4. To withdraw privileges, benefits or concessions of workers on strike, with a view to breaking their strike.

K. Right to work

1. To declare or to resort to an unjustified lock-out with a view to depriving the workers of their rights to work.
2. To declare or resort to unjustified retrenchment with a view to depriving the workers of their right to work or to receive benefits under the provisions of labour laws, agreements, settlements and awards.
3. To unjustifiably laying off the workers with a view to depriving them of their legitimate dues or to restraining or coercing them in their trade union activities.

L. Miscellaneous Matters

To victimise the worker merely because he had made certain allegations against the employer or because he had filed a case before any authority against the employer or because he had given evidence in an enquiry or proceedings against the employer.

*II.—On the part of Employers' Organisations***A. Trade Union Matters**

1. To support one particular Workers' Organisation as against another.
2. To issue directions to the Members of the organisation to support one particular Workers' Organisation as against another.
3. To issue directions to the Members to restrain their workers from exercising their right to free Organisation.

B. Collective Bargaining Matters

1. To refuse to negotiate, in good faith, with the recognised union or with the union enjoying the majority support of the workmen.
2. To issue directions to the Members to refuse to negotiate, in good faith, with the recognised union or with the union enjoying the majority support of the workmen.
3. To enter into agreements with minority unions on matters or major issues of collective bargaining.

C. Implementation of Labour Laws, Agreements, Settlements and Awards

1. To issue secret directions to Members not to observe the provisions of labour laws' agreements, settlements and awards.
2. To fail to disapprove unfair labour practices committed by Members.
3. To fail to issue directions to recalcitrant Members to observe the provisions of labour laws, agreements and settlements and awards.
4. To fail to issue directions to recalcitrant Members to observe provisions of non-statutory Codes and recommendations of authorities appointed by Government.
5. To fail to disapprove of action of Members in committing breaches of non-statutory codes or the recommendations of the authorities appointed by Government.

III—On the part of the Workers

A. Trade Union Matters

1. To abuse, assault, intimidate, coerce, restrain or interfere with other workers from joining a Trade Union of their choice or as a retaliation against their not joining a particular union.
2. To advocate and canvass Union membership within the premises of the concern.
3. To pose as a representative of the workmen without proper authority.
4. To collect unauthorised contributions from the workmen without giving proper receipts and maintaining proper accounts thereof.
5. To refuse to abide by the majority decisions of the workmen.
6. To misguide or to misinform other workmen for their own ulterior motives or interests.
7. Irregular payment of Union dues.

B. Collective Bargaining Matters

1. To give threats of strike, go-slow, gheraos, rowdy demonstrations, physical violence, sabotage, etc. with a view to coerce the employer to settle an industrial dispute.
2. To resort to strike, go-slow, gheraos, rowdy demonstrations, physical violence, sabotage, etc. with a view to coerce the employer to settle an industrial dispute.
3. To refuse to conduct negotiations in good faith with the employer.
4. To refuse to take recourse to the machinery prescribed for settlement of industrial disputes.
5. To give mis-leading or false reports to the workers of Meetings held with the employer or of the proceedings held before the prescribed authorities.

C. Implementation of Labour Laws, Awards, Agreements, etc.

1. To fail to perform duties and obligations under labour laws, agreements, settlements or awards.
2. To violate provisions of labour laws, agreements, settlements, standing orders or awards.
3. To fail to discourage co-workers from committing violations of labour laws, agreements, settlements or awards.
4. Refusal to do overtime work when required by the employer.

D. Productivity

1. To refuse to co-operate with the employer to raise production and to improve productivity for no valid reasons.
2. To resort to strike, go-slow or other agitational methods thereby hampering production, with a view to coerce the employer to submit to the demands of the workers.

E. Violation of Service Regulations

1. To be negligent in performance of assigned duties.
2. To violate Safety Regulations.
3. To quit services abruptly without due notice to the employer.
4. To unauthorisedly disclose confidential information pertaining to the employer or to make use of such information for unauthorised purposes.

F. Strikes

1. To resort to strikes, including sit-down strikes or hunger strikes, for matters not connected with industrial disputes.
2. To coerce the non-striking workers by threats of physical violence.
3. To resort to strike.
4. To disturb the normal working of other adjacent concerns by resorting to such methods as cutting their essential supplies like water, electricity, etc.
5. To threaten or to resort strikes for matters not connected with genuine trade union activities.

G. Miscellaneous matters

1. To interfere with the managerial rights of the employers.
2. To self interestedly refuse to accept reasonable proposals of the employer even though they may be beneficial to workmen at large.
3. To circumvent the responsibilities, rights and liabilities.
4. To willfully slow down the process of work during regular working hours with a view to claiming over-time therefor.
5. To put up grievances on flimsy grounds.
6. To misuse concessions and benefits provided under labour laws, agreements, settlements or awards, such as leave facilities, ESI benefits etc.

IV—ON THE PART OF WORKERS' ORGANISATIONS

A. Trade Union Matters

1. To interfere with the right of the workers to form, join or associate with a trade union of their own choice.
2. To cause or attempt to cause an employer to discriminate against workers in the matter of recruitment, tenure of employment or terms or conditions of employment.
3. To create disharmony amongst co-workers, with a view to dismember and dismantle a rival organisation.
4. To abet, instigate, encourage or connive at insubordination and other violent activities on the part of the workers.
5. To fail or to refuse to express disapproval or to take appropriate action against the office-bearers or members of the organisation for indulging in violent or unlawful activities.
6. To disown responsibilities for wrongful methods adopted by the members.
7. To threaten members with expulsion from organisation membership for working against the directions of the union.
8. To fail to disapprove action of members in engaging themselves with union activities during working hours or within the premises of the working place, otherwise than as provided by law or practice.
9. To submit false records, returns or information to the employer or to the prescribed authorities.
10. To use Union funds not for the welfare and in the interest of the members but for achieving political gains or other unconstitutional activities.
11. To make bogus reports or complaints giving false information to the prescribed authorities with the intention of harassing the employer.
12. To collect unauthorised subscriptions from members without giving proper receipts and maintaining proper accounts in respect thereof.
13. To give false or misleading reports or information to members in respect of the outcome of proceeding before prescribed authorities or meetings with the employer.
14. To commit breach of the Inter-Union Code of Conduct or the Code of Discipline.
15. To interfere by the threats with the free elections of workers on various statutory and non-statutory committees.
16. To appoint as office bearers of the union workmen, who are under suspension or against whom disciplinary proceedings are contemplated or are on hand, with a view to surreptitiously giving them protection under the "protected workmen's" rule.
17. To instigate the workers to commit acts against their interest.

16. To engage in various forms of agitations such as boycotts, go-slow, strikes, gheraos, bundhs acts subversive of discipline, against the employer for matters not connected with industrial disputes.

19. To oppose or to prevent the employer from entering into direct employers-employee relationship with the workers.

B. Collective Bargaining

1. To refuse to settle disputes or differences through the process of mutual negotiations, conciliation, adjudication or arbitration.

2. To refuse to bargain collectively in good faith.

3. To restrain or coerce the employer in the selection of his representatives for the purpose of collective bargaining or settlement of grievances.

4. To pursue flimsy or unreasonable grievances of the employees.

5. To enlarge the impact of an industrial dispute by applying economic pressure against a neutral employer.

C. Implementation of labour laws, agreements, settlements and awards

1. To surreptitiously to create conditions that would prevent fulfilment of obligations under labour laws, agreements, settlement or awards.

2. To fail to take prompt action to implement, agreements, settlements and awards.

3. To fail to comply with the terms of agreements, settlements or awards.

4. To demand benefits in excess of what are provided under agreements, settlements or awards under threats of refusal to work.

D. Productivity

1. To refuse to co-operate with the employer to increase production and improve labour productivity for no valid reasons.

2. To resort to strike, go-slow or other agitational methods thereby hampering the workers production and coercing the employer to submit to demands of the workers.

E. Strikes

1. To give various kinds of threats to the employer during strikes.

2. To engage in violent activities against the employer and non-striking employees during strike.

3. To incite or actively support illegal or unjustifiable strikes.

4. To break a strike conducted by a rival union.

5. To pressurise the employer to withdraw recognition given to a rival union by threatening or resorting to strike.

F. Miscellaneous matters

1. To issue directions to the workers to refuse to work overtime required by the employer, with a view to harassing him or coercing him to settle an industrial dispute.

2. To refuse to consider reasonable proposals of the employer even though they are beneficial to the workmen at large.

3. To unauthorisedly disclose confidential information pertaining to the employer or to make use of such information for unauthorised purposes.

4. To fail to express disapproval of actions of workmen who quit services abruptly without due notice to the employer.

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