

TRADE UNION DEVELOPMENT AND THE LAW

IN ZAMBIA

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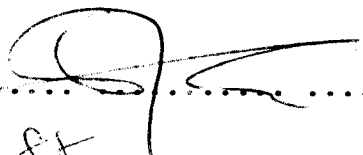
A dissertation submitted in partial
fulfilment of the requirements for
the degree of Master of Laws at the
University of Zambia.

by

Mbaalala B. Munungu

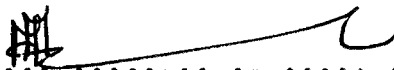
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THIS DISSERTATION OF MBAALALA B. MUNUNGU IS APPROVED AS
FULFILLING PART OF THE REQUIREMENTS FOR THE AWARD OF THE
DEGREE OF MASTER OF LAWS BY THE UNIVERSITY OF ZAMBIA

SIGNED:  (EXAMINER)

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A B S T R A C T

This dissertation considers trade unionism and the trade union law in Zambia. Trade unionism and the law that governs it were introduced into Zambia, then Northern Rhodesia, from Great Britain at the turn of the century by settlers. They are therefore foreign concepts. As such they had to be adapted to the local environment. This was so because they had not been evolved for the Zambian environment.

This dissertation therefore focuses on the inception of the trade unionism and the trade union law in Zambia and their development. In doing this, the dissertation examines circumstances surrounding the development of trade unionism, i.e. the formation of trade unions and the application of the law then applicable. It identifies the administrative and legal problems attendant during the formative years and after. It then analyses the methods used in adapting and assimilating the received law so as to conform to the local environment.

The dissertation deals with development up to 1980. But, some account of events taking place after 1980 have been included where necessary.

ACKNOWLEDGEMENTS

My interest in trade union development and the law in Zambia came about as a result of my having been elected chairman of a works council at the Rural Development Corporation of Zambia Limited head office. This was sometime in 1976 after the coming into effect of Part VII of the Industrial Relations Act.

Dr. D. Anyoti, who had been appointed as my supervisor left the country immediately after his appointment and I was left to work on my own without guidance. In fact, for a very long period I had abandoned my studies altogether.

At one time, however, after repeated requests to the Dean, Mr. E. Kalula was appointed my supervisor. But unfortunately, Mr. Kalula at that time had his hands already full. He was himself preparing his Thesis for Ph. D. Later on however, Dr. J. M. Mulwila agreed to take over my supervision from Mr. Kalula. This dissertation is as a result of Dr. Mulwila's efforts to see me through my course, and to him I owe alot.

I should like to express my sincere gratitude to my friend and neighbour R. C. Mulenga who lent me his typewriter in the

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I wish to extend my sincere thanks to my family for having been kind and understanding during many hours when I was absent from among them for research and typing. Special thanks go to my dear wife who provided me with all the stationery I needed.

While admitting having received alot of help from friends and my supervisor, I must say that I take full responsibility for any errors, omissions or misstatements of fact or law which may be found in this dissertation.

TABLE OF CONTENTS

	<u>PAGE</u>
TITLE	i
ABSTRACT	ii
ACKNOWLEDGEMENTS	iii

TRADE UNION DEVELOPMENT AND THE LAW IN ZAMBIA

	INTRODUCTION	1
CHAPTER 1	THE LEGAL SUPPORT OF A TRADE UNION	3
	(a) Introduction	3
	(b) Definition of a trade union	4
	(c) The legal status of a trade union	8
	(i) The registered and unregistered trade unions	8
	(ii) Towards registration of trade unions	12
	(d) Registration of trade unions	17
	(e) Union membership	21
CHAPTER 2	ADAPTATIONS AND ASSIMILATIONS	29
	(a) Introduction	29
	(b) Legislative history of the local trade union law	30
	(c) Government attitude	36

	<u>PAGE</u>
(d) Adaptation and assimilation of English law: the extent of borrowing	40
(e) Conclusion	41
 CHAPTER 3 THE DEVELOPMENT OF TRADE UNION-	
ISM PRIOR TO INDEPENDENCE	46
(a) Introduction	46
(b) The Colonial labour policies and their impact on Northern Rhodesia	47
(c) Towards collective bargaining	64
(i) The role of the Labour Commiss- ioner	68
(ii) The Government social worker	73
(iii) Trade union labour officer	73
(d) African advancement	74
(e) Conclusion	77
 CHAPTER 4 TRADE UNIONISM AFTER INDEPENDENCE	85
(a) Introduction	85
(b) The Industrial Relations Act	93
(c) Trade unionism after the Indust- rial Relations Act	96
(i) Power to go on strike	97

	<u>PAGE</u>
(ii) Power of collective bargaining	100
(iii) Trade unions vis-a-vis Works Councils	114
(d) Conclusion	117
CHAPTER 5 SUMMARY, CONCLUSION AND PROPOSALS	124
(a) Introduction	124
(b) The Industrial Relations Act	124
(c) Trade unionism after IRA	125
(d) Conclusions and proposals	126
ABBREVIATIONS	130
BIBLIOGRAPHY	131

I N T R O D U C T I O N

Trade union development is associated with industrial development of any given community, and consequently trade unionism can only develop where the community in question has been industrialised. The development of trade unions in Zambia did not therefore come until the process of industrialisation started. It was not until 1936 that the first all-European trade union was formed; and this was after the industrial activities of the 1920s which brought in their wake the establishment of copper mines. African trade unions were, however, delayed until 1947. This delay also affected the the development of indigeneous trade union law.

This dissertation, as the title implies, looks at the development of trade unions and the law affecting them in Zambia. It traces the path taken by this development and notes the many obstacles encountered, which obstacles centred mainly on industrial, educational, racial and political spheres. The dissertation is divided into five chapters. Chapter one deals with the legal characteristics of a trade union. This involves the definition of a trade union and its legal status. In addition, the chapter examines the difference between a registered and unregistered trade union. Chapter Two deals with reception of English law in Zambia and looks

also at the methods used to adapt and assimilate this imported law in order to accord with the local environment.

In Chapter Three, the dissertation examines the difficulties through which this development passed prior to independence. It also examines the means used to overcome the many obstacles. And in Chapter Four, it examines the post independence trade unionism in the context of the Industrial Relations Act, of 1971. In doing this, we examine the background to the introduction of the Industrial Relations Act.

In Chapter Five the dissertation takes an overview of the development of trade unionism and the law governing it. In this overview we offer some suggestions which we feel may help, to some extent, to overcome some of the problems the trade union movement continues to face.

CHAPTER 1

THE LEGAL CHARACTERISTICS OF A TRADE UNION

(a) Introduction:

The growth of trade union movement is linked to industrial
1
development of a country. It is therefore, only after a country
has gone through an 'industrial revolution' that it would expect
to encourage the growth of trade unionism within its boundaries.
Zambia (formerly Northern Rhodesia) was no exception. It was
not until Zambia had sufficiently become industrialised that
signs of a trade union movement started to show.

2
Although the first trade union was formed in 1936 and
recognised in 1937, it was not until 1947, that an 'all-African
trade union' was formed and recognised. And even then trade
unionism did not become a mass movement until after the formation
of the largest African trade union in the country, the
Northern Rhodesia African Mineworkers' Union, in 1949. This
was given impetus by the impact of the second World War, and
changes associated with developing technology, increasing scale
of industrial organization, growing wealth and greater government
intervention. All these contributed to a transformation

of the social and economic life of the country and set in action the wheels of trade unionism as a mass organization. Trade unionism is therefore an imported organization of labourers, just as industrialisation is.

In the wake of this mass movement, a need to regulate its organization arose, and laws to this effect have since been passed.³

(b) Definition of a trade union:

The statutory definition of a trade union under the received law was:

any combination, whether temporary or permanent, the principal objects of which are under its constitution statutory objects, namely, the regulation of the relationship between workmen and masters or between workmen and workmen, or the imposition of restrictive conditions on the conduct of any trade or business, and also the provision of the benefits to its members.⁴

Some points from the above definition are explained below: First, we notice from the definition that the statutory objects are many. In fact there are twelve statutory objects under the 1871 and 1876 Acts.⁵ These, however, need not all be included in the constitution so as to comply with its requirements. At the same time, this does not mean that non-statutory objects may not be included, provided there are statutory or principal objects.

Secondly, we have seen from the statutory definition, that for any organization to be regarded as a trade union, it must include among its objects, one or more principal or statutory objects. Otherwise it will not, in law, be regarded as a trade union. As regards trade unions which apply for registration, the fulfilment of this requirement is left to the Registrar of Trade Unions who has to satisfy himself, on examination of the constitution whether or not the application complies with the law.

Where an organization whose objects do not comply with the requirements of the law, applies for registration as a trade union and is inadvertently registered, it will be regarded, in law as a trade union until the mistake is discovered and cured by the court. Under the 1949 Trade Unions and Trade Disputes Ordinance and subsequent amendments, the Registrar has the power, where he discovers a mistake in the registration of a trade union, to recall and cancel the certificate of registration.

Thirdly, we have noticed in the definition given above that it includes the benefits a union may give to its mebers. Although these benefits are included in the definition, they are not compulsory but merely permissible. They are not therefore an essential
6
part of the definition.

Fourthly, the words 'temporary' or 'permanent' in the definition may refer to a temporary union of a few people whose purpose or objects are those defined in the Acts. It does not, however, refer to an 'ad hoc' union of a handful of people who only come together for an isolated incident. This is the point of difference from a permanent union which draws up a constitution with some principal or statutory objects. It does not, however, matter in what form the constitution is. It may be written or unwritten. This is borne out by the fact that the United Kingdom, as such, has what is called 'unwritten constitution' which is recognised in law.

Fifthly, the regulation of the relationship between workmen and masters involves the laying down of working conditions under which the workmen may work. These conditions may include the amount of wages a workman may receive under his contract of employment; while the relations between masters and masters are meant to avoid unnecessary underhand competitions.

The above is the extent of the definition of a trade union as extended to Zambia by the 1911 Order-in-Council as amended by the Northern Rhodesia Order-in-Council of 1924 and the British Acts Extension Ordinance. Zambia, however, enacted its own Trade Unions and Trade Disputes Ordinance in 1949. The objects of this enactment was to consolidate and adapt so as to conform with the local conditions the Imperial Acts of Parliament, which had

10

been applied to the territory. Because the local ordinance was an ordinance to 'consolidate and adapt' the old Imperial Acts, the definition of a trade union remained unchanged. This remained substantially so until a drastic and almost realistic Act, namely, the Industrial Relations Act, 1971, was passed, by the local Legislature. The definition in the Industrial Relations Act, 1971, of a trade union is as follows:

In this Act the expression "trade union" means a combination of employers which is registered as a trade union under section 5 (and includes the local branch executive) and under the constitution of which the principal objects are the regulation of collective relations between employees and employers or between employees and organization of employers, or between employees and employees, which said objects are hereinafter referred to as the statutory objects.

There are two points of difference brought about by the definition in the Industrial Relations Act. First, we notice from the 1971 Act, that an organization does not become a trade union until it has been duly registered. The Act has made 'registration' an integral part of the definition of a trade union. Secondly, it has removed the possibility of an employers' association qualifying as a trade union by making it clear that only "combinations of employees" registered under section 5 of the Act come under the definition of a trade union. Prior to 1971 Act, an employers' association qualified as a trade union.

(c) The Legal status of a trade union:

(i) The registered and unregistered trade unions:

A trade union is generally regarded, under the received law,¹² as a voluntary unincorporated association. This is to say that, a trade union is not a legal entity separate from its members and capable of suing and being sued in its own name. It has been said that neither the 1871 Act, nor subsequent statutes, established¹³ the legal status of a trade union clearly and unambiguously. This statement refers to the fact that the law as was received in Zambia recognized two sets of trade unions - the registered and the unregistered unions. This was so because registration was¹⁴ voluntary until 1956. Because of this ambiguous position in the law as received, trade unions faced difficulties of some kind or other, for example, the question of whether a trade union was capable of entering into a valid contract in its own name; or whether it could be sued in its own name. This ambiguous position¹⁵ is explained below.

Prior to the 1956 law, which law was similar to that previously received from the United Kingdom, two situations obtained. First, is that of an unregistered trade union. Such a union could not sue or be sued in its own name because it was not regarded as an independent legal entity. Despite this general disability, however, Order XIV, r. 3, of the Rules of the High Court says,

" where more persons than one have the same interest in one suit, one or more of such persons may be authorised to sue or to defend in such a suit for the benefit of or on behalf of all the persons so interested." This would have enabled representatives of an unregistered union, e. g. top officials and trustees, to bring a representative action or to be sued on behalf of the total membership of the union.

Be this as it is, owing to the fact that such a representative action must represent every individual making up the union, formidable obstacles would have been met in such cases. In contractual actions, for example, it would have been found that change of membership, between the time of the breach of contract and the time of the action, defeats the action since the new members do not have the " same interest " within the meaning of Order XIV, r. 3, and that this will be so whether it is a representative action against or by unincorporated association. It has been found that a shifting membership would, in principle, have the same devastating effect on representative tort actions. Unregistered, like registered trade unions would not be made liable in tort under section 4 of the Trade Disputes Act, 1906. But even without the protection of section 4 above, it is likely that the difficulties of the representative action might have afforded a defence in practice, because a representative action for damages against an unregistered association will fail if any member of the association had some personal defence to

¹⁸ make. In such circumstances, his association, too, could avail itself of the member's defence. A representative action on tort, by an unregistered union might equally fail, if the tort required proof of damages, since the damages would, in principle, have to be shown to be personal to each member.

The registered unions, on the other hand, have got their own problems. Such unions have, at times, been judicially described¹⁹ as "quasi corporations", near corporations" or "tertium quid". Registration has, therefore, undoubtedly produced rather a "hybrid" type of union. Its status has been put between that of an incorporated company and that of an unregistered association. The House of Lords in Taff Vale Railway Co. v. Amalgamated Society of Railway Servants,²⁰ decided that such a union could be sued in its own name in tort, with the consequence that the union funds would be used for the damages awarded, and not the private assets of the members themselves. It was emphasised by the majority of their Lordships who held that, while it was true that a trade union was not a corporation or legal entity, distinct from its members, that nevertheless the privileges conferred upon registered unions by the Trade Union Act, 1871, supported a correlative liability upon such a union to be sued in its own name for torts it committed. Lord Brampton came out clearly in the case when he said:

I think a legal entity was created under the Trade Union Act, 1871, by the registration of the society in its present name in the manner prescribed, and that legal entity so created though not perhaps in the strict sense a corporation, is nevertheless a newly created corporate body created by the statute.

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21

This was followed in *Bonsor v. Musicians' Union*, where Lord Morton said that the union was capable of entering into contracts and of being sued as a legal entity distinct from its members; and that the contract of membership was between Bonsor and the Union.

In addition to the above, the object of a system of registration of trade unions introduced in 1871 was to ensure that organizations which had newly been granted legal recognition should, at least, show a modicum of formal organizational requirements. The requirement to register, as already pointed out, was wholly voluntary, but carried with it some indirect inducements, namely:

- (i) As regards trustees of a registered trade union, there is a provision for automatic vesting of the union property in the succeeding trustees. In addition, stock in public funds may be transferred by the direction of the Registrar of Friendly Societies when a trustee is unable or incapable of acting.
- (ii) The income of registered trustees is enhanced by the

provision that interest and dividends applicable and in fact applied solely to pay "provident benefits" are exempt from income tax.

(iii) An accounting by officials to the union trustees of all properties in their hands is required and may be enforced. In respect of fraudulent obtaining, withholding or disposal of union property, swift and inexpensive procedures are available, to the registered unions.

(iv) A member of a registered trade union may, from the age of 16 years, dispose of sums of up to k400.00 at death payable to him or her by the union by means of a written nomination only. If a member leaves no will or written nomination, up to k200.00 of union money payable to him may be distributed by trustees without letters of administration being taken out.

Some of these inducements are still available to the unions under the new legislation.

(ii) Towards registration of trade unions:

In 1956, as already pointed out, the Trade Unions and Trade Disputes Ordinance of 1949 was amended and made registration of trade unions compulsory. This amendment brought into Zambian law a significant change. The requirement that all trade unions should be registered meant that the Registrar of Trade Unions would be able to control the growth of trade unions. In addition, this meant that all trade unions would now avail themselves of the

the inducements available under previous legislation. It must, however, be noted that the need for compulsory registration of trade unions had been realised earlier. In 1930, Lord Passfield, the Secretary of State for Colonies, issued a despatch, instructing all colonial governors who were in the process of introducing labour legislation in their colonies to see to it that registration of trade unions was made compulsory.²² The reason for this requirement was that "registration of labourers without previous experience of combination for any social or economic purposes" should not fall under the domination of disaffected persons by whom their activities may be diverted to mischievous ends. To this effect, a clause imposing compulsory registration of trade unions was included in the 1938 draft bill on trade unions. This bill, however, never became law.²³ Another draft bill, on trade unions, was drawn in 1947. This Bill too, contained a clause on compulsory registration of trade unions. Much opposition to the inclusion of this clause in the Bill was raised by many organizations concerned.²⁴ The Labour Commissioner, in a letter to the Industrial Adviser referred him to the discussion of the problem that might arise as a result of the inclusion of a clause on registration of trade unions. It was thought that the inclusion of such a clause in the Bill might have the effect of upsetting or delaying natural progress of African trade unionism; and in lieu of this clause, a suggestion was made that consideration should be given to the

definition of "trade union" to obviate the necessity for registration of the existing or future representative associations of Africans which, although falling short of trade unions, would be included in the present definition. On the strength of this present-²⁵ ation, the Industrial Adviser recommended the omission of this clause, and it was accordingly omitted from the Bill.²⁶ The compromise reached was that registration should remain voluntary but that unions should be compelled to notify the Registrar of their existence as soon as they came into being. When analysing the basis of the strong opposition to compulsory registration, it was found that this was based on the imposition, on the registered unions, of some requirements to submit annual statements of their financial management rather than the disadvantages conferred by registration as outlined in the Taff Vale Case.²⁷ Zambia, then Northern Rhodesia, at that time was the only territory which had not enacted the compulsory registration clause in its Trade Unions and Trade Disputes Ordinance.²⁸

Immediately after the passing of the 1949 Trade Unions and Trade Disputes Ordinance, those who had earlier urged the inclusion of the compulsory registration clause started to agitate for an amendment to the ordinance to include compulsory registration. In 1951, a memorandum on " Trade Unionism in the Colonies " was submitted to the Secretary of State for Colonies by the Colonial

Labour Advisory Committee. In its recommendations the Committee had this to say on compulsory registration:

The first move of an emergent union must be to seek registration and achieve legal status. The provision for compulsory registration, which is in force in all colonial legislation except that of Northern Rhodesia may first seem inconsistent with the historic development and spirit of trade unionism in this country, and objections have been advanced on that ground. This provision, however, was recommended in the Passfield Despatch of 1930, to ensure that 'organizations of labourers without experience of combination for social or economic purpose' should not fall under the domination of disaffected persons by whom their activities may be diverted to mischievous ends. The danger then so clearly foreseen was not entirely prevented by this provision; but experience has shown how useful it can be against malpractices and maladministration. It ensures that, from the start, a union's rules and administration of its financial matters conform to certain reasonable standards, and that the sanction of prosecution or cancellation of registration remains in the background as a guarantee against that those standards will be maintained.²⁹

In the light of these recommendations, the Secretary of State for Colonies wrote to the Governor of Northern Rhodesia asking him to comment on the report. The Governor did not accept the Committee's recommendations and advised the Secretary of State to the contrary.

30

The Overseas Employers' Federation also discussed the effect and usefulness of compulsory registration of trade unions and came to the conclusion that it was the only way open to trade unions.³¹

The Chamber of Mines had been in favour of compulsory registration from the start and in 1947 it submitted a letter conveying its agreement. It had not abandoned this idea. The European trade unions, which had earlier objected to the idea of compulsory registration, were now showing a change of attitude. This change was brought about, mainly, by one incident which happened between 1950 and 1954. Members of the Mine Officials and Salaried Staff Association

were libelled in a letter by a branch official of the African Mineworkers' Union.³² Because the African Mineworkers' Union was not registered, they could not bring an action against it in its own name. A representative action in this case was also out of

question owing to its attendant difficulties.³³

Early in January, 1955, the Labour Commissioner, in a letter to the Chief Secretary wrote in the following tone:

There is a possibility now that European unions would accept the principle of compulsory registration but the Africans would not, in the period originally allowed (three months) be able to attain the necessary standards to qualify for registration and if they were required to be dissolved they would continue to exist as organized underground movements with no possibility of official advice and guidance being given to their leaders. The two European unions would agree to compulsory registration for the benefits it confers on them.

With this changed attitude, a draft amendment Bill was put out containing a clause on compulsory registration. A compromise was, however, to be reached. Instead of the original three months allowed before registration, the period was, in the draft amendment Bill, extended to six months. And in 1956, this was passed into law. The coming into law of the compulsory registration of trade unions marked a bridge between the law practised before 1956 and that to follow from 1956, onward. The legal status of a trade union in Zambia now is, as stated by Lord Brampton in the Taff Valle case above. However, apart from the incentives outlined in this case, which make unregistered unions unattractive, these unions have no other major disadvantages.³⁴

(d) Registration of trade unions:

Trade unions are required, under the Industrial Relations Act,³⁵ 1971, to apply for registration as soon as they come into being.³⁶ The minimum number of people required to form a trade union is seven. The application is directed to the Commissioner of Labour, who may register such a trade union if he is satisfied that it complies with the provisions of the Act. An application for registration must be preceded by a notice of such application, in the government gazette.³⁷ This must appear in three consecutive issues of the gazette. The purpose of such a publication in the government gazette is to enable objections to the registration to be lodged before actual registration is done. The intending trade union must, together with its application for registration, submit

its constitution to the Commissioner. In case of refusal to register as a trade union, the trade union in question may appeal to the Industrial Relations Court.³⁸

Where a trade union has been registered a certificate of registration will be issued. The Commissioner of Labour, in his capacity as the Registrar of Trade Unions is empowered under the Industrial Relations Act to reject applications where these do not comply with the law. He may even cancel a certificate of registration already issued, for the same reason. As example, in 1968, the Registrar rejected an application for registration from the Zambia Union of Bankers³⁹ and advised them to join the Zambia Society of Bank Officials already registered. In the same year, he gave statutory notice of his intention to cancel the certificate of registration relating to the Zambia Local Civil Servants' Association.⁴⁰ In 1970, the Registrar turned down an application for registration by the National Union of Food, Drinks and Factory Workers; and another from the National Union of Railwaymen.⁴¹

Problems of registration have also arisen as a result of the Government policy of "one industry, one union". The tendency, on the part of trade unionism, in the beginning, was to favour multi-unionism, i.e. several small unions in which one of the main

occupational group in a factory was organized by a different union. In some cases, multi-unionism arose when there were more than one union competing for membership within a given group of workers within a factory. This type of multi-unionism was found to be wasteful and caused a lot of demarcation problems. The Government therefore, introduced the policy of 'one industry, one union'. This policy was meant to minimise the occurrence of demarcation problems. Under the policy, sectional claims on behalf of different occupational groups within a particular factory can be easily harmonised and thus make it easier for the union to conclude effective company and factory agreements. Demarcation problems between groups became easier to solve and the temptation for the unions to outdo each other in militancy or obduracy are eliminated. Demarcation problems arise as a result of there being several small unions, each trying to obtain membership from the same group of people in the same place. In such a case it becomes very difficult for an employer or employers' association to recognize any one of these small groups. The difficulties brought about by such demarcations disputes is fully explained in the next paragraph.

In accordance with the policy of 'one industry, one union', in 1968, objections were raised by the National Union of Transport and Allied Workers to the registration of Zambia Airways Workers' Union. The National Union of Transport and Allied Workers contended

that, in accordance with the Government policy of 'one industry, one union', Zambia Airways Workers' Union should not be registered since their union covered this field⁴². They were supported in this claim by the Zambia Congress of Trade Unions. However, this application was saved by the decision to classify Zambia Airways as a separate industry. This was done on the basis used in classifying Zambia Railways. The Guards' Union of Zambia faced the same problem as earlier faced by the Zambia Airways Workers' Union when they applied for registration in 1972. Objections to its registration were raised by the National Union of Commercial and Industrial Workers, who contended that their union was the legitimate organization to which guards could belong, and that registration of guards' union would run contrary to the Government's declared policy of 'one industry, one union'. The Zambia Congress of Trade Unions supported the objections again. The same method as was used in classifying Zambia Airways as a separate industry, was again used here. The Guards' Union was registered, but its operations were restricted to the security guards and allied workers employed by commercial security firms. In other words, commercial security firms were recognised as a separate industry for the purposes of registering the Guards' Union.⁴³

In conclusion, one would say that the introduction of the method of classifying industries using fine artificial differences

is, in a way, defeating the intended goals of 'one industry, one union' policy.

(e) Union Membership:

Membership of a trade union, since the beginning of trade union movement, has been based on the union constitution, which is sometimes referred to as the 'union rule book'. For a person to become a member of a trade union, that person has to apply to the union on a prescribed form, and when the application has been accepted, that person becomes a party to a contract of association with the rest of the union members. The relationship between a trade union, or indeed any other non-proprietary organization and its members, depends therefore, primarily on the rules of that organization which form the terms of a contract of membership between one member and every other member. To these contractual terms the law may add others, and in particular, what are known as the rules of natural ⁴⁴justice.

The requirements of trade unions for membership are that:

- (i) the applicant shall either have served an apprenticeship in the trade; or
- (ii) he shall have experience in the trade; or
- (iii) he shall be employed or seek employment in one of the occupations the union covers.

Often the applicant will already be working in the trade, unless there is a closed shop, when membership may be applied for simultaneously with employment. Admissions are usually conducted through the branch offices. The union is free to reject the application, except, perhaps, where membership is a condition of employment. This freedom to reject is accompanied by the freedom, on the part of the individual, to join the union.

According to the general principles of contract, parties to any contract must, of necessity, have capacity to contract, (i.e. must fulfil the basic requirements of the law of contract). One of these basic requirements is that, a party must be of full contractual age, presently pegged at 21 years. To this general provision of the law of contract, there is an exception when sometimes young people, between the school leaving age and twenty-one, are accepted as 'juniors or associated members'. Be this as it is, difficulties have been experienced in enforcing contracts in which these young people are parties. Where, however, there is a closed shop and a person who is less than twenty-one years employed by the trade or industry in which the closed shop applies, applies for membership, he will be accepted as a full member in the legal sense and a party to the contract of association.

There is another aspect of the law of contract which may affect the membership of the union. This is where the membership

is obtained by misrepresentation, fraudulent or innocent. On the matter being discovered, the membership may be rescinded.

Although it has been said above, that there is freedom, on the part of the individual to either join a union or not, and on the part of the union to either accept or refuse membership, we saw above that, where there is a closed shop this freedom to refuse membership is questionable. The freedom of an individual to join a union does not therefore arise where there is a closed shop. The concept of closed shop is a common law concept while freedom to join a union or not is expressly provided by the statute. In enforcing the observance of a closed shop it would appear that an infringement of an express statutory provision is committed. This is so because where a statute intends to override a common law provision, it should be allowed to do so. In this respect Industrial Relations Act, 1971, has so provided. This situation may now appear academic, but we should expect that some time in future, it may be possible for a person to challenge the union on the concept of the closed shop. The freedom of an individual to join the union of his choice, although theoretically in existence, is however, practically limited by the existence of a closed shop and other institutional pressures. As to the existence of a closed shop, there are two alternatives:

- (1) If the closed shop does require membership of one union exclusively, then the individual's freedom of choice is

non-existent within the area of control of the closed shop in question.

- (2) If the closed shop is the kind that requires membership not of one union exclusively, but of some union, then the individual's freedom of choice will be adversely affected only if it comes into collision with inter-union relations.

The phrase 'other institutional pressures' referred to above refers mainly to the government policy of 'one industry, one union'. Refusal, by the government, to recognise small rival or breakway unions for bargaining purposes, indirectly circumscribes freedom of choice of one's union by reducing the chances of survival of such a small rival or breakway union.

References

1. Meynaud, Jean & Sala-Bey, Trade Unionism in Africa, p. 2; Methuen & Co. Ltd., 1967.
2. This was an 'all-white' trade union: The Northern Rhodesia Mine Workers' Union.
3. The first local law, the Trade Unions and Trade Disputes Ordinance, was passed into law in 1949; and the latest, Industrial Relations Act, 1971, was passed in 1971.
4. This definition was made possible by the combination of the following Acts:
 - (a) Section 23 of Trade Union Act, 1871;
 - (b) Section 16 of Trade Union Act Amendment Act, 1876;
 - (c) Section 2 of the Trade Union Act, 1913.
5. Rideout, Roger W., Principles of Labour Law, Second Edition, Sweet & Maxwell, London, 1976, p. 253.
6. Grunfeld, Cyril, Modern Trade Union Law, Sweet & Maxwell, London, 1966, pp. 8 - 9.
7. Ibid, pp. 8 - 9. : Since the introduction of compulsory registration of trade unions, it is very unlikely that there could exist any 'temporary unions', because registration imposes some kind of permanency.
8. See Brierly, J. L., Law and Government, in Principle and Practice, Odhams Press Ltd., London.

9. These two provisions provided that the law applicable to the territory of Northern Rhodesia shall be:

- (a) the Common law; and
- (b) the doctrine of equity; and
- (c) the statutes which were in force in England on 17th day of August, 1911, (being the commencement day of the Northern Rhodesia Order-in-Council, 1911) ; and
- (d) the statutes of later date than that mentioned in paragraph (c) in force in England, now applied to the territory, or which hereafter shall be applied thereto by an Act or otherwise.

10. These are:

- (a) The Trade Union Act, 1871;
- (b) The Conspiracy and Protection Of Property Act, 1875;
- (c) The Employers and Workmen's Act, 1875;
- (d) The Trade Union Amendment Act, 1876;
- (e) The Trade Disputes Act, 1906;
- (f) The Trade Union Act, 1913; and
- (g) The Trade Union (Amendment) Act, 1917.

11. Grunfeld, Cyril, p. 7.

12. Ibid, p. 7.

13. United Kingdom, The Royal Commission on Trade Unions and Employers' Associations, 1866, Cmnd. 3623, pp. 211 - 216.

14. See Amendment to the Trade Unions and Trade Disputes Ordinance, 1956.
15. The inclusion of Common law principles in this section has been necessitated by the need to show exactly the historical background of our present law.
16. This material should be read in conjunction with that on p. 16.
17. Grunfeld, Cyril, p. 15.
18. Mercantile Marine Services Assocn. v. Thomas (1916) 2 K. B. 243.
19. Cmd. No. 3623, supra n. 11 at p. 8.
20. (1901) A. C. 426.
21. (1956) A. C. 104.
22. Sec 1/1401 (.N.A.) Lusaka.
23. Ibid.
24. Sec 1/1401, folio 9.
25. Ibid.
26. See Hansard No. 64 of 1949.
27. (1901) A. C. 426.
28. Letter to Chief Secretary from the Labour Commissioner, dated 11th January, 1955, N.R. 3/332 vol. (i) Z.N.A., Lusaka.
29. N.R. 3/293, folio 16, Z.N.A., Lusaka.
30. This was a federation of overseas employers in the British Colonies; Roberts, B. C., Labour in the British Tropical Territories of the Commonwealth, G. Bell & Sons Ltd., London,

1964, p. 130

31. N. R. 3/332, vol. (i) Z.N.A., Lusaka.
32. Ibid, see letter dated 11th January, 1955, to Chief Secretary.
33. Grunfeld, Cyril, p.15.
34. Rideout, Roger. W., pp. 255 - 257.
35. S. 5 (1) of Industrial Relations Act, 1971.
36. S. 7 (1), *ibid*.
37. S. 7 (5), *ibid*.
38. S.10 (1), *ibid*.
39. Annual Report of the Ministry of Labour and Social Services -
Department of Labour, 1968: Cases mentioned in this section
occurred before the coming into effect of the IRA, 1971, but
they are still relevant to the post IRA situation in Zambia.
40. *Ibid*.
41. *Ibid*.
42. *Ibid*.
43. *Ibid*.
44. Rideout, Roger, W., p. 270.
45. Doyle v. White City Stadium Ltd., (1935) 1 K. B. 110.

CHAPTER 2

ADAPTATIONS AND ASSIMILATIONS

(a) Introduction

In 1930, some doubts arose as to what law governed trade union matters in Zambia. These doubts came as a result of a circular Despatch of 17th September, 1930, in which the Secretary of State for Colonies - Lord Passfield - had requested the colonial governments, among other things, to introduce some trade union¹ legislation, where none existed. Sir James Maxwell, then Governor of Northern Rhodesia, wrote to the Secretary of State thus:

.... I am advised that by virtue of the Northern Rhodesia Order-in-Council of 1924, the Trade Union Acts, 1871 to 1906, apply to this territory and there does not appear to be, therefore, any necessity for further legislation at the moment.²

Despite this, however, it was still not so clear as to what British Acts applied in the territory. To clear this doubt, a local Act of Parliament was passed in 1929, which clarified the position. This was the Imperial Acts Extension Ordinance - now the British Acts Extension Act. Under this Ordinance, the following British Trade Union Acts³ were confirmed and extended to apply to Zambia in their entirety. The earlier contradictions arose because the government did not know exactly whether there existed in Zambia at that time a law governing the development of trade unions. The government was concerned to know this

in order to know how to handle the emerging trade unions. On the other hand, Lord Passfield was prompted to write the circular despatch referred to above by the fact that he realised there were no clear laws in the colonies serving the labouring class. As a matter of fact, Lord Passfield's government was labour and the Labour Government was in favour of bettering the working standards of the working classes in the colonies by encouraging the passing of labour laws. After the passing of the Ordinance already referred to above, it became clear as to what law regarding trade unions applied to Zambia.

The beginnings and the development of trade union law in Zambia can therefore, only be fully understood and appreciated by first studying the British trade union Acts from where Zambian trade union law originated. Although the British trade union Acts were originally enacted and meant for the British people, these were extended to apply to British colonies by Colonial Government.

(b) Legislative history of the local trade union law

In order for us to understand how much our trade union law has borrowed, over the years, from the British trade union law, it will be necessary to make some comparisons as to the origins of our law. These comparisons can only be best understood by

examining how our law adapted and assimilated the provisions of the British Acts, which have since been consumed as our own.

The first attempt at passing local law started in 1938. In that year, a bill was drafted for presentation to the Legislative Council. Eight years had passed since Lord Passfield had urged the government to introduce labour legislation, and the government had not then seen any good reason to do so. The situation was now different. The copper industry had now been developed to such an extent that there was need for labour to be controlled. It was therefore felt necessary to introduce this bill. After its publication in the Government Gazette many interested parties were not pleased with its provisions and petitioned the Government to postpone its enactment so that they have time in which to study it and be able to make meaningful comments before the bill became⁴ law. To this effect, the Chief Secretary wrote, on 22nd November, 1938, to the Governor thus:

I have the honour to inform you that representations have been made to the Government by interested parties, with regard to the trade union bill which was recently published for information in the Gazette that they have had insufficient time fully to consider the draft bill. It has therefore been decided that the bill will not now be introduced at the forthcoming session of the Legislative⁵ Council.

This letter to the Governor continued:

.... The Secretary of State approved the terms of the bill subject to certain comments. The mine companies were not anxious for the bill to be rushed as they wanted to consult among themselves in considering its effects. The mine workers' union similarly were against over expedition. It was, therefore, decided by Council, that the bill should not be introduced in November, 1938.

There were several reasons for the reluctance of the Government to press for the bill to go through. Some of these
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reasons were:

- (1) Unionists had a feeling that any form of trade union legislation was an attempt, by the Government, to control, if not abolish trade unions. This is born by many complaints lodged by the unionists with the
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Government.

The unionists had just been granted recognition after a hard struggle and were justified in their suspicion. Government and the mining companies were against the formation of trade unions and this attitude had at this time not changed for the better.

- (2) Employers were not yet ready to have what they called 'wholesale' trade unions, especially among Africans who they regarded as not yet ready for unionization. This attitude is reflected in the evidence submitted
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to the first Forster Commission of Inquiry.

- (3) The territorial Government, too was not sure whether trade unions would or would not be used to further political objects of the leadership.

These were the main reasons for the 'killing' of the 1938 bill. And as a result, the bill was not presented to the November, 1938 session of the Legislative Council. In fact, the bill was never presented to the Council untill 1942.

When, however, the bill was resuscitated in 1942, it was under a different title: " Trade Unions, Conciliation and Trade Disputes Bill ". This was so because the Government wanted to provide for conciliation as well. It is nevertheless submitted that, although the 1938 bill had provisions for conciliation, these did not warrant the bill to be so entitled.

This bill, unlike its predecessor, was published for information first and later presented to the Legislative Council for consideration. The reason for publishing it for information first before presenting it to the Council was to avoid complaints which followed the presentation of the 1938 bill to the Council.

It was the Government's intention to have presented the bill in 1941. But this was not possible because of the general elections which were to be held that year for the elected members of the Legislative Council. At its second reading in September,

1942, the bill was referred to a Select Committee. Due to the pressure as attended the earlier bill in 1938, it was found difficult to present the bill for a third reading. We believe that the reason for referring the bill to a Select Committee was to delay its being passed into law. It was a general feeling of both the employers and the government that time for such a law in Zambia had not yet come. The employers were afraid of legalising trade unions at that time as they thought that Africans were not yet sufficiently educated to make use of trade unions. The government too, was not yet ready to legalise trade unions, especially, among the Africans. Their fear was that the trade unions may be used by the leadership for objects intended to benefit the leadership itself. There was also disagreement between the politicians and unionists. The Northern Rhodesia Labour Party and the Mine Workers' Union did not agree on some of the provisions of the bill. It was felt that any enactment to comply with the requirements of either the Labour Party or the Mine Workers' Union would not satisfy the other party. It was ^{fore} there/ considered likely that such a move would provoke widespread dissatisfaction among the workers. It was necessary at that time to maintain industrial peace for purposes of enabling the country to go on producing copper for war purposes. In fact, it is our view that the government believed that the position

with regard to illegal strikes appeared to be adequately covered by the applied Trade Unions and Trade Disputes Act, 1927 and the Emergency Powers Regulations. In the end therefore, it was felt that it was both unnecessary and unwise to proceed with contentious legislation at that time.

In addition, the Government felt that it was not in the interest of both the Northern Rhodesia Labour Party and the Mine Workers' Union to enact an ordinance whose provisions would be scrapped off the following day. This feeling was brought about by the intended repeal of the United Kingdom Act of 1927 whose provisions had been incorporated in the local bill. It was also felt by the Government that, although no African trade union had yet been formed, it was important that the desire, on the part of the Africans, to form such unions which had expressed itself already, should not be suppressed by the proposed law. It was therefore, felt necessary to envisage the existence of three parties, none of whose interests may be identical; the employers, the European unions and the African unions. The bill, as it then stood, provided only for arbitration between two parties in a dispute, thereby turning a blind eye to the impending creation of an African Trade union which would become the third party.

The Governor also felt that, apart from any other reasons,

he needed to be afforded expert advice on the formation of African trade unions before he could consider allowing the proposed law to go through. As a result of all these considerations the Chief Secretary did not convene the Select Committee, and the bill thus automatically lapsed on the conclusion of that session.

(c) Government attitude

It is important, at this point, to explain the pattern of development of trade unions in Zambia, and why, at this point in time only one section of the industrial community had fully fledged trade unions while the other had not. It had been the policy of the Imperial Government, and therefore, the territorial Government, as well, to encourage separate developments of the ethnic communities in their colonies on racial basis; and this affected the development of trade unions in Zambia. There had to be separate unions serving separate racial communities -
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whites and blacks.

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The Governor's Despatch to the Secretary of State for Colonies raises some questions which need to be looked into. Some of these questions are: Were the reasons given in his letter the only reasons for the reluctance, on the part of the Governor, to proceed with the bill? If not; what were the other reasons?

In introducing the bill in 1942, the Attorney-General had

this to say to the Council:

In answer to that request copies of the seven Acts which are set out in the objects and reasons were laid on the table of the Council. One of the Honourable members was not satisfied with that; ... If any one had endeavoured to read these seven Acts of Parliament with their cross references I think he would wish to have them placed before him in a more simple manner. So the next step was an undertaking that a bill would be prepared consolidating seven Acts of Parliament. This was not a particularly easy matter, but it was done with conspicuous success by M. Dickson.

This indicates that there were present many drafting problems.

Apart from this, the debates were really heated and some members were determined to prevent the bill from becoming law: An example was Mr. Welensky who said:

... The measure itself is not welcome by trade union movement as a whole, but sir, I do not believe that that gives anyone the right to say we do not see good in certain parts of the measure. There are parts I shall oppose with everything in my power, with every legitimate means at the disposal of the Labour Party, but I do not feel that that gives anyone the right to suggest we are unreasonable.¹¹

The debates continued and pointed out to the deficiency in the bill's provision for the formation of African trade unions:

... It is quite obvious that although in the main this bill refers to the existing trade unions and to trade unions which are likely to be formed among Europeans there is nothing in the bill to say that it is confined to the

European population at all. We have undoubtedly got to face the fact that time is coming and may come fairly soon in which we shall have unions consisting of Africans¹²...

The seriousness of the debates is brought out in a speech by Sir Stewart Gore-Browne when he said:

I am speaking now, sir, as I have been challenged to do so by the Honourable Mover. I listened to his speech, and I must say that in all these years I have sat in this Council I have never listened to what was to my mind such a harmful speech. If there ever was a measure which we had to approach in a calm and balanced spirit and without rousing passions which are only too near the surface, it is this one. The Hon. Mover, as I understand him, was deliberately provocative. I hope he is satisfied with what he has done, -
I am not ...¹³

The cause of this conflict was rooted in the entrenched policy of separate developments encouraged by the Imperial Government and carried out by the territorial Government. Separate development was a policy of government which required that Europeans should look after their own interests, while those of the Africans were being looked after by nominated white members of the Legislative Council. In other words, 'separate development' is another phrase for 'colour bar'. The Labour Party here was serving the interests of Europeans, while Sir Stewart Gore-Browne, member representing African interests, was trying to serve those interests; and the end result was this bitter conflict.

From the examination of the debates concerning this bill, one finds that there were the following main reasons for the bill's discontinuation, viz:

- (1) The opposition of the Labour Party to the provisions of the bill relating to trade disputes, which provisions had been borrowed from the United Kingdom 1927 Trade Disputes and Trade Unions Act;
- (2) The lack of provisions in the bill to cater for future African trade unions; and
- (3) The general reluctance of the Government to introduce trade union legislation. This was as a result of lobbying by interested parties, mainly employers.

In 1947, however, another Bill was drafted for presentation to the Legislative Council. The provisions of this bill were the same as those of the 1938 and 1942 bills, except that, in this bill all references which related to the provisions of the United Kingdom 1927 Act were omitted as this Act had been repealed in the United Kingdom. The 1947 bill, like its predecessors, was debated at length. The bill itself, apart from having drawn heavily on the previous drafts, had drawn directly from the original British Acts. Although the bill was drafted in 1947, it did not become law until 1949. The reason for this long delay was that various parties who had been asked to comment on the bill

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before it came to the Legislative Council did not do so in time.

(d) Adaptation and assimilation of English Law: the extent
of borrowing

Zambian law generally has virtually depended on wholesale borrowing from United Kingdom law; and Zambian trade union law in particular is no exception. Since the first draft bill of 1938, which bill, however, never became law, trade union draft bills have borrowed heavily from the United Kingdom trade union law. The extent of this borrowing can best be seen in the draft bill of 1947, which subsequently became law.

There were three main areas for which the 1947 bill wanted to cater. These were:

(a) Trade union establishment

Under this heading the bill borrowed very heavily from the United Kingdom trade union Acts.

(b) Trade disputes

In trying to provide for the settlement of trade disputes the draftsman of the 1947 bill relied mainly on the then existing United Kingdom trade union Acts and as a result drew heavily from their provisions.

(c) Conciliation

Conciliation provisions in the 1947 bill were equally

21

drawn from the United Kingdom conciliation Acts.

This is how the Northern Rhodesia trade union law adapted and assimilated the British Acts. We must note, however, that the purpose of the local Act was only to "consolidate and adapt" the 'imported' legislation, so to speak, so as to conform with local conditions and nothing more. It was not, therefore, a repealing or amending Act. In this regard, the provisions of the British Acts which had not been specifically catered for in the local legislation still applied to Northern Rhodesia and continued to apply to Zambia so long as they are not contrary or repugnant to the provisions of the later legislation. This is so as expressed by the following maxims:

"Leges posteriores priores contraries abrogat." This means that, where an earlier statute was not inconsistent with the later statute, the later does not repeal the earlier statute. And

"Expresio unius est exclusio alterius" - This means that, where a later statute expressly repeals only a few sections of an earlier statute, that which is not expressly mentioned in the later statute remains unrepealed. To this extent, it can be contended that British law is still applicable to Zambia as it did prior to 1949.

(e) Conclusion

The importance of the above exercise lies in pointing out

the sources of our law and the fact that we have not, ourselves been courageous enough to make our own innovations. This is true even with our ' celebrated ' Industrial Relations Act, 1971, which borrowed heavily from the British Act of the same title passed in the same year. The only local exercise we have so far undertaken is to adapt and assimilate foreign Acts, for local application. This is a weakness on the part of our legislature, although it may have been, initially, carried out for its convenience then.

While the earlier legislatures may be excused for this weakness for the reason that, at that time they did not have the facilities needed for carrying out research before any legislation is introduced into parliament, our present legislature has all the facilities of a modern University and cannot therefore have the same excuse. But it continues to do exactly the same things which the earlier legislatures did. The only reason perhaps, for continued un-innovativeness in our parliamentarians may lie in their political immaturity.

References

1. Sec 1/1401, Z. N. A., Lusaka.
2. Although the Governor mentioned the 1924 Order-in-Council, it **should have** been the 1911 Order-in-Council which originally extended these British Acts to the then Northern Rhodesia.
3. (a) Trade Union Act, 1871;
(b) Trade Union Amendment Act, 1878;
(c) The Conciliation Act, 1896;
(d) The Trade Disputes Act, 1906;
(e) The Trade Union Act, 1913;
(f) The Trade Union (Amendment) Act, 1917; and
(g) The Trade Disputes and Trade Union Act, 1927.
4. It became necessary in 1938 to introduce a local trade union bill due to a number of reasons, some of which are that: it had been eight years since Sir Maxwell objected to the introduction of such law and many changes had since taken place; and the other reason was that the British Parliamentarians had been urging, in the British Parliament, the Imperial Government to take some appropriate measures to encourage the development of trade unionism in the territory. Legislation for the development of trade unions was seen as the only way open.
5. Sec. 1/1402, vol. (i), Z. N. A., Lusaka.

References cont'd

6. This referred to European unionists only because there were no African trade unions and therefore unionists yet.
7. Sec. 1/1402, vol. (ii), Z. N. A., Lusaka.
8. Report of the first Forster Commission of Inquiry, Government Printer, Lusaka, 1940.
9. For details, see N. R. 3/332, Z. N. A., Lusaka.
10. For the full text of the Governor's Despatch, see Sec. 1/1401, Z. N. A., Lusaka.
11. Sec. 1/1401, Welensky was the leader of the Northern Rhodesia Labour Party.
12. Mr. Page, making his views known - Hansard No. 43 of 1942.
13. Ibid.
14. Ibid.
15. Sec. 1/1490, Notes for the Executive Council dated 20th August, 1947.
16. Sec. 1/1402.
17. Sec. 1/1490.
18. See Industrial Relations Act, 1971.
19. (a) Trade Union Act, 1871;
(b) Conspiracy and Protection of Property Act, 1875;
(c) Trade Union Amendment Act, 1876,
(d) Trade Disputes Act, 1906; and
(e) Trade Union Act, 1913.

References cont'd

20. (a) Trade Disputes Act, 1906; and
(b) Conspiracy and Protection of Property Act, 1875.
21. Conciliation Act, 1896.
22. Cross, Rupert, Statutory Interpretation, Butterworths,
London, 1976.

CHAPTER 3

THE DEVELOPMENT OF TRADE UNIONISM PRIOR TO INDEPENDENCE

(a) Introduction

Trade unionism as a function of collective representation to protect and advance the workers' interest as producers within the economic system is an imported institution which, in normal circumstances is generally linked to the level of economic and industrial development of a given community.¹ However, this was not the pattern of development of trade unionism in Zambia. Even when the economic and industrial development of the country warranted the establishment of trade unionism among all the working population, its establishment in Zambia was resisted by both the territorial government and the settler European community.

The resistance by the territorial government was based on a misconception that African trade unionism represented a serious threat to the territorial administration. The danger envisaged by the territorial government was that the African workers, being mainly illiterate and therefore without previous background of trade unionism, might confuse economic exploitation with political domination,² and thereby encouraging nationalistic demands. This was a fallacy on the part of the territorial government because

it was not based on any empirical evidence. On the part of the settler European community, their resistance arose out of a fear of what they thought African trade unionism might do. This fear too was not based on any empirical evidence.

The establishment and development of trade unionism in Zambia is therefore characterised with the fight against factors unfavourable to its growth. In this chapter, we shall examine the obstacles to the establishment of trade unionism and the fight against these factors. To do this, we shall have to expose what actually went on in the Colonial Office and the Secretariat at Lusaka. This will, in the process, reveal to some extent, what went on in implementing the obstacles and in destroying their barrier.

(b) The Colonial labour policies and their impact on Northern Rhodesia

The Colonial Office had no established labour policy before the first World War. One wonders why such a vital policy was lacking in the Colonial Office. The explanation of the absence of a formulated labour policy may, perhaps lie in the fact that the Native labour itself had not yet taken on any significance to warrant the establishment of a general policy. This is supported

by the fact that, at that time, the colonial employers, who were mainly private companies and estates, still regarded their native labour as merely one of the tools of production and nothing more.

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One prominent writer has however defended the colonial office on this point and justified the non-existence of such a policy. He has said that there was no need at that time for the establishment of a rigid colonial labour policy because of the flexibility and diversity of the British colonial administration, which reflected the range of different social and economic conditions in different territories, the different views and personalities of governors and their advisers, the different territorial developments, and stages of constitutional development reached.
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Delay in the formulation and implementation of a general colonial labour policy biased towards the recognition of the importance of the indigeneous labour was justified on the ground that there was a diversity of groups of people to be catered for. This reason is however not valid. We believe that the real cause of such delay lies in the reluctance on the part of the British government to take a decision there and then. This indecision can be traced to the opposition of the settler employers to the introduction of such a policy. The local administration as well as the Colonial Office were afraid of antagonising the settler employers. The fact that at a later date such a policy was formulated and implemented is reason enough to suggest that if the British

Government wanted to formulate such a policy at a much earlier date they could have easily done so.

The absence of a formulated colonial labour policy led to the laying of such weight in the administration of colonial labour matters on the opinions of the local administration of various territories and on the local knowledge and experience⁶ on which those opinions were based. This tendency to allow local opinions to prevail over instructions and directives from the colonial office had a delaying effect on the acceptance of the⁷ directives. The local administration had been allowed to build in itself a confidence that, whatever they were to tell the colonial office, was accepted. This confidence in most cases resulted in their resisting any directives which were meant for the improvement of local labour, even when there was no need to resist.

In the period between the first and the second World Wars, something that was to change the pace of the then 'ad hoc' administration of the colonial labour matters happened. This⁸ was the new social and economic order which took shape. In addition, in England there was installed, for the first time ever, a labour Government, which was inclined to favour the development of a liberal colonial labour policy to foster the development of colonial labour organizations.

In 1929, therefore, under the influence of the Labour Government, an Act of Parliament, known as the Colonial Development Act, was passed. One of the essential features of this Act was that the colonial administrations were to encourage the formation of trade unions and insist on fair wages for workmen. Because of the already existing colonial set-up where the local administrations were given undue prominence, this enactment was not implemented at all. The local administrations refused to implement it because, in their opinion, time was not yet ripe for any local labour to make use of the imported institution of collective bargaining. The other reason why the local administration refused to implement the provisions of this Act was the pressure exerted on them by the local European business community which did not
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favour the formation of African trade unions. There is however another reason. The Act was given to the colonies in form of a directive. Since a directive has no sanction following it, it is always possible to ignore a directive and escape censure. In this case the colonial administrations simply ignored the directive and got away with it.

The Colonial Office, in its endeavour to formulate a permanent colonial labour policy at this point in time had, however, made a big mistake. It had forgotten to lay a foundation first in the colonial territories for the reception of the new directives. We have already noticed above how the local administration had

earlier been allowed to act like demigods in the formulation of 'ad hoc' colonial labour policies. As a result of this state of affairs, they never expected the Colonial Office to act otherwise than on their expressed views. When change was being brought about, the best the colonial office should have done was to create, in the colonies, an atmosphere among the local administration conducive to the reception of new and dynamic policy. This was absent and as a result, all early initiatives for the formulation of a colonial labour policy fell on deaf ears.

The Labour Party in England which came to power in 1929 as indicated above, played a significant role in developing the colonial labour policy in favour of liberalising the working conditions under which the indigeneous people of the colonies worked. In their search for such a policy, in 1930, the famous Passfield Memorandum of Paramountcy of the indigeneous interests was issued and distributed to all colonial governments. The significance of this memorandum lay in its emphasis on the rights and interests of the indigeneous people of the colonies. The memorandum said, in essence, that the interests of the indigeneous peoples of the colonies must, at all times, take precedence over those of the settlers. This memorandum was prompted by the lack of interest, on the part of the local administration, as already indicated above, in implementing colonial directives earlier given which required the local administration to make

provisions in their local law for organised labour.

This policy of liberalisation was received with mixed feelings among the local administration and the business community. The policy was not welcome because it meant the freeing of the local labour from the inhuman conditions under which it had hitherto worked. It meant that the labour was now going to cost a little bit more per man-hour, a development which business communities throughout the colonies hated. This was seen as going too far. This prompted the rising of a resistance, we have already met above, in the colonies. This resistance necessitated reorganization of the Colonial Office in order for it to be able to learn more about the conditions then prevailing in the colonies.

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The first Forster Commission of Inquiry Report summed up the feelings of the territorial government and the local business community in relation to the introduction of organized labour among the blacks when it recommended that the Northern Rhodesia Government, in general, and the Mining Companies, in particular, should provide means to educate the natives in the organization of collective bargaining before the implementation of the colonial office directives.

Earlier, lengthy discussions, at Geneva, which were concerned with the drafting of the Forced Labour Convention of 1930, had been

held. This Convention compelled the Colonial Office to examine the difficult question of labour standards appropriate to non-metropolitan territories that were necessitated by the ratification of this Convention. The modification of the laws in the territories which were necessitated by the ratification of the Convention involved the Colonial Office in extensive negotiations, and the question of the policy on labour matters began to take on a new significance.

It is pertinent at this point in time to comment on the measures which were being taken by the Colonial Office in order to bring pressure to bear on the local administration. The Colonial Office had earlier missed the point of difference between themselves and the local administration. The cause of the failure to implement the colonial office directives was the lack of a base upon which to work. The Colonial Office failed to realise that, for their directives to be effective, the territorial governments were first to be made to realise the importance of such measures, not only to the indigeneous peoples of the territories, but also to the economy of the territories. There was a need therefore first to educate the local administrations before introducing means to implement such measures. It would only be after the local administrations had started to appreciate such measures that the actual measures should have been introduced and in that way their implementation would not have been resisted. The absence of local labour legis-

ation in the colonial territories, as earlier noticed, to guide the local administrations was a factor which delayed the reception of the early Colonial Office directives on labour matters. The local administrations were therefore used to act on their own initiatives. To try and change such a working system without first creating a conducive atmosphere was tantamount to saying that what had been done hitherto by the local administration was not the right thing to have been done, a state of affairs unacceptable to them.

The Colonial Office, however, later realised this mistake and tried to correct it by holding, in 1930, a meeting of colonial governors to discuss subjects touching on the need to change the labour conditions and the creation of job security. It was emphasised at this meeting that it was the duty of the colonial governments, henceforth, to show sympathy with the increasing tendency for workers' organizations to be formed. The whole idea of this meeting was to encourage colonial governments to develop a policy which would guide the colonial peoples' aspirations into constitutional channels and to provide some safety valves and opportunity for progress. This was based on the idea that it would be easier for the governments to deal with an organized body, such as a trade union, than with a number of irresponsible individuals. The whole atmosphere indicated a reversal of the hardcore conservative policy of 'laissez-faire' and the realisation of the import-

ance of the natives in the colonial territories.

Armed with the results of this one meeting, the colonial office went ahead and issued more directives to the colonial governments. One of these was a despatch sent on 17th September, 1930, advising them of the necessity to pass trade union legislation. This despatch suggested that suitable legislation, where no unions existed, should be passed incorporating the principles of sections 2 and 3 of the 1871 British Trade Union Act. The result at the recipient end was the same as before. No action was taken by the recipient colonial governments for the same reasons. This meant that the colonial office had been cheated by the reaction of the first colonial governor's conference into believing that, that one conference had been enough to change the conservative attitudes of the local administrations. They should have realised that they needed quite a number of such conferences over a period of years before they could expect any favourable reaction from the recipient colonial governments. As a result therefore, there was still no impact of the colonial office directives on the development of the colonial labour policies.

Because of the failure of the Colonial Office labour policy directives to have any meaningful impact on the development of the colonial labour policy the indigeneous peoples themselves

decided this time, to do something in order to accerate the change intended by the colonial office labour directives, which for sometime had been ignored by the local administration. In 1935, a violent and spontaneous protest on the mines by the black miners¹⁴ took place. In the wake of this protest the establishment panicked and was forced to appoint a Commission of Inquiry into the causes of the protest. The causes of the protest were many and varied, but centred mainly on the treatment of the black workers by both the white employers and their white supervisors. Despite the Commission recommendations, the Government failed to advise the mining companies to remedy the causes of the African discontent and displeasure. The mine managements therefore did little and for most part, life on the mines and in the mine compounds continued as¹⁵ before.

The causes of these protests were the results of the failure on the part of the local administration to heed the colonial office directives. If this had been done earlier, the working conditions of the natives would have been improved and the causes of the discontent would have therefore been nipped in the bud. The local administration equally failed to advise the mine managements to remove the causes of the African discontent and displeasure. The reason for this failure lay in the fact that the local administration was not yet convinced that there was any need to improve the

status of working natives of the colonial territories. This meant that the period of education to soften the attitudes of the local administrations had not yet ended. The preparation for the creation of an atmosphere in which change would be readily accepted had to continue.

However, in the wake of the 1935 protest, the white miners saw a threat, not only to their immediate jobs, but also to the future jobs of their children. To safeguard themselves and their children, the white miners decided to do something towards securing the safety of their jobs and those of their children. They therefore sought advice from a Mr. Charles Harris, then Secretary General of the all-white South African Mineworkers' Union. For this purpose, they invited him to come to Zambia and advise them on the formation of a branch of the South African Union. In 1936 this was done. The formation of this branch was made possible by the amalgamation of local European trade unions which had earlier been formed independently at each of the four mining locations. Prior to the 1935 protest European miners had already started to organize themselves into trade unions. But these were based on each of the four mining locations. They were therefore not national in character but local. These were the branches which were amalgamated in 1936 to form a national branch of the all-white South African Mineworkers' Union. The new union was allowed to function under the

17
then existing trade union law imported from the United Kingdom.

Under these provisions therefore, the law applicable to Zambia, then Northern Rhodesia, was the following:

- (a) the Common law of England;
- (b) the doctrine of Equity;
- (c) the statutes which were in force in England on the 17th August, 1911 (being the commencement date of the Northern Rhodesia Order-in-Council of 1911); and
- (d) any statute of later date than that mentioned in paragraph (c) in force in England, now applied to the protectorate or which hereafter shall be applied thereto by an Act or otherwise.

In essence this meant the transplantation of the British
18
trade union Acts from 1871 up to 1911. The Imperial Acts Extension Ordinance, first enacted in 1929, extended more Imperial
19
Acts.

Despite the above, the position in Northern Rhodesia in relation to the applicable trade union law, was far from being clear. When the then Acting Attorney-General was asked for an opinion on the existing state of legal affairs, his first reply to the Governor was, that he did not know of any trade union laws

20

existing in Northern Rhodesia then. But after re-examining the materials then available, he was sincere enough to admit his ignorance and wrote a second opinion to the Governor, advising him of the applicability of the British trade union law from 1871 up to 1906, under and by virtue of the provisions of the Northern Rhodesia Order-in-Council, 1911, as amended by the Northern Rhodesia Order-in-Council of 1924.

Because of this seeming confusion as regards the administration of trade union legislation, a situation was perpetuated which discouraged the existence of a basis for the reception of the colonial office directives on how to develop the intended colonial labour policy.

The absence of this receptive machinery in the colonial territories, coupled with the deteriorating social and economic order between 1935 and 1937 brought about some industrial unrest in most of the colonies. This state of industrial unrest prompted members of the British Parliament to ask many questions, ranging from establishment of labour departments to provision of legislation for the establishment of trade unions in the colonies, where, none already existed. In the wake of these debates another much strongly worded despatch was sent out in 1937, to the colonial governors, urging them to establish labour departments and other

21

ancillary services. This despatch brought to light the need for re-organizing the colonial office. Instead of ad hoc methods hitherto employed, a need for permanency was revealed. This was necessitated by the pressure of events which convinced the senior officials of a need for more specialised knowledge to be available on social and economic problems. This led to the establishment of a technical department of social services. Such a move was long overdue, in the same way as the establishment of a labour department in Northern Rhodesia had long been overdue. These were the basic infrastructures which should have been established earlier in order to pave way for the reception of the intended new colonial labour policy. Because of their absence the implementation of such a labour policy and therefore its impact was considerably delayed.

Following on the 1937 despatch and re-organization of the colonial office, in 1938 Major (later Sir Glanville) Orde-Browne, formerly Provincial Commissioner in Tanganyika, was sent to Northern Rhodesia to investigate and to report to the Colonial Office on labour conditions in the Protectorate, to recommend the administrative machinery which would be necessary and the legislation required to improve these conditions. This step too should have been taken in 1929, when it was first decided that there was going to be established a formal and permanent colonial labour

policy. Because of its absence at the right time, it delayed the passing of local labour legislation for almost two decades.

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Following the recommendation of the Orde-Browne Report, a draft Bill on trade unions and trade disputes was prepared and presented to the Legislative Council for debate. The draft Bill, earlier seen in Chapter Two, had made provisions for the establishment of trade unions among all workers in Northern Rhodesia irrespective of colour. It had also made provisions for other ancillary matters. However, due to some unfavourable circumstances then in existence, the Bill never became law. The defeating circumstances were mainly political, and to a lesser extent, economic.

The question of establishing a labour department was then given serious consideration. The Royal Commission of 1937, also²⁴ lent support to the Orde-Browne Report on the establishment of a labour department, among other things, with the result that the department was established later in the year. This now paved the way for the reception of the colonial office directives on labour matters and the establishment of a vehicle through which labour²⁵ was to be heard. This had not been possible earlier as evidenced by a despatch from the colonial office dated 24th August, 1937, which read in part:

... I am of the opinion that relations between employers and employees, which constitute the main function of any government labour organization, can hardly be dealt with efficiently if they are merely left to the Secretariat or the Native Affairs ... Nor do I think that they can be effectively covered in District administration by an administrative staff which is primarily occupied with other interests and duties.

The main import of this despatch was that the Colonial Office was actually dissatisfied with the arrangement then in existence for the administration of labour matters in the colonies and was therefore bent on bringing about a change; which change was not possible until after the establishment of a labour department.

Following the establishment of a labour department in Northern Rhodesia, the British Parliament, in 1940, passed the Colonial Development and Welfare Fund Act. This Act, which was a revision of and an improvement on the 1929 Act,²⁶ was meant to revolutionise the relationship between the Colonial Office and the colonies with a view to encouraging the forstering of measures meant to develop trade union organizations among the natives. The Act provided, in part, that before making any scheme under it, as respects any colony, the Secretary of State shall satisfy himself, in a case where

the scheme provides for the payment of the whole or part of the execution of any works, that the law of the colony provides reasonable facilities for the establishment of trade unions, and that fair conditions of labour will be observed in the execution of the works.

What this particular provision of the Act meant was that, unless there were provisions allowing the existence of trade unions, no aid would be given. Those colonies which wanted this aid (and they were many) therefore enacted some 'sort' of labour legislation to comply with the requirements of the Act. The impact of this new legislation was more than expected. This is so because almost
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all, except for one, colonies enacted some form of labour legislation.

This enactment coincided with the African riots on the Copper-belt of Northern Rhodesia of 1940. These riots prompted the Colonial Secretary to compel a reluctant territorial government to
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appoint a Commission of Inquiry in order to ensure an impartial assessment of the causes of these riots. In its recommendations the Commission, among other things, urged the government in general to devise a form of a workable industrial machinery and to make provision for training facilities to enable Africans on the mines
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to enter Schedule 'A' jobs. These recommendations had a great impact

later in forstering the development of trade unions in the territory. It should be noted, however, that at this point in time, the local administration had had sufficient 'indoctrination' from the Colonial Office concerning the need for change in the administration of the colonial labour matters. The conservative attitudes earlier encountered had by now given way to experimental desires. And the result was that, in 1947, a draft Bill on industrial reconciliation was published for debate. But somewhat this Bill did not become law immediately. In 1947, the 1942 draft Bill was revived under the title of Trade Unions and Trade Disputes Bill. It became law in 1949 under the title of Trade Unions and Trade Disputes Ordinance. ³⁰

This was the climax of the development of the British colonial labour policy which started in 1929. Its impact had now just started to be felt in colonial Northern Rhodesia. The developments in the administration of labour matters which took place in the colony henceforth were as a result of the British influence.

(c) Towards collective bargaining

The process of change from spontaneous demonstrations of workers to organized strikes was long and painful, especially among the indigeneous Zambian workers. Employers, who were mainly whites and the local government administration were initially

against the idea of allowing workers to organize themselves into trade unions for reasons we have already discussed above. This conservative attitude of the local government administration and the employers was blamed by the indigeneous Zambians as being detrimental to the development of trade unionism. They were helped in the condemnation of the local government and the employers by the Colonial Office in London. The Colonial Office had come under fire from time to time from the Labour Members of Parliament in respect of the administration of its colonial labour policy. As a result of these criticisms the Colonial Office, as seen above, endeavoured to improve the situation by many directives issued to the local administration.

There were so many factors which prompted the onslaught by the British labour party on the Colonial Office. The Colonial office had been forced to act by this onslaught of the Labour Members of Parliament, who, from the nature of their organization of the labour party, were mainly labour organizers. They had seen the evils of an industrial revolution and were now not prepared to allow the kind of labour servitude experienced in Europe to be perpetuated elsewhere. They were therefore bent on preventing its recurrency. The steps which they were urging the colonial office to take in order to bring about the required change in the administration of the colonial labour, would perhaps have

come earlier had the coming to political power of the labour party in England come much earlier than it in fact did. The initiatives of the Colonial Office were supported by the indigeneous workers themselves who realised that they were being cheated by being refused to organize themselves.

With this two-pronged attack on the old system, it was not long before the local administration and the local European employers realised the need to allow the proposed change. Although this change is now seen as having been allowed at this point in time, there had always been change coming in though not very much noticeable. Such change started to come in as early as 1931, when, in Luanshya, a system of tribal representation³² called " Tribal Elder System" was initiated. This was created as a means of communication between the Africans working for the mines and mine managements. This kind of 'vehicle' for African representation was provided as a means through which Africans could voice their grievances. The Tribal Elder System was followed, between 1936 and 1938, by the introduction of Urban³³ Advisory Councils, with a similar aim of knowing " the feelings of Africans on the Copperbelt on various matters." This was going to be part of the functions of the newly established Urban Advisory Councils. One is bound, after noticing that, as early

as 1931, the local administration, in conjunction with European employers, was willing to allow Africans some limited freedom to organize themselves, to ask the reasons why this had to be done otherwise than through trade unions. The answer to this would seem to lie in the then prevailing attitudes of the local administration. In their opinion the African was still an uneducated worker who was not able to understand the mechanics of organized labour, and was therefore not fit to be exposed to it. Infact, although there was this seeming softening of the European attitudes, it was not their intention to allow Africans to organize themselves into independent trade unions. What was being done here then was to channel Africans into an organization limited in both scope and extent. This was a deliberate move on the part of the whites so that they could retain control of the body. Indeed, the Tribal Elder System and the Urban Advisory Councils remained under the control of the local administration through the District Officers.

We have already discussed above the means employed by the colonial office between 1929 and 1940 to try and change the local administration's attitudes with regard to the propped change in the British colonial labour policy. By 1940, the Colonial Office was pleased with the progress so far achieved in changing the attitudes and was ready to introduce a limited form of trade union organization among the indigeneous workers. This was done in three stages as we shall see now.

(i) The role of the Labour Commissioner:

The reaction of the government to the spontaneous labour strikes which had taken place on the Copperbelt between 1935 and 1940, was to try and seek ways of stabilising labour relations in the territory, especially on the Copperbelt. This task fell to the Labour Commissioner who made an attempt at the introduction of the concept of collective bargaining into the relations between mine managements and their African employees. He did this by forming and obtaining recognition for the association
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of the Boss Boys' Committee. This was in 1942. In essence, this was the beginning of the African trade unionism in Zambia. Towards the end of 1945, Mr. Beven, of the Ministry of Labour in the United Kingdom, visited the territory at the instance of the Colonial Office, to see for himself what was taking place as regards the development of collective bargaining on the mines. Arising out of his recommendations, the Boss Boys' Committee, on each mine was enlarged to include representatives not necessarily boss boys - chosen by workers in each department on the mines. These expanded boss boys' committees were now entrusted to deal with working conditions, while the Tribal Representatives
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were left to deal with the domestic affairs.

It is suprising to note that the Colonial Office was so

eager to help towards the improvement of the organization of the Boss Boys' Committees and at the same time reluctant to allow indigeneous Zambians to openly organise themselves into trade unions. The explanation to such a move on the part of the Colonial Office may seem to lie in its attitudes towards Africans' capability to understand trade union organization, its benefits and the dangers it posed to the country's economy if misused. With the help of the local administration the colonial office believed that Africans were not yet educated sufficiently enough to be able to understand the complicated system of trade union organization. Until such time when the Africans were educated sufficiently enough, there was therefore no way the Africans would be allowed to organise themselves. This attitude was supported by the first Forster Commission of Inquiry, which recommended that there must be provided a means through which Africans may be able to enter Schedule 'A' jobs. In other words, they were recommending the introduction of sufficient educational facilities to cater for Africans.

In a paper entitled " The advancement of the African as
37
an employed person," the Labour Commissioner wrote in part thus:

No sensible person would for one moment suggest that it is possible or desireable to repress the growing desire among sections of Africans to improve their lot by acting

in associations. There is however, a vast difference between furthering trade unions on people who do not understand their use and responsibilities and encouraging other suitable methods of collective action.

This was the kind of excuse used to cover up the main reasons, as expounded above, for retarding the inception of African trade unionism by local administration. In doing this they were adamant and were supported in this by the first Forster Commission of Inquiry Report, which recommended that there must be provided means for the Africans to be educated as quickly as possible. The purpose of this Commission recommendation was to remove the only available excuse for the whites' refusal to allow Africans to organise themselves. The Commissioners realised that, as soon as a sufficient number of Africans were educated the whites would no longer be justified in their resistance based on the Africans' illiteracy. In other words, the Commissioners realised that as long as the African was not yet sufficiently educated, there would be no chance for him to advance. The local administration, in turn, introduced a system of piecemeal unionization to build the African up to the point where he would be allowed to organize himself in independent trade unions. This is where the expanded Boss Boys' Committees come in. This system was deliberately framed in such a way as to allow the Labour Commissioner to retain full control and direction of the Committees to suit the then prevailing white mentality.

The transformation and expansion of the new-look Boss Boys' Committees was completed at Nkana by April, 1947, and the new Committee although still called the Boss Boys' Committee, was in reality a works committee, and it started to be called so in January, 1948. The committee worked very well and was popular with Africans. On the other mines the progress towards a works committee on the Nkana model took time to perfect but had been encouraged by the Labour Commissioner all the time until success was later achieved. These Committees formed the backbone of the Northern Rhodesia African Mineworkers' Union.

While the formation of works committees was being encouraged on the mines, there was no similar enthusiasm outside mining operations. The Labour Commissioner, to the disappointment of many people, deliberately refused to extend this organizational principle to the mass of the workers. Although no apparent reason has been given for not doing so, it may be that he wanted to see how it would work with the boss boys' committees. The other reason might be that at that time the mining industry was the only industry in the country with established labour organizational infrastructure. If this is true, then the Labour Commissioner's field of operation would have been restricted by this. In any case it was an experimental exercise and as such could only be so done, as already indicated above, in the

mining industry where African labour was already sufficiently organized. The other reason may lie in the belief by Europeans³⁹ that Africans were not yet ready for mass unionization. Following the same thinking, government refused to allow an attempt by the European unions to form a branch in which they would enrol⁴⁰ Africans. There was, however, another factor to this refusal. This was based on fear of evident desire by the European unions to dominate and frustrate Africans and their aspirations. The European unions thought that, by this design, they would stop the rate of African advancement, and among other things, exercise⁴¹ an all-pervading influence on the post war mine policies.

The efforts being exerted by the Labour Commissioner to improve the status of working Africans were not sufficient to placate the demands being advanced by Africans themselves. The Africans therefore, with a view to supplementing their efforts and to speed up their advancement, revived welfare associations which had been organized in the early thirties for their benefit, but had been phased out for lack of membership by the middle of⁴² the thirties. This revival was brought about by the absence of appreciable improvements in the conditions of employment of Africans despite the earlier strikes and heightened appreciation of the crucial role they played in the industrial life.

(ii) The Government social worker

Realising the inadequacy of the means being used to improve the conditions of the working Africans through the single efforts of the Labour Commissioner and following the recommendation of the first Forster Commission of Inquiry the territorial government was forced into accepting, though reluctantly, the appointment of a government social worker by the Colonial Office. Mr. H. Elwell was appointed as government social worker with the responsibility of educating Africans in labour relations. This was in keeping with the principles of the 1930 Passfield Memorandum which required that the African interests should receive all the recognition they deserved over and above those of the settler community.

(iii) Trade union labour officer

At this point in time, it was realised by the colonial office, after representations from the British Trade Union Congress, that it was time to introduce limited trade union representation among Africans. In order for this to be done properly, a trade union labour officer, in the name of William Comrie, was sent to Northern Rhodesia and was attached to the department of labour. Mr. Comrie was a prominent trade unionist sent here to prepare Africans for eventual unionization. The

appointment of Comrie was the climax of the preparation of Africans for subsequent responsibility which lay ahead.

The grounds had now been sufficiently prepared and it was time to introduce the basic legal framework under which the local trade unions were going to operate. In 1947, therefore, a draft Bill on trade unions - The Trade Unions and Trade Disputes⁴⁵ Bill - was prepared and presented to the Legislative Council. The⁴⁶ Bill became law in 1949 under the title of 'Trade Unions and Trade Disputes Ordinance'. The Ordinance was a revival of the 1938 and 1942 draft bills on the subject. These had drawn very heavily, as already seen in Chapter Two above, on the British trade union laws then in existence, for their provisions. After this ordinance, African trade unions started to be organised and recognised.

(d) African advancement

The process of change we have been discussing above took place with the main purpose of bringing about African advancement, both socially and economically.

47

Although the first Forster Commission Report had earlier recommended the implementation of African advancement, this was not possible before 1947, because of the war situation which then obtained. When it became possible, in 1947, to implement this,

a meeting, composed of the employers, the European unions and territorial government officials, was called. Owing to strong opposition, from European unions, against the proposed African advancement, the meeting never achieved anything significant. The failure of this meeting prompted the appointment of another⁴⁸ Commission of Inquiry in 1947. The European trade unions immediately reacted adversely to the appointment of this Commission. The objection by the European unions to the appointment of this Commission was based on two basic points. The first was directed at the chairman of the commission who was seen as an African cause⁴⁹ sympathiser. The second was the fact that the terms of reference of the Commission did not include " equal pay for equal job⁵⁰ principle." The European trade unions therefore refused to co-operate. But despite the non-co-operation of the European trade unions, the Commission went ahead and heard the evidence and finally made its recommendations, which included the following:

- (a) 28 jobs were to be removed from Schedule 'A' jobs and made available to the Africans immediately; 54 other jobs were to be made available after some training;
- (b) the principle of " fragmentation " as a training measure in order to facilitate the taking over of responsible jobs by the Africans, etc.

The Commission's recommendations remained largely unimplemented for a number of years. When, in 1953, on coming into effect of the Federation of Rhodesia and Nyasaland, the Africans of Northern Rhodesia started agitating for the implementation of these recommendations, another, one man, commission of inquiry⁵¹ was appointed. The Guillebeud Commission of Inquiry was appointed to look into the demands of the Africans. In his recommendations, Mr. Guillebeud pointed out that the Africans did not only want increased wages, but that they also wanted to advance to posts of greater responsibilities. These recommendations forced the mining companies to persuade the whites to come to a conference table. In 1954 therefore the whites agreed to talk, but on condition that the Northern Rhodesia African Mineworkers' Union was going to be part of the conference participants in addition to the other parties earlier involved. This too was a complete failure.

This failure of the conference prompted the appointment of the second Forster Commission of Inquiry in 1954. The Commission, among other things, ordered the resumption of the stalled talks on African advancement, and endorsed the Dalglish Commission recommendations in toto, except for the wages to be paid to the⁵² Africans who took over the fragmented jobs. The Commission, in

making the recommendations, observed that the Africans' wages should not be related to the European wages.

As a result of the second Forster Commission recommendations, the white unions agreed to attend the talks on African advancement, and accepted, in 1955, to release 24 jobs to the Africans. They also agreed to the fragmentation of jobs, but insisted on the fact that those Africans who took over Schedule 'A' jobs received the rate for the job. They, in addition, agreed to appoint an industrial consultant, in order to be able to release more jobs on his recommendation. And in 1959, the Industrial Consultant recommended the release of 35 more jobs from Schedule 'A' jobs. He also recommended the end of the 'closed shop'.

(e) Conclusion

From the above analysis it has become clear that the absence of a well formulated labour policy on colonial labour matters was not a deliberate omission on the part of the Colonial office, but arose out of many factors, among them, the diversity of the conditions prevailing in different colonies, the stages of social, economic and constitutional development of each territory. This resulted in the colonial office giving a free hand in the administration of the colonies to the local administrators, because of

their closeness to the subject matter. Consequent upon this, the Colonial Office acted only as a rubber stamp in most, if not all, matters of policy. Above all, the disregard of the indigeneous colonial labour in terms of its quality was quite a major contributing factor to non availability of a viable labour policy in the colonies at a time when it was very much needed.

The situation continued to be one of fluidity and flexibility. This situation was compounded by the fact that indigeneous labour at this time had not taken on any new significance to warrant the formulation and administration of a formulated and at the same time expensive policy. In between the end of the first World War and the beginning of the second World War, things started to happen which necessitated a second look at what was happening in the Colonial Office. The first of such things to happen was the coming into power of a labour government in England. As soon as it formed its first ever government, the Labour Party initiated a programme of reforms in matters especially those relating to the administration of colonial labour.

The initial moves intended to reform the then existing labour administration were not successful. Their failure has been attributed to many problems, some of which were:

- (a) the absence of an understanding on part of the local

administration of a need for change;

- (b) the absence of a legal framework to support the introduction of such change;
- (c) the illiteracy of the populace for whom the new measures were intended to benefit; and
- (d) the lack of qualified manpower in the colonies as well as in England, to administer and interpret the new measures.

We have noticed that this whole programme was not achieved over night. It took almost two decades for the right atmosphere to prevail. When this atmosphere was achieved, a new problem emerged. This was the difference between the two communities involved in the mining industry which started to compete against each other. In short, the creation of an atmosphere which allowed trade unionism among Africans as well, only exegerated the problems of African advancement, which problems had already been recognised earlier. It was because of the ardent desire by the Colonial Office to advance Africans in industry that all the measures we have discussed above were initiated and undertaken. Without this, perhaps the course of history of colonial labour would have taken a different turn.

While there were these problems, the end result has been

encouraging because the intended goal has been achieved though,
perhaps, after a period which has been made longer by the
stubbornness of the settler community which did not want
Africans to advance

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1. Roberts, B. D., Labour in Tropical Territories of the Commonwealth, G. Bell and Sons Ltd., 1964, p. xiv.
2. Macdonald, D. F., The State and The Trade Unions, Macmillan & Co. Ltd., 1960, London, p. 71.
3. Sec 2/332 Z.N.A. Lusaka.
4. Roberts, B. C., pp. 169 - 172.
5. Ibid, p. 170.
6. Ibid, p. 169.
7. This was so because it helped to promote the biased opinions of the local administrators, who were mainly, working in league with the settler community.
8. Government Printer, Lusaka, 1940.
9. N. R. 3/332, Z.N.A., Lusaka.
10. Government Printer, Lusaka, 1940.
11. The Colonial Office were not aware that the local administrations were working in league with the settler communities against the native interests.
12. Circular Letter dated 17th September, 1930, addressed to the Officer administering the Government of Northern Rhodesia from the Secretary of State for Colonies.
13. See supra. p. 55

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15. Robert, Rotberg, The Rise of Nationalism in Central Africa: The Making of Malawi and Zambia, - 1873 to 1964, Havard University Press, 1966, p. 168.
16. Ibid, p. 169.
17. Under the 1911 Order-in-Council, as amended by the Northern Rhodesia Order-in-Council of 1924 and the Imperial Acts Extension Ordinance of 1929.
18. (a) The Trade Union Act, 1871;
(b) Conspiracy and Protection of Property Act, 1875;
(c) Employers and Workmen's Act, 1875; and
(d) Trade Disputes Act, 1906.
19. (a) The Trade Union Act, 1913;
(b) The Trade Union (Amalgamation) Act, 1917; and
(c) The Trade Disputes and Trade Unions Act, 1927.
20. Sec. 1/1419, Z. N. A., Lusaka.
21. Roberts, B. C., supra p. 182.
22. The Orde-Browne Report, Government Printer, Lusaka, 1938.
23. Ibid.
24. The Rhodesia - Nyasaland Royal Commission Report, Cmnd. 5949, 1939.
25. As a result of this, a labour department was established later in the year.

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26. See above, p. 62
27. The Bahamas, however, did not enact any such legislation.
28. This is the first Forster Commission of Inquiry.
29. These were jobs specially reserved for whites only.
30. See Chapter Two supra.
31. This was done by way of colonial directives.
32. Epstein, A. L., Politics in an urban community, Manchester University Press, 1958, p. 48.
33. Ibid, pp. 39 - 41.
34. These were the African gang leaders on the mines.
35. Epstein, A. L., opp. cit.
36. Government Printer, Lusaka, 1940
37. Sec. 1/1328, Z. N. A., Lusaka.
38. See note 37 supra.
39. Ibid., p. 72
40. Sec. 1/1351, Z. N. A., Lusaka.
41. Ibid.
42. Sec. 1/1428, Z. N. A., Lusaka.
43. See note 37 above.
44. Sec. 1/1351, Z. N. A., Lusaka.
45. For details, see Chapter Two supra.
46. Ibid.
47. See note 37 supra.

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CHAPTER 4

TRADE UNIONISM AFTER INDEPENDENCE

(a) Introduction

The development of trade unionism in Zambia, like elsewhere, has been, mainly shaped by the pattern of political events. Trade unions for the most part, seem to feel a great necessity to identify with a revolutionary process demanding both economic and social reformation. According to Bruce Millen, "... in this identification they become part of a political ferment and mass grouping for political equality..."¹ This urge for political grouping comes to an end when the political goal has been achieved.

The marriage, therefore, which had existed between the labour movement on the one hand and nationalist political parties on the other part during the political struggle for independence came to an end at independence. After the attainment of independence trade unions wanted to revert to their traditional role, as a social movement of labouring people whose aim is to improve the social, economic and political lot of the individual through improving the position of the working group.²

The assertion by the trade unions of their traditional role after independence ran counter to the expectations of the new

governing class who had hoped that the unions would still continue the marriage for national reconstruction purposes. As a result therefore, a tag-of-war between former friends ensued. Trade unions wanted to assert the rights of the union members, which were that they should be allowed to take industrial action where need arose. On the other hand, the Party and its Government wanted to control the labour unions so as to be able to develop the country without incurring serious labour problems. When this could not be done, the Party and its Government wanted to use some other means in order to weaken the labour movement. They therefore 'poached' from the labour unions the top class leaders and offered them top government posts at home and in foreign service. This was done with a single purpose, to weaken the trade union movement so that the Party and its Government are able to control it as they wished. To do this effectively, in 1965, the then existing United Trade Union Congress was dissolved and was replaced by the statutory Zambia Congress of Trade Unions, which unlike its predecessors was established by an Act of Parliament. This Congress was established in accordance with the provisions of the Trade Unions and Trade Disputes (Amendment) Act, No. 3 of 1965. Under this amendment the Government appropriated to itself sufficient powers intended to be used in the control of the trade union:

movement. These powers enabled the Government to appoint the first executive committee of the new Zambia Congress of Trade Unions under a statutory instrument.³

As a result of these measures there was a steady weakening of the leadership in the trade union movement, especially outside the mining industry and railways. This led to the ineffectiveness of the trade union movement at a time when workers were increasingly becoming impatient and vociferous in their demands for a large share of national wealth. This, in turn, led to the higher incidence of unconstitutional strikes during the period. In general, union officials appeared to have been deprived of control over their members.

TABLE 1

Industrial stoppages between 1965 and 1967

<u>Year</u>	<u>Number of stoppages</u>	<u>Number of man-days lost</u>
1965	114	22,493
1966	241	579,406
1967	222	46,088

4

All these strikes were unconstitutional.

In the mining industry, for example, dissatisfaction with

the dual wage system and the wages of the lower workers became
5
widespread. As a result of this, the Zambian Mineworkers' Union,
in January, 1965, presented what amounted to a demand for a
general wage increase. Negotiations for these, however, broke
down in September, 1965 and the Union sought permission from the
Registrar of Societies to hold a strike ballot. Although no
strike was held in 1965, events that took place between the time
6
the letter to the Registrar was written in 1965 and March, 1966,
were so favourable to the working masses and as a result a strike
took place at Nchanga. This spread to Bancroft on 29th March;
Luanshya on 31st March; Chibuluma, Chambeshi and Mufulira were
affected by 2nd April. Ndola Refineries were affected on 4th
April.

As a result of these strikes, the Brown Commission of
7
Inquiry was appointed on 5th April, 1966, to inquire into the
causes of the strikes.

In 1967, August, the Mineworkers' Union of Zambia raised
the question of the single wage scale applicable to all employees.
This wage scale had, in the meantime, acquired the title of
'Industrial Basic Pay Scale (IBPS)'. This question came up
again in 1968. Arising out of a disagreement between the mining
companies and the union, the union informed the Ministry of

Labour on March, 17th 1969, of a dispute with the mining companies and a Board of Conciliation was set up on 29th March, 1969, to deal with the union demands.

By 1967, the cumulative effect of labour indiscipline which had beset the country from independence, had been felt by the Party and its Government. The Party and its Government were getting concerned about the low productivity of the country's economy and wanted to find a cure for it. The first step that was taken, was the holding of the first ever tripartite labour ⁸ Conference in Livingstone in April, 1967. The task before the Conference, which composed of the labour leaders, employers and Government officials, was to analyse the causes of low productivity and to make practical recommendations for implementation, both as short term-and-long term approaches to the problem. At the end of the Conference on 29th April, the Conference came up with the following recommendations:

- (a) a code for industrial peace in the country;
- (b) a code for enhanced productivity;
- (c) a pledge to the national development plan; and
- (d) recommendations to the Government.

Under the "industrial peace" heading, the Conference recommended measures to be taken relating to:

- (i) discipline,
- (ii) industrial relations matters which included complaints, grievances and disputes,
- (iii) training of trade unionists, particularly shop assistants, in duties and procedures and the need to ensure that local personnel officers understand their functions.

Under the "code for enhanced productivity", the following were recommended:

- (i) improvement in wages,
- (ii) discouragement of absenteeism from work, reporting late for work, leaving work early, excessive drinking and drunkenness on duty, etc.,
- (iii) understanding of the industrial agreements by both parties,
- (iv) improvement of training facilities,
- (v) forstering good relations between employer and workers, supervisors and supervised,
- (vi) provision of good housing,
- (vii) job security and better working conditions.

Under the "pledge to the national development plan" the Conference participants pledged their loyalty to the country and promised to work within the framework of the existing laws and agreements.

A number of recommendations were made to the Government. These were meant to improve the existing working relations between the parties, to provide holidays with pay, job security and good working conditions, etc. The Conference exposed a lot of inadequacies then existing in the industrial relations legislations; example, disputes procedures were not properly laid down; there was no court especially providing services for industrial disputes. In addition, most of the laws relating to labour and labour problems were still colonial and therefore, in some way, discriminatory. The Conference further exposed the need for concerted effort in maintaining industrial peace and in raising industrial productivity.

As a result of the above, there was therefore need for change. The Livingstone Conference recommended in particular, among others, the establishment of joint consultative machinery to improve communication between managements and the workers at the plant and enterprise levels. In the wake of these recommendations, joint industrial Councils, whose composition involved management and workers, and workers' committees, composed of workers only were established. But, in the meantime, President Kaunda had requested the United Nations Development Programme to nominate the International Labour Organization to supervise

a study and to submit a report which was to be used as a guideline in the formulation of longer term policy on productivity, prices and incomes in the country. The result was the appointment of Professor H. A. Turner, of Cambridge University, by the International Labour Organization, to visit Zambia and undertake the required study and the preparation of the report.

9

In his report, Professor Turner identified what he called the two major problems of the Zambian economy. These were:

- (a) the very low level of productivity and efficiency in the urban employment sector, particularly in relation to that sector's comparatively higher labour costs; and
- (b) the big gap which had developed between the increased living standards of the urban employees and the conditions of the people in the villages.

After the Turner Report had been presented to and studied by the Government, the Second National Convention was called in Kitwe in December, 1969, to discuss its implications. The President's proposals to the participants centred around four main areas. These were productivity, prices, wages and industrial relations. The President urged the participants to find the causes of falling productivity and to prescribe a cure for it. He asked the participants to find a formula which would help in holding down the

upward trend in prices. He suggested that the participants should make ready a procedure that would establish relations between the worker and the employer that were in keeping with the philosophy of Humanism.

The Convention recommended, among other things, the introduction of a system whereby the employer, the worker and the government official will be able to sit down and work out a formula to resolve any labour or industrial disputes. It however recognised that all the necessary regulations to enforce discipline and improve productivity existed in Zambia but that there had been a breakdown in the machinery to administer them. The Convention believed that this should be rectified immediately. It was therefore recommended to the Government to rectify this deficiency.

(b) The Industrial Relations Act

The Government having declared what it wanted to achieve by the proposed new order embarked on drafting the legislation to effect this new order. The result was the Industrial Relations Act, 1971. The Government having failed to control trade unionism by Government policy directives wanted sufficient power to control
11
the vociferous leadership of the trade unions so as to be able to curb the prevalent worker indiscipline which had resulted in

low productivity in the country's economy. The draftsman of the IRA therefore addressed himself to these demands of Government. Government wanted , among other things, to curb unconstitutional strikes which had become so regular that they were almost paralysing the economy of the country. Government's intention to control trade unions in this direction was spelt out by President Kaunda when he addressed the Second National Convention at Kitwe in 1969. In addition, the Government wanted to introduce alternative machinery for settlement of industrial disputes.

12

The first draft was an ambitious one which tried to cover almost every detail as originally proposed. But when it came to Parliament, much of what had been put in was pruned. This pruning of the draft, especially as regards provisions relating to Works Councils, attracted adverse comments from various quarters. The Minister of Labour in answer to some of these criticisms said:

" ... some people have gone to the extent of labelling the idea of introducing works councils as communist inspired..." He continued by saying that Parliament intended to establish works councils and not workers' councils. Angela Quemby commented on the pruning of the draft and said that: "... the amalgam which appeared at the end of 1971, however, bore little resemblance to any single one of the early designs, in form or in content." She further said that " the subordinated status of the worker, a 'colonial legacy;

13

14

remained unscathed". It was true that most of the original materials had been pruned by Parliament for several reasons. The IRA had been designed earlier to cater for a situation which had drastically changed by the time the Bill was being discussed in 1971. The target of the proposed IRA in 1967 was the private business sector which was then in the hands of foreign investors. At the time of discussing the draft Bill this had been changed as a result of the economic reforms of 1968 and 1970. If the IRA had to be enacted as earlier envisaged the target now would be the state which owned most of the private sector through parastatals. The purpose and tenor of the IRA, 1971, was to change the " traditional" pattern of management decision-making. In the original draft Bill it was envisaged that works councils would be established in industries or undertakings with as few workers as 25. But the final draft which became law had increased the minimum number of eligible employees to 100. The reasons for such a drastic change were not given, but it has been suggested that, perhaps this was as a result of heavy lobbying by the private farmers, or that the works councils were to be introduced at first on experimental basis only. It is true private farmers did lobby heavily and, to some extent this worked in their favour. The main reason, however, for such an increase in the minimum number of eligible employees appears to lie in the fact that the labour movement, which should have

represented the workers' interests, was at this point in time very weak, having lost a number of leading trade unionists to
19
both Government and commerce.

(c) Trade unionism after the Industrial Relations Act

The Party and its Government wanted the practice of trade unionism after the passing of the IRA to be different from what it had formerly been. The main reason being that trade unionism as inherited from the metropolitan England was, in the eyes of the Party and its Government, contrary to the provisions and aims of the Philosophy of Humanism, which was a corner stone of the Zambian society. It was therefore, the intention of the initiators of the IRA to control, through new provisions, the practice of trade unionism. This was in conformity with what President Kaunda, at the second National Convention at Kitwe had said. He said that: " A large part of the proposed new industrial relations legislation will be concerned with the administration of trade unions, and with the machinery for collective bargaining. These measures must be regarded by some as a restriction of traditional freedom of employers and trade unions to negotiate ... Freedom for one group must always be worked out in relation to freedom of the other group..." The President said that neither management nor unions
20
should be permitted to behave as if they were a law unto themselves. These statements indicated that the Party and its Government were

intent on imposing restrictions on both management and trade unions in their freedom to bargain collectively. It was said that no government could allow the well-being of the nation to be jeopardised by the unrestricted and undisciplined power-play of labour and management. The reason for wanting to restrict the traditional freedom of labour and managements was that their activities did not take into account the interests of the community at large. This disregard of the community interests was contrary to the Philosophy of Humanism, which puts community interests above those of sections of it. The Party and its Government felt that as custodian of community interests, they must have the right and therefore power to intervene in the process of collective bargaining.

(i) Power to go on strike

Traditionally, trade union law has been based on three fundamental principles enshrined in the British system. These were: freedom of association; the right to bargain collectively and, in certain circumstances, to withdraw labour; and minimum participation and interference by government. But because of the problems the country's economy had been going through, the Party and its Government wanted to change this traditional basis of trade union law. For example section 116 (2) of the IRA, 1971 provides that: " No employer, trade union or other person shall

take part in a strike which:

(a) has not been authorised by a strike ballot taken in manner provided by the constitution of a trade union;

(b) is not in contemplation or furtherance of a collective dispute to which such employee or trade union is a party; or

(c) is in contemplation or furtherance of a collective dispute in which conciliation is in progress or which has been referred to the Industrial Relations Court." The purpose of this section is to avoid, as far as is possible, any constitutional strikes.

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This section, together with section 117, make it virtually impossible for any employee ever to go on a constitutional strike. In effect, the traditional right of a worker to withdraw his labour when need be, has virtually been wiped out by the IRA. Section 3 of the Act has defined " essential service " to cover so large an area of industry that it leaves very few sections of it which may be able to go on strike if they fulfill the other preliminary requirements.

Of late, President Kaunda has issued a special order under ²³ the Preservation of Public Security Act which effectively bars all categories of essential medical personnel from going on strike. And in addition, the Minister of Labour and Social ²⁴ Services has also signed a Statutory Instrument which states

that union subscriptions deducted from workers' salaries shall be deemed revoked and declared null and void from the day when the trade union goes on an illegal strike. All this has been done in the interest of preserving the community. Trade unions are therefore now forced, at any cost, to negotiate at a conference table and not to use industrial action to have their demands met. Since freedom to use industrial action by trade unions has been virtually removed, where they fail to negotiate at a conference table with the employers, the result is unconstitutional strikes. Such strikes have now been on the increase after the coming into effect
25
of the IRA.

TABLE II

Unconstitutional work stoppages

<u>Year</u>	<u>Number of stoppages</u>	<u>Number of man-days lost</u>
1971	127	18,694
1972	74	20,874
1973	68	4,175
1974	60	38,334
1975	78	51,012
1976	59	6,527
1977	51	15,990
1978	56	301,562

1979	-	26 42,916
1980	<u>121</u>	<u>79,896</u>
Total	<u>694</u>	<u>570,180</u>

(ii) Power of collective bargaining

The IRA still recognises the power inherent in employee organizations to collectively bargain. This power is still retained in the Act though in somewhat different, and to some extent, diluted form. Prior to the passing of the IRA, where a dispute arose, industrial action used to be the only option open to the trade union movement. The damage caused by such an action was immense and it was found that such an action was not in the interest of all parties concerned. To try to minimise the damage caused by industrial action, the state has tried to find an amicable solution between the contending forces. The result has been the IRA, which makes provision for joint councils as fora for resolving industrial differences.

There are now two types of bargaining procedures. These are: the contractual procedure, where both employer or employers' association and the union come together to negotiate and arrive at an agreement and then disperse. In other words, this procedure is ad hoc. The second is what has come to be known as 'institu-

tional ' or ' dynamic ' procedure. This consists in the creation of a permanent body known as joint industrial council, a conciliation board or joint committee. On this body both sides are represented by a number of representatives and a constitution and a code of procedure are formulated to govern the every day work of the council. It is to this kind of permanent establishment that our discussion is directed.

In the IRA, ' joint council ' has been defined as " joint industrial council, national council, or any other body, however, named, established, for the purpose of carrying on collective bargaining for an industry." ²⁷ Bargaining in this sense may be local, i.e. confined to a factory or establishment, or may be industry wide, i.e. it may cover a given industry . Bargaining on an industry wide basis is very much encouraged by the Government. It avoids the creation of splinter unions which may be too weak to bargain with big employers' association. In collective bargaining as envisaged by the IRA, a Recognition Agreement is the starting point. This is different from the procedure followed prior to the passing of the IRA where numerical strength of members was all that was required to acquire the right to represent those members at collective bargaining. The Recognition agreement is an agreement under which the employer (a) agrees to recognise the trade union as the representative of the workers in the

bargaining process. In addition, such an agreement may provide procedures for reaching and reviewing collective agreements and for handling grievances. It is provided under the Act that such a recognition agreement must set forth the circumstances in which, and the methods, procedures and rules by and under which, such an agreement may be reviewed, altered, varied, replaced or
28
terminated.

As soon as a recognition agreement has been signed and an award made, the stage for collective bargaining becomes clear. Where therefore, collective bargaining has been successful, the result is a collective agreement. A collective agreement has been defined as ' a treaty between social powers; a peace treat
29
and at the same time a normative treaty.' A collective agreement is therefore made between two or more employers jointly without forming an association, or two or more employers' associations without forming a super federation, a federation of employers' associations, on the employers' side, and on the workers' side, by two or more trade unions. It may be noted here, however, that, under the Act, no single worker, on his own behalf, may negotiate a collective agreement, nor can any number of workers who do not form an association.

Since negotiation is always carried on by an association

on either side, a problem of law may arise. This is the quest-

30

ion of capacity. Does an association, be it of workers or emplo-

yers, when negotiating a collective agreement act as principal

or agent of its members? If we are to answer this question, we

must remember that, under the law, while an employer can, an

31

employee cannot, be a party to an agreement. In such a case

therefore, the employers' association, the trade union, is acting

as principal. On the other hand, however, it may be a question

of fact whether, in a given situation, the employers' association

intends to act in one or the other capacity or in both. In case

of very large association or organization with very small firms

as members, the presumed intention may be that the association

or organization negotiates often as principal. Here, we must

note that there are many reasons why the 'agency principle' can-

not be easily evoked, and cannot therefore be right if applied

to the workers' side. If we accept the agency theory, what

happens to those members who join the union after the making of

the agreement, or those who have opposed the agreement? Apart

from the above, the obligation a union undertakes and the rights

it acquires under a collective agreement, are by nature, collective,

they cannot therefore be performed or claimed by an individual.

As a result therefore, the agreement does not itself impose any

obligation on the union members and conversely, no union member

can individually derive any rights from the agreement as such. The problem however, comes when we come to consider factory or shop-floor agreements which supplement industry wide agreements. Here, we again meet the ad hoc committee of hand-picked local representatives who are chosen to represent workers. The problem created by such kind of collective bargaining can best be described in the words of the Donovan Commission: "the principal evil of
32
industrial relations." Be this as it may, shop-floor bargaining
33
is here to stay and in this respect has been encouraged.

There are two main bargaining levels in industry. The first is at industry-wide level where employers' associations negotiate with employees' associations, i.e. trade unions. Below this level, there is the plant or factory level, where employers may be represented by management and workers by works councils. At times, the level may be even lower. Both levels are concerned with the laying down of minimum requirements. Collective agreements are therefore concerned only with minimum requirements and not maximum requirements. This is important. It is easier to lay down minimum requirements below which no worker may be employed than to fix maximum requirements. If therefore collective bargaining was concerned with the laying down of maximum requirements, there would be little incentives left to induce workers to stay long in employment. Often

employers negotiate with unions to the exclusion of employers' associations. This happens more often when the two sides want to supplement agreements made by their associations. But sometimes the negotiations may be carried out to reach a main agreement and not to supplement any existing ones. This often happens in two instances. The first is where an employer dominates the industry, e.g. the Zambia Consolidated Copper Mines Limited; the second is where an employer does not approve of the employers' association. In such a case the employer may even not be a member of such an association. The IRA does not compel employers³⁴ to become members of employers' associations. They have an option.

Under the Act, provision has been made which allows recognition of particular trade unions as representatives of workers in particular industry or plant. In multi-unionism, this involves a choice between competing unions. When one union has been recognised by an industry or plant, the next thing which follows is the negotiation of a collective agreement under which topics are specified which fall within the jurisdiction of such union. This means that when unions come to negotiate, they do not negotiate in abstract, but on particular matters.

The development of trade union recognition has been long and painful. Employers were initially reluctant to recognise

unions and the law did practically nothing towards this problem. And when the law started to encroach on the development of the law of collective bargaining it was careful not to impose a duty on industry or employer to bargain. It left the choice to the employer and industry. During the days of multi-trade-unionism the employer had the choice to choose a union with which to bargain and the choice was not easy to make. In most cases the basis of the choice was "representative". Because of this wide discretion on the part of the employer, it was difficult, if not impossible, for the law to intervene as long as the employer chose one union and carried 'some' negotiation, whether genuine or not. It therefore became evident that some provision should be made in the proposed IRA for the recognition of trade unions by employers. The means to be employed were not to be 'legal compulsion' but through gentle persuasion by the likelihood of intervention by the Industrial Relations Court.

After a particular trade union has been recognised by a particular industry or employer, as the bargaining agent, the next question that arises is the extent to which that union may negotiate. This makes the subject-matter of the collective bargaining part of the 'recognition issue' itself. What this means is that the range of collective bargaining can ultimately

be determined through the settlement of recognition issue by the Industrial Relations Court. The restricted scope of contents of most of our recognition agreements is one of the major defects of our system of industrial relations. But this can be cured by making the concept of 'recognition' flexible to allow new subjects to be added to the agreements. It is possible therefore that through this extension, the policy of worker participation and their unions may be enhanced in the making of management decisions affecting the future of the enterprise and thus their own³⁷ future. If approved, this method may be used when the union wants its representation to new categories of workers, which hitherto have not been under its umbrella. The disadvantage of this method is that it will be only applicable at enterprise and plant level where it is possible for new subjects to be added.

Although the policy of 'one industry one union' has been encouraged by Government to prevent multi-unionism and therefore inter-union disputes, the system is still far from being perfect. Multi-unionism, i.e. the co-existence of two or more trade unions in one plant or enterprise is unavoidable in the absence of a perfect system of one industry one union. But the problems arising from the existence of multi-unionism may be minimised by the existence of agreements about demarcation and allocation

of jobs and provided the unions are prepared to bargain jointly. The law, however, provides that such disputes be referred to the
38
Zambia Congress of Trade Unions. The use of the 'voluntary' method of settling inter union disputes has been in existence for quite a long time and is regarded as good unionism and may be supported and supplemented by the practice of forming, in plant
39
or enterprise, joint shop stewards' committees, representing two or more unions. Often problems that are common among multi-unionism are those caused by multi-unionism becoming rival unionism, i.e. where two or more unions compete for the control of the same category of jobs or for the allegiance of the same category of workers. Such situations can be dealt with as earlier indicated, through agreements between unions. The Z. C. T. U. rules rela-
40
ting to the relations between the unions govern such cases. These rules were established in 1931, at Bridlington Congress in England and have now become almost universal. The implementation of these rules is the responsibility of the Disputes Committee of the Z. C. T. U. The situation where the use of these rules may fail because one or more unions were not members of the Congress does not arise in Zambia since 1965 because
41
membership of the Congress by registered unions is now compulsory.

In the United Kingdom there has been a chain of statutes

passed and intended to provide settlement machinery in the case of differences between the employer and the workers. The main reasons for these statutes were to prevent stoppages, or⁴² where these have already taken place, to shorten their duration. These statutes were, however, not successful because they were bypassed by the development of industrial relations. The main statute in this line is the Conciliation Act, 1896. This acted as a legal basis for the conciliation services to be provided. In Zambia, the equivalent statute is the Conciliation Ordinance of 1949. Conciliation is one of the most important aspects of labour relations. Its purpose is to help the parties to achieve a settlement of their problem or problems voluntarily. This requires that the conciliator refrains from imposing such settlement on the parties. This is what is called 'voluntary principle'. The other purpose is to encourage the parties, where possible, to use their own settlement machinery. This means that the matter should not be referred to arbitration unless and until all possibilities of using the agreed procedures have been exhausted. This is what is called the 'priority or autonomous institution'.

Although the Conciliation Ordinance brought about a measure of success, it failed in some other respects. It

failed to create a permanent arbitration board, i.e. a body which would develop not only its own expertise but possibly also a set of principles which would be brought to bear on the settlement of industrial conflicts. Because of these failures, the Act was repealed and replaced by provisions in the IRA. Conciliation and arbitration in the sense used in the IRA have the purpose of achieving a collective agreement or regulation at industry or plant level. Conciliation and arbitration, as conceived by the Act presupposes that a dispute either exists already or is apprehended. Where therefore parties arrive at an agreement unaided by negotiation through a third party, there is no conciliation or arbitration. Conciliation may therefore, under the IRA proceed on two different levels. On the first level, the Minister of Labour may appoint⁴³ a single conciliator or a board of conciliation to conciliate in the dispute. The single conciliator or board of conciliation are appointed ad hoc. Conciliation in this regard is dominated by the twin principles enunciated above of the need for parties⁴⁴ to consent and the priority of their own autonomous machinery. Under the IRA the application of the second of these principles is governed by the procedure which must be observed before a⁴⁵ case can go to conciliation. The second of these conciliation levels is the IRC.

Exceptions apart, no one can submit a case for conciliation
46
to the IRC. Generally speaking therefore, the IRC cannot conciliate
except upon a reference. Before this reference can be made two
matters must be considered. The first is whether the dispute
cannot be settled by conciliation, and the second is whether there
is autonomous settlement machinery; if there is, a special reason
why it cannot be resorted to first; and whether an attempt to
use it has been made and failed. The mere agreement of the parties
to conciliation does not relieve the Minister of the duty to
ensure that the intervention of statutory procedures is treated
as subsidiary to autonomous regulation. The conciliator or
board of conciliation are not courts. As voluntary arbitration
bodies it is their duty to promote agreements, i.e. to assist
in the creation of rights and obligations between the parties
and not, as courts usually do, to determine what rights and
obligations are already in existence. Despite this difference
however, the spirit of the conciliator or board of conciliation
is judicial and so is their procedure.

Principally, conciliation and arbitration are substitutes
for direct negotiation on substantive terms of employment,
but they, especially conciliation, can also be used to settle
disputes on bargaining machinery, on regulation, and quite
generally, on what can be the subject of a procedure agreement.

Conciliation is therefore designed and intended to promote collective agreements and to improve collective labour relations.

We have noticed above how law tries to promote collective agreements. After promoting the conclusion of a collective agreement, it is prudent that it should be observed in order to achieve its intended objective - promotion of industrial peace and productivity. A collective agreement is an industrial peace⁴⁷ treaty, and at the same time a source of rules for terms and conditions of employment, for the distribution of work and for the stability of jobs. Its two functions express the main expectations of the two sides, and it is through reconciling their expectations that a system of industrial relations is able to achieve that balance of power which is one of its main objectives.

The definition of "collective agreement" under the IRA puts it in the category of a contract. This is so because it is an agreement between two parties who, each has offered 'consideration' to enter into such an agreement. The consideration are the mutual promises on either part. The parties to such a contract are the employer or the association representing the employer or employers and the trade union or unions representing

the employees. As a contract, it is a legal code.

The contractual function of a collective agreement is mainly, but not, exclusively, subservient to the maintenance of industrial peace. The codifying or rule-making, some times called 'normative-function' of a collective agreement serves to ensure that the agreed conditions are applied in the plant, enterprise or industry to which the agreement refers. Many of them prescribe terms of the individual employment relations, others, the conditions under which that relation may or may not be created. Still others prescribe the mutual rights and duties between union representatives and the employers. As a code then the collective agreement determines the contents of existing and pre-determines that of future contracts of employment. Usually, it prescribes entry minima, and sometimes, especially if it is a plant agreement, it sets a standard not to be departed from downward. It determines the substance of employment, but not its existence. As a matter of law, the individual employer and the worker decide whether or not to enter into a contract; once they have done so, it is the collective agreement which says what are their rights and obligations under the contract.

The contract of employment is typically " a standard

contract." In this case, the parties submit to terms made by agreement between others - the organizations of the two sides - the employer - and a third party - the union. The contract of employment is therefore an act of submission. The two parties submit to the collective agreement which expresses the combined or bilateral rule-making power of management and organised labour, but in addition, the workers also submit to works rules which emanate from the unilateral rule-making power of management.

The substantive rules of collective agreements are mainly designed to protect the expectation of the workers that their standards of living will be maintained. Among these rules, some seek to impose obligations on workers, e.g. to work overtime at the employer's request, or to work certain shifts. In a highly competitive market they may have the additional effect of protecting employers against under-cutting by commercial rivals. Yet the principal social function of agreements as a code is the maintenance of wage and other standards in the interests of the workers.

(iii) Trade unions vis-avis Works Councils

The traditional role of trade unions is to improve the social, economic or political lot of the individual members

through improving the position of the working group. They do this through the process of collective bargaining. In collective bargaining, the trade unions defend, and where possible, improve their members' terms and conditions of employment. They are out to raise wages, to shorten hours and to make working conditions safer, healthier and better in many other respects.

48

Under the IRA works councils have been established whose objectives are almost identical with those of the trade unions. Under s. 69, every council is given the power "to promote and maintain the effective participation of workers in the affairs of the undertaking for which such council is established and to secure mutual co-operation of workers, management of the undertaking and the trade union in the interest of industrial peace, improved working conditions and greater efficiency, and productivity." These provisions very much subtract from the power of trade unions and in a way duplicate the same, which results in more inefficiency than there was earlier. Works councils have been introduced under the pretext of encouraging worker participation in the management decision-making. Worker participation as such is not bad and could have been implemented through trade unions given the appropriate legal framework. The introduction of works councils was a drastic step on the part of the Party and its Government to do; a step which does not add

much to but subtracted a lot from the role of trade unions.

Generally speaking, worker participation in management decision-making, as such, is not bad. But it has its own bad effects. Participation at plant and intermediate levels may be helpful. But the danger being that even at these levels, managers should be free to discuss policy without being pre-occupied with the risk that what they say may be misunderstood and lead to confusion on the shop-floor, just as stewards must be free to meet on their own. As a result, if workers' representatives were included in management bodies there would be a serious danger that meetings would become perfunctory with real decisions taken before hand by manager alone.

All these people who advocate worker participation do not envisage the loss of the workers' identity in industry. In other words, the purpose of their advocating worker participation is merely to bring a degree of reasonably acceptable industrial democracy - the human face, in terms of the Catholic
49 50 philosophy, and man-centredness, in terms of Humanism. They do not therefore, contemplate a stage where the identity of the
51 worker will be completely absorbed in the "body" of management. This is so because they realise that the two camps' interests

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are not the same nor are they identical. Whatever happens, a degree of seperateness must be maintained. This is borne out by a speech given by the Chairman-General of the Z. C. T. U

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when he said " Any trade union leaders who succumb to the machination of the slogans of the country, are not supposed to be in forefront to finght for justice." Indeed, it is very difficult, if not impossible, to fight management when one is management

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itself.

What should not be forgotten is that trade union movement as such is a social movement of labouring people. It is basically worker orientated and not management orientated. The machinery of the trade union movement will therefore be better served if left in the opposition camp. We believe that there is nothing more important - on the part of trade unions - than taking part in collective bargaining. This is so because, while collective bargaining, the worker is not only engaged in bargaining, he will also be engaged in the most fundamental sphere of his working life - the regulation, not only of his wages, but also of hours of work, safety at work, housing, etc.

(d) Conclusion

The passing of the IRA started as an exercise in controlling

the powers then inherent in the trade union movement. The Party and its Government had earlier waged a battle between trade unions and themselves. These were as a result of the unity of purpose, which had existed during the struggle for independence, which unity had come to an end at independence. Labour therefore wanted to assert its traditional role, which was collective representation to protect and advance the interests of the workers as producers within the economic system. This is the core around which nearly all labour movements have been built from the 18th century to the present. This desire, on the part of the union movement, ran counter to the expectation of the Party and its Government, which still wanted the co-operation of the union movement which had existed before independence to continue in the interest of national reconstruction. To obtain this co-operation, the Party and its Government employed various means and finally the IRA. The Act, among other things, set out to curtail the union powers by restricting, if not extinguishing, the right of the labour movement to obtain financial assistance from overseas, except with government approval; by introducing the concept of works councils and the concept of worker participation.

All these were meant to be used in controlling the powers of the trade union movement. But statistics have shown that the

intended goal of the IRA is yet to be achieved. The pitting of the trade union movement against an inefficient system of works councils has only helped to boost the morale of union leaders and their members. And the harshness with which some government pronouncements against union leaders are made has only helped to nurse a growing public sympathy towards trade unionism. In these circumstances therefore, one would be compelled to conclude that the IRA has in fact backfired. This conclusion is supported by the constant calls from both the public and government officials to amend the provisions of the IRA - especially those provisions relating to worker participation - to accord with the expectations of those for whom they are meant to assist - the workers.

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10. Report of the Second National Convention on rural development, incomes, wages and prices in Zambia, Government Printer, Lusaka, 1969.
11. Despite the fact that the trade union movement had lost some able leaders to the Government, the successors to these lost leaders were forced to be vociferous because of the disgruntled membership they found.
12. Details of this are being discussed in the next section.

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16. Ibid.
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18. Hansard of 30th November, 1971, col. 339, Michley, M. P.
19. See supra p. 86.
20. President Kaunda in the address to the Second National Convention at Kitwe, Government Printer, Lusaka, 1969, pp. 21 - 23.
21. Section 117 provides that no employee engaged in an essential service shall be allowed to go on strike, etc.
22. While the IRA allows union members to go on a strike, the procedures prescribed by the Act for the union to fulfill before going on strike are so cumbersome that no union can possibly go through them and then at the end hold a strike.
23. Government Gazette Notice No. 78 of 1985.
24. No. 6 of 1985.

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25. See Table II below, p. 99.
26. The Annual Report does not indicate the number of stoppages.
27. Section 3.
28. Section 112.
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30. For details, see Harry Nkumbula and Simon Kapwepwe v. The Attorney-General, S.C.Z. Judgment No. 15 of 1979.
31. Kahn-Freund, Otto, op. cit. p. 132.
32. Cmd. No. 3623.
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34. Section 31 (1) (a).
35. It was the largest union which was recognised by the employer.
36. See post p. 110.
37. Kahn-Freund, Otto, op. cit. p. 148.
38. Section 28.
39. See McCarthy, The Role of Shop Stewards in British Industry, The Royal Commission, Cmd. No. 3623, Paper No. 1.
40. Section 27.
41. Section 15.
42. Kahn-Freund, Otto, op cit.
43. Section 93 (2).

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CHAPTER 5

SUMMARY, CONCLUSION AND PROPOSALS

(a) Introduction

In this work we have discussed the formation of trade unions in the country; their initial developmental problems, and the legal framework employed in forstering the development of trade unionism. In the process of discussing these we have touched on various aspects of trade union law that were imported and how these had been adapted and assimilated to suit the local environment. A lot has therefore been learnt about various problems encountered by both the trade unions in their path of development and government officials in trying to find a suitable legal framework to suit the local situation.

In this chapter therefore, we intend to summarise what we have discussed and try, where possible, to offer suggestions for the improvement of the current state of affairs.

(b) The Industrial Relations Act

The government policy on trade unionism after independence required that there should be co-operation, and even much closer co-operation between the Party and the trade unions to work together, but this was not the case. The trade unions were

not satisfied with the way government handled its affairs and as a result, industrial unrest set in.

In order to try to bring about amicable relationship between the Party and its Government on the one hand and trade unions on the other hand, and with a view to placing a reasonable degree of control of trade unions into the hands of the Party and its Government, the IRA was brought into being. As already noticed above, the background to the introduction of the IRA was characterised by growing industrial unrest resulting in low industrial output and therefore stagnant economy. The IRA was introduced to correct this.

(c) Trade unionism after IRA

Despite the good intentions, on the part of the Party and its Government, for bringing in the IRA, the Act has not achieved its intended goal and this is evident in:

(i) Union problems

There is a marked difference of opinions about how trade unions should go about with their business between trade unionists and the Party and its Government. On the one hand, the Party and its Government is saying that trade unionists have too much power placed in their hands, which power is being misused, at times, for personal gains. This is the Party and government thinking;

on the other hand, trade unionists are saying that they have been left with very little power, if any, with which they are supposed to carry out their duties. The little power, if any, which is left in the hands of the unionists is not sufficient to carry out their duties. In short, trade unionists are saying that the Party and its Government has virtually curtailed freedom to organize trade unions to such an extent that, there is no freedom at all. This is shown by the recent Party and Government measures taken against workers in general and trade unions in particular.¹

(ii) Desire for change

The IRA has not been a pleasing legal implement to both the trade unions, on the one hand and the Party and its Government, on the other. Both sides have called for a large scale amendment to the Act so that it accords with what it was intended to do.

(d) Conclusion

Given the above situation we can, in conclusion, only offer tentative suggestions and proposals for change, which we think if implemented may result in a marked improvement in the relationship between the two parties in industry.

The intentions of the Party and its Government are to remove from trade unions as much power as possible so as to have them

work in closer relationship with the Party and its Government. The Party and its Government is afraid of giving too much power to the unions. But we believe that harnessing trade unions for the government's own benefit is not a good idea at all. In fact we take refuge in President Kaunda's statement in 1965, when he said that " ... The recent history of many African countries show that the possibility of conflict between the Government and the trade unions is real. In many cases these conflicts have been resolved by virtual destruction of the trade union movement² concerned. I do not want this to happen here." We believe therefore that there is no need to destroy trade unionism in Zambia. In fact there is all the more reason now to try and help trade unionism to grow better. This is so because unions have never been so much a part of economic and social life as to day. They are taking increasing responsibilities at all levels of society. This results in union members exerting more influence than we actually are prepared to admit.

Instead of trying to point accusing fingers at trade unionists, the Party and its Government should change its attitude and try to accept trade unionists as national leaders in their own right. As soon as this is accepted, conflicts that have characterised the industrial life for the past twenty years will be minimised, if not wiped out completely. In addition, the IRA should

be amended in such a way that it encourages the development of trade unionism without necessarily pegging the trade union movement to the Government strings.

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ABBREVIATIONS

I. P. B. S.	Industrial Basic Pay Scale
I. R. A.	Industrial Relations Act
I. R. C.	Industrial Relations Court
S. C. Z.	Supreme Court of Zambia
Z. C. T. U.	Zambia Congress of Trade Unions
Z. N. A.	Zambia National Archives

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