DELHI FACTORY OWNERS' FEDERATION

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Ref. No. /III.2./369 NEW DELHI-1 May 20, 1968.
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Dear Shri Bharat Ramji

ORAL EVIDENCE BEFORE THE NATIONAL COMMISSION ON LABOUR

As you might be aware, the Federation had submitted a memorandum to the National Commission on Labour highlighting the difficulties experienced by the small and medium scale industrial units in the implementation of various labour laws.

I am enclosing a copy of the said memorandum for your ready reference.

The members of the Federation also tendered oral evidence before the Commission on 7 May, 1968 and I am enclosing a resume of the discussion alongwith our replies to the questionnaire sent by the office of the Commission.

I am sure you will find the same of considerable interest.

With kind regards,

BHARAT RAM'S OFFICE
24 MAY 1968
DCM, DELHI

Yours faithfully,

(Shiv Raj Gupta)

Encl:as above.

Dr. Bharat Ram,
Delhi Cloth Mills
Bara Hindu Rao,
Delhi.

DELHI FACTORY OWNERS' FEDERATION

MEMORANDUM TO THE NATIONAL COMMISSION ON LABOUR

1. INTRODUCTION

1.1 The Delhi Factory Owners' Federation is the oldest and most representative organisation of the factory owners in Delhi being established in 1931. The constituents of the Federation consist mainly of medium and small scale factories spread all over Delhi. One of the main promotional activities of the Federation is to provide the members with expert labour advisory services. The Federation has seen the vicissitudes of industry throughout these years, and claims to have vast knowledge of the problems, and difficulties faced by both the employers and the employees directly engaged in the industry.

1.2 The small and medium class factories at Delhi have to face a number of disadvantages as compared to factories at other places. Some of the disadvantages are on account of locational handicaps like long haulage from port-towns/ coal fields, lack of mineral resources/raw materials and distance from the marketing centres, higher taxes and costlier power.

1.3 Whereas the apex bodies of employers have already submitted detailed memorandum to the National Commission on Labour giving views on behalf of the industry, the Federation seeks to mention in this Note only some of the difficulties faced by the small industrial units in the administration of varius labour legislations.

1.4. The Federation firmly believes that in the industrial development of the country, small and medium scale industries have a specific and an important role to play.

2. DIFFICULTIES EXPERIENCED BY SMALL/MEDIUM SCALE UNITS

2.1. The small and medium scale industries suffer from various disadvantages as compared to the large scale industries. Some of the disadvantages are enumerated below:

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2.1.1 It is generally accepted that average productivity per worker in a small industrial unit is considerably less primarily because of the low investment per worker and use of less advanced technology. In case this sector has to come up in competition with the large industrial units, its growth will have to be nurtured in a purposive manner.

2.1.2 In a small plant there is little scope for utilisation of industrial waste or industrial bye-products. It is also not possible to set up other ancilliary works which may be conducive to higher profiting of the concern as a whole.

2.1.3 There is less scope of mechanization of high degree in small scale industries. As the size of a particular factory increases, it is possible to use highly automatic machines and adopt highly mechanised methods of production. In view of the lesser degree of mechanisation there is also less scope for rationalisation on account of which the labour cost in small and medium size industries is more than the labour cost in a bigger factory.

2.1.4 In a small or medium size factory there is less scope for division of labour. The small concerns cannot afford the services of experienced and skilled officers and staff for every little job and, therefore, they have to rely on less experienced and less-skilled officers. In a small scale concern a Technician or an Officer may be entrusted with three or four jobs which in a large concern might be handled by separate officers. Consequently, the work of an officer in a large concern is more specialised while it is not possible to do for obvious reasons in a small concern. Small concern, therefore, does not get the benefit of expert counselling on technical, commercial legal, financial or cost accountancy etc.

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2.1.5 In a small concern the overhead costs are always more as compared to a large concern, because the expenses on managerial staff, land, equipment, building, maintenance etc. which form part of the overhead cost to the cost of production is, therefore, much less in a large plant as compared to a small plant.

2.1.6 There is little scope for advertisement and research in the case of small scale industries.

2.1.7 A small scale concern has no expert staff to deal with labour. The relations of workers with the employer are, therefore, direct and are more personal than in a large plant. On the other hand, the unions are generally more powerful. In a small plant or factory, there is no scope for a separate union on account of less number of employees. In view of this, the general practice is to form a union of employees of a particular industry in a specific Region. Such a union has got the following in thousands of small and medium size factories and, therefore, the office bearers of such a union are more skilled and competent and conversant with labour matters while the individual proprietors who have to handle the labour problems only once in a while are entirely unskilled and have no prior experience and they are no match to the union either in skill in handling labour matters or in organisation.

2.1.8 The small and medium size industries generally suffer from lack of finance and marketing facilities. There is difficulty of procuring raw material, specially when they are controlled. There are practically no reserves and the credit facilities are generally non-existent or grossly insufficient.

2.1.9 The problems faced by the small entrepreneurs on account of the working of various legislations applicable to their establishments are real and manifold. They are

not legal experts and do not have resources to set up a machinery to deal with the various industrial relation problems arising out of the working of the various labour laws.

2.1.10 The entrepreneur has his own problems to keep his factory running. As a single individual, he has to man the production, sales, finance including accounting, and many other incidental problems which confront him from day to day. On top of all this, if he is burdened with complicated industrial legislation, he will hardly be in a position to bring about maximum productivity essential for him to compete with the large scale organised sector.

2.2 It is, therefore, necessary that the burden of labour laws on small entrepreneurs ought to be lightened.

2.3. In this Memorandum, an attempt has been made to point out the difficulties experienced by the small entrepreneurs in the administration of the industrial laws as also to propose solution to various problems that arise between the employer-employee relationship consistent with the rights and obligations and the burden of conflicting interests of both the sides.

3. INDUSTRIAL DISPUTES ACT

3.1 The Industrial Disputes Act makes no distinction between small and large scale industrial organisations. The procedure for the settlement of disputes as laid down under the Industrial Disputes Act is long and cumbersome which a small industrial unit can hardly afford.

3.2 In a small industrial set up, the relationship between the employers and the employees is direct as compared to a big industrial unit. The repercussions of an industrial dispute in a small establishment are much wider than those in a big industrial unit. A small entrepreneur cannot afford the litigation which is involved in the settlement of an

industrial dispute, for apart from financial considerations, it is bound to upset its entire working. It is, therefore, necessary that a line should be drawn where the Industrial Disputes Act would cease to apply, and some other Act may be made enforceable to suit the need and necessity of the small entrepreneurs which may provide them cheap and speedy remedy consistent with the interests of both the employers and the employees.

3.3. Further in a small establishment where the relationship between the employer and the employee is direct and personal, the application of the Industrial Disputes Act poses many difficulties in the enforcement of discipline in the unit. Take for instance, the case of a dismissed workman where though the dismissal was justified on facts, it was set aside by the Tribunal on account of some technical flaw. In such cases which are very common a small entrepreneur is faced with a real difficult problem. Apart from the financial consideration and that of the problem of discipline which the reinstatement involved, a small entrepreneur is also faced with the problem of doing away of the services of the employee whom he had to engage to carry out his work in place of the said dismissed employee.

3.4 It is suggested that in case of small industrial units, the employers should be given the right to dispense with the services of an erring employee. It is not pleaded that a small entrepreneur should be given the right of hire and fire as he wished, but some safeguards against the capricious use of this right by an employer could be built in by providing for necessary compensation which he may be required to pay to the employee whose services have been terminated.

3.5 It is further suggested that the Industrial Disputes Act should not be made applicable to those industrial units which employ less than 50 workmen.

3.6 In case, it is not found feasible to exclude totally the small establishments from the purview of the Industrial Disputes Act, it is imperative that the said Act should be suitably amended to make necessary provisions for the workmen employed by the small and medium scale employers taking into consideration the peculiar nature of their operations.

3.7 It is suggested that in a small and medium scale unit, direct industrial dispute should be avoided as far as possible. In a large concern employing a large number of workers, the relations between the employers and employees are impersonal, and therefore it does not generate so much ill-will. In a small concern any friction between the workers and the Proprietor is likely to have more psychological impact upon both of them. One of the methods of avoiding frequent industrial disputes between the workers and the employers is that the terms and conditions of service applicable to these units should be standardized and specifically laid down.

3.8 Under the Industrial Disputes Act, as it stands, there is no period of limitation provided for raising an industrial dispute and for moving an application under section 33C(2) which relates to the claims of the workmen for benefits. The result being that there remains an uncertainty which encourages the union and the employee to raise stale and frivolous demands.

3.9 Sometimes the Federation receives complaints from its members that belated and wrong claims are made by the workmen and they are supported by the unions, for obvious reasons. It is not known when a workman may make a claim that he has been performing overtime for the last ten years but he has not been paid or he has been performing superior duties but has been paid on the basis

of inferior work. In such cases it becomes very difficult to scrutinise the claims of the workers by industrial litigation and there is great scope for exploitation of the employers by the unions. The small and medium size employers are also not likely to keep their records for the past years for indefinite period. It is, therefore, a fit case in which the time limit should be laid down if any claim is to be preferred by the employees or by unions on behalf of the employees. It is suggested that in case an employee has got any claim, he should make the same within the period of six months. It is also the experience of the Federation that sometimes the workers go away after leaving their job but without giving a formal resignation letter. They accept the services with some other employer without any knowledge on the part of the previous employer. After leaving the services with the other employer or even during the period they are in service with the other employer, the Union on their behalf might be prosecuting his claim for reinstatement with the previous employers. Even the employees and the unions are capable of adopting unfair labour practice and it is the experience of the Federation that they do occasionally adopt such unfair means. In order to avoid such unfair means and resort to false and frivolous claim, the Federation would strongly suggest that there should be a period which may limit preferring a claim on the part of worker.

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3.10 It may be mentioned here that other laws for claiming dues under the Payment of Wages Act, Delhi Shops and Establishments Act do provide for a period of limitation.

3.11 The period for which Award under the present law is to remain in force i.e. one year is too short with the result that the employees are encouraged to take recourse to industrial disputes at such short intervals thus disturbing completely the harmonious and smooth working of an industrial unit. If a wage scheme or any other condition of service is evolved with cooperation of the parties, and this evolution takes two years, it is very unreasonable to upset the entire wage scheme etc within a short period of one year only. After all wage fixation is to be done on a long term basis and should not be upset at short intervals. These principles are well known and have been often expressed by the industrial adjudicators. The Federation would urge that law should be brought in conformity with such principles.

3.12 The Industrial Disputes Act aims at providing ways and means of achieving industrial peace and harmony and it will be in the fitness of things to make provisions for a longer period of operation of awards and Settlements.

3.13 It is, therefore, suggested that Awards should

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continue to remain in force for a minimum period of three years.

3.14 In small/medium units, trade unions operate on industry rather than unit basis. The unions formed on industry basis have got large resources. In case when the union resorts to direct action such as strike etc., it creates troubles for small and medium size factories. A particular factory owner may be having only 10 employees and he is not expected to have a large number of supervisory staff or watchmen or other ancilliary staff. The Unions who claim allegience of the employees of that factory might be having thousands of workers in other concerns on its roll as its members. At the time of direct action the union might muster support of hundreds and thousands of persons to demonstrate at the factory of a particular concern or to resort to picketing and violent and coercive activities. Even if a few workers of the factory concerned are loyal, they can be completely over-awed by the superior force of the union. The problem of the small and medium size factories in view of the emergency of union autocracy requires special consideration. We might give an instance of one industrial concern in Delhi which has got normally 25 to 30 employees on its roll. A number of employees associated by outside sympathisers occupied the factory premises and continued to do so for months together. They not only defied the instructions and advice of the local officers but also the

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injunctions of Civil Court and the action taken by the District Authorities. When even the mandate of the judiciary is not honoured and there are not sufficient means to enforce the same, the employers are eventually at the mercy of the Union. Even when the employers may take orders from judiciary and magistrate against some of the workers, other workers are ready to fill in their place. The local authorities including police are most reluctant to interfere and give suitable protection to the factory owners. Such acts of lawlessness are on increase and instances can be given if required. In view of this position and in view of the weak bargaining position of the small and medium class factories vis-a-vis the powerful unions, some safeguards are necessary and the following safeguards are suggested:-

a. The Unions and the workers should be prohibited from going on strike without atleast 21 days prior notice.

b. As soon as the strike notice is given by the Union or the workers to a particular employer, the dispute should be automatically deemed to have been taken up by the Conciliation Officer for conciliation and he should immediately, without any delay, convene the meeting of the parties. It is the experience of the Federation that even when strike notice is given, the Conciliation Officers do not normally take up the case for conciliation for considerable number of days inspite of the requests of the employers. This situation should be remedied, and the Conciliation Officer must be enjoined to take up the case for conciliation immediately.

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c. When the industry is faced with the prospects of strike, the Conciliation Officer must move swiftly and, therefore, it should be obligatory on the part of the Conciliation Officer to hold the conciliation proceedings from day to day and not to grant any adjournment, except at the joint request of both the parties. The Federation thinks that in such cases if the conciliation is expedited, then many ugly incidents and industrial strikes may be avoided. Ordinarily it is mentioned in the Industrial Disputes Act that the Conciliation Officer should conclude his conciliation proceedings within 14 days, but in case where an industry is faced with a strike, the Federation would submit that the Conciliation Officer must conclude the conciliation proceedings within 3/4 days or in any case much before the period of strike notice expires.

d. If the conciliation fails then the Conciliation Officer should immediately send his report to the Government. The Government should, before the period of the strike notice expires, refer the dispute for adjudication and prohibit the strike meanwhile. If the Government, however, finds no substance in the demands of the Union and decides not to refer the case, even in that case the Government should be in a position to issue a prohibitory order.

e. If a dispute is referred to an Industrial Tribunal then the interests of the workers are safe in the hands of the Tribunal. If the demands of the workers are very emergent,

they can get interim relief from the hands of the Tribunal. The provisions of the existing Industrial Disputes Act are wide enough to enable an Industrial Tribunal to grant any interim relief. However, the Industrial Tribunal has no power to grant any injunction if the unions adopt unreasonable, violent or illegal tactics. The Federation would strongly suggest that while the Industrial Tribunal should be competent to grant interim reliefs, he should also be competent to grant suitable injunctions against the parties concerned.

4. ENFORCEMENT OF LABOUR LEGISLATION

4.1 In the recent past there has been a plethora of labour legislation. A small entrepreneur has neither the means nor resources to be fully posted with the day-to-day developments in the labour legislation. It has been observed that soon after a piece of legislation is enacted, amendments begin to pour in. The example of the Employees' provident Fund Scheme, which is amended very frequently can be given in this regard.

4.2 Further the various labour laws are written in what may be called a very technical language which a small employer finds difficult to understand fully and to analyse the intention behind a particular legislation. It is urged that not only there should not be too many labour legislations, but the laws should be written in a clear and easy to understand language.

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4.3 The labour laws existing today require a number of forms to be filled under the various statutes, and to maintain separate records for each statute like Factories Act, Employees State Insurance Act, Payment of Bonus Act, Payment of Wages Act, Minimum Wages Act, Employees Provident Fund Act, Delhi Shops & Commercial Establishments Act. etc. The various forms prescribed in the Acts throw a very heavy burden on the management of industrial and commercial establishments.

4.4 It is requested that the forms etc. required to be maintained under the various Acts should be streamlined and instead of sending forms under various enactments to the same Government Department, a combined form giving the information required by the Labour Department should be evolved.

4.5 Consideration may also be given to the amendments to various labour legislations in the country like Employees Provident Fund Act, Payment of Bonus Act, Employees State Insurance Act, Industrial Disputes Act, Delhi Shops & Commercial Establishments Act, that the said Acts would not be applicable to those establishments employing less than 50 workmen.

4.6 The existence of various labour legislations have given rise to ambiguity. It is generally found that a matter covered by a particular statute is also covered by another enactment. Further the definitions of say 'industry', 'wages' or 'workmen' given under the various legislations is different under various statutes. This leads to multiplicity of suits and applications filed by the workmen.

4.7 It is further urged that the matters which are covered by other labour legislations should be exempt

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from the Industrial Disputes Act and should not form the subject matter of any reference for adjudication.

5. TRADE UNIONS AND INDUSTRIAL RELATIONS

5.1 A glance at the history of Trade Union Movement would lead to an unmistakable conclusion that the Trade Unions have not conformed to the ideals for which they stood. The trade unions in India are generally controlled by political parties and most of the union leaders bear no relationship with the organisation with the result that the aims and objectives of the Industrial Disputes Act i.e. industrial peace through collective bargaining are completely overlooked. The Trade Union leaders indulge in all sorts of activities with the primary object of maintaining their leadership amongst the work force. It has a very disturbing effect on the industrial relations particularly in the case of a small industrial unit. If the Industrial Disputes Act is to deliver the goods, it is necessary that outside influence in the trade unions should be eliminated.

5.2 It is necessary that the Trade Unions Act should be suitably amended to the effect that no person having connections with political parties should be allowed to function as an office bearer of the Union.

5.3 Further for smooth working and healthy functioning of a trade union, it is suggested that no dismissed employee should be entitled to become an office bearer or a servant of the trade union.

Resume of the discussion with the Chairman and the Members of the National Commission on Labour at New Delhi on 7 May, 1968.

The following representatives of Delhi Factory Owners' Federation led by Shri Shiv Raj Gupta tendered oral evidence before the National Commission on Labour on Tuesday 7 May 1968 at New Delhi:

1. Shri Shiv Raj Gupta - President
2. Shri B.K.Gupta - Vice-President
3. Shri J.R.Jindal
4. Shri K.K.Khullar
5. Shri G.C. Bhandari
6. Shri C.M. Lal - Labour Officer.

2. A questionnaire containing the points which could be discussed at the time of oral evidence was received from the Office of the Commission. Replies to the same were personally handed over before the commencement of the oral evidence.

3. Giving an introduction of the Delhi Factory Owners' Federation Shri Shiv Raj Gupta stated that the constituents of the Federation consisted of large, medium and small scale industrial units operating in various parts of Delhi. He stated that so far as large units were concerned the apex bodies like the Council of Indian Employers had already submitted detailed memoranda, and in the present memorandum the Federation had sought to highlight the difficulties faced by the medium and small scale industrial units in implementation of various labour laws.

4. On a query from Shri Gajendragadkar, Chairman of the Commission - whether the Federation claimed total exemption from the provisions of the Industrial Disputes Act, Shri Shiv Raj Gupta informed that it was their case that the small and medium scale establishments employing less than 50 persons should be excluded from the purview of the Industrial Disputes Act and other labour legislations, for such units had neither the resources nor legal background to understand the intricate procedure of such Acts. He urged that the small and medium scale units should be allowed to terminate the services of an employee by paying suitable compensation. He pointed out that such units many a time had to reinstate employees dismissed for gross-misconduct simply because of some technical flaw in the enquiry procedure and in view of the delicate employer-employee relationship in a small concern such situations created hardships.

5. Shri Gajendragadkar observed that it would not be possible to give an unqualified right to the employers to terminate the services of an employee. The procedure for termination/dismissal had been well set over a period of time and it would not be proper to put the clock back. He however, suggested that in order that small and medium employers were saved of the intricate procedure involved in labour laws, the employers should agree to refer the disputes to arbitration where technicalties of law were not attracted. He suggested that arbitrators could be appointed by the Labour Commissioner in case a common person could not be agreed to by the Management and the worker.

6. It was also suggested that in order to avoid technical difficulties involved in conducting an enquiry by small and medium scale employers where the employer himself was the

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person who gave the charge-sheet, held the enquiry and took the final decision it would be proper if the enquiries for disciplinary matters were also conducted by the arbitrators to be appointed by the Labour Commissioners of the respective States. The members of the Commission generally agreed with the proposition.

7. To a query from Shri Gajendragadkar whether the employers would have any objection if the workers were represented by the trade union officials before the arbitrators it was stressed that such a right should not be given & if that was allowed the very purpose of the domestic enquiry was likely to be defeated. It was, however, suggested that both the employers and the employees could appear personally before the arbitrators and lead their respective evidence.

8. Shri Gajendragadkar enquired as to which of the following two problems were more important for small and medium scale employers:

i) Problems arising out of indiscipline in the unit; and

ii) problems on account of competition from large scale units.

9. Shri Shiv Raj Gupta pointed out that for small and medium scale industries, problems arising out of the indiscipline in the unit were of prime importance. He mentioned that to be able to compete with large scale sector it was essential for a small entrepreneur to keep his house in order. He mentioned that the problem of indiscipline was acute in such units and there had been a number of occasions where the employees left the service of their own accord without caring to give notice etc provided under the law.

10. Shri Gajendragadkar suggested that the Federation should compile and send to the Commission a list of the cases where the employees left the services without giving due notice for finding some other employment or for some other reasons.

11. The members of the Commission also noted with concern an instance cited in the memorandum where in one of the industrial concerns in Delhi the workmen assisted by the outside sympathisers continued to occupy the factory premises for months together and even the injunctions received from the Civil Court against their action was not given effect to.

12. The Chairman advised the Federation to furnish them complete details of the matter referred as also all such other similar matters.

(C M LAL)
LABOUR OFFICER

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DELHI FACTORY OWNERS' FEDERATION

REPLIES TO POINTS FOR DISCUSSION WHEN THE COMMISSION RECORDS EVIDENCE

INTRODUCTION

As mentioned in our Memorandum, the problems faced by the small entrepreneurs are manifold and real. Small entrepreneurs can by no stretch of imagination be equated to big industrialists for generally they all come from poor or middle class families having no or meagre financial resources. They have established factories with their own efforts and with the co-operation and financial help of their friends and relatives. They have worked shoulder to shoulder with the workers and know them and their problems at a personal level. There is, therefore, not a big difference between a worker and a small entrepreneur.

Para-wise replies to the questionnaire issued by the National Commission on Labour is given overleaf.

1. Yes. We would, however, submit that special consideration should be shown to small scale industries by providing suitable safeguards for protecting their interests, and exempting such establishments from the provisions of certain Acts.

Yes. We agree that "Labour" should be put in the Union list.

2. Yes. There should be a regular cadre made by the Centre.

(a) Appointments to these courts should be made from a specially constituted cadre on the pattern of other All India Services. Appointments of Presiding Officers of Tribunals and Labour Courts, Labour Commissioners and Conciliation Officers should be made from amongst that cadre.

(b) We are in favour that the Labour Appellate Tribunal should be revived.

3. Yes. Subject to reply regarding the question of wages.

We are not in favour of combining collective bargaining with an agreement for compulsory arbitration.

Wages for employment in small and medium scale industries should preferably be fixed by Wage Boards on regional basis as in their case there cannot be much scope for differential in wages from unit to unit because paying capacity of small scale industries cannot vary very much.

4. The small scale industrialist should be permitted to appoint casual and contract labour as it is not possible for him to have a planned and organised programme of production.

5. Yes. But there should be only one union in a unit.

(a) We are opposed to determination of representative

character of the union by secret ballot. However, if such statutory provision cannot be constitutionally made then we would suggest the following conditions:

(i) In the beginning of each year the employees of an establishment should furnish to their employers letters of authority of their intention to become members of a particular union, and authorising the employer to deduct union subscription from wages. This will enable the employer to note the genuine strength of membership of each union. This should be applicable for a minimum period of one year.

(ii) The union should agree expressly that they would abide by the sanctions laid down in the Code of discipline in industry and any violation of those conditions would render withdrawal of recognition.

(b) Plant-wise unions be recognised.

(c) No

(d) The question would not arise as we advocate one union for a Plant. We do not favour unions for the Officers and the supervisory staff.

(e) Would not arise because we advocate only one union in a unit. However, if that is not feasible then the majority union should be the sole bargaining agent in collective bargaining on conditions of service and the minority union should be permitted to take only individual cases of employees.

(f) Unable to comment.

(g) Presently Works Committees are not functioning in small and medium scale industrial units and we have, therefore, no experience.

6. Yes. The presence of "outsiders" in the trade union movement should be discouraged.

An "outsider" would be somebody who had no work interest with the industrial unit and would include a workman who had been in the employment for a number of years and resigned for taking to union work.

7. Yes.

Yes. This leads to multiplicity of trade unions and make it weaker in the result.

8 (a) Yes

(b) Yes

(c) We agree that in case of non-implementation of awards and wage board decisions, the employees/employers should have a right to approach the Labour Courts or Tribunals. However, no right to file complaint in a Criminal Court should be given.

A similar right should be given to the employers also.

9. Yes

10. Yes

Yes. It is feasible to prescribe complete and detailed procedure for holding domestic inquiries in accordance with the principles of natural justice.

We would not like standing orders to be framed about promotions.

11 Yes, but keeping regional considerations in mind.

(a) Need-based wage is desirable keeping in mind the interests of the industry and the national requirements. It is not feasible in the present economic conditions particularly in case of small and medium scale industries.

(b) Wages should be programmed in a phased manner directly linked with the national income.

12. We favour linkage of wages to productivity.

(a) They should be standardized. In the same region we favour same wage for same work.

(b) It requires scientific study by experts.

(c) Due weightage should be given to these factors.

13. Strike without due notice should be made illegal. 14 days notice is too short a period to enable the parties to negotiate for an agreed solution or for the authorities to intervene to avoid disputes and therefore we have suggested that atleast minimum 21 days notice should be provided in small scale establishments.

(a) 'Pen down' should be included in the definition of strike. Work to rule, go slow, gheraos should not be treated as strike but they should be treated as gross-misconducts.

(b) Yes.

14. Our general experience is that the Officials of Labour Department are usually pro-labour in their attitude rather than being independent and impartial. It is suggested that they should also be appointed from the cadre referred to in reply to question 2.

15. We endorse the view that emphasis should be on corrective aspect and not on penal aspects of labour legislations. The number of cases being small is due to the fact that violations of labour legislations are generally committed by the employees and Labour Department is reluctant to institute criminal proceedings against them.

We are of the view that for any violation, it should be considered sufficient if adequate fine is imposed. The penalty of imprisonment should not be imposed. We would further suggest that such collection of fines should be kept as a separate fund for being

used for the welfare of the labour.

16. No comments.

17. No because an interested party cannot be a judge of such things.

18. Yes. It should be re-examined.

19. Not for small scale industries.

20. It is a vicious circle one chasing the other.

21. Yes. The minimum wages should be ensured for the unorganized sector by extending its coverage.

22. We do not agree that the lack of transport facilities could be the main reason for inadequate implementation of most of labour laws in small and medium scale industries. In our view, it is the plethora of labour legislation which comes in the way of effective implementation of labour legislations.

23. Our experience is that no complaint has been received about this and the records regarding payment of wages are properly maintained. The articles are are weighed in the presence of the worker concerned and it is an adequate safeguard.

24. Yes

25 We share the view that unmanageable volume of statistical information is collected by the Government. The collection of information should be simplified and consolidated in one form, and only such information should be collected which is to be utilised by the Government.

26. No comments.

27. No comments.

28. There should be no question of bonus in small establishments as it leads to disputes every year. It is too early to comment on the working of the Payment of Bonus Act.

29. Yes.

The reasons for this are as under: -

(1) The provisions of the Industrial Disputes Act are to a large extent responsible for strained industrial relations. The right given to the employees to fight with their employers is the root cause of strained relations. In order to improve the relations, it would be necessary to minimise resort to compulsory adjudication as far as possible and to promote collective bargaining in its place, in order to find solutions of the differences between employers and employees in regard to their service conditions and terms of employment, in a cordial and congenial atmosphere.

(2) Labour laws are not written in simple and direct language. Even the Judges of the courts find difficulty in interpreting the various statutes dealing with labour laws. It is, therefore, necessary to rewrite the whole law in simple language which can be easily understood both by the employer and employee. If this be done much of the litigation which leads to strained relations will be reduced.

(3) The procedure for disposal of cases in the courts is lengthy and cumbersome which needs to be simplified so that cases are disposed of and decided within short time.

(4) There is a tendency on the part of the Judges of the Labour Courts and Tribunals to be despotic. This tendency is mainly due to two reasons: (1) the selection of the Judges is not made on the basis of merit and competency but on political considerations or favouritism and nepotism. (2) The appointments are in the hands of the State Government (Labour Ministry). It is suggested that a

regular cadre should be established for appointment of Presiding Officers of these courts on permanent basis, like the Judges of Civil Courts. Their appointment should be made by the Chief Justice of the State High Court on the basis of merit, or their selection may be made after holding examination in labour laws by the Public Service Commission.

(5) At present there is no period of limitation prescribed for raising demands and disputes. In order to minimise disputes, it is necessary to provide in the law a fixed period of limitation, say 6 months for raising a demand.

(6) The present machinery for mediation and conciliation is not very effective and helpful due to incompetent personnel. It is suggested that mediators and conciliators should be persons who have got enough experience of working of industries and knowledge of industrial law.

(7) At present the sense of discipline amongst the employees is at its lowest ebb. The main reason of this is the restrictions and curbs imposed on the employers right to take disciplinary action. All such restrictions and curbs need to be removed forthwith.

(8) There is no sanction to enforce the code of discipline. It is suggested that the code should be written into the law and made effective. Any breach of the code should be considered a gross misconduct on the part of the employees concerned. Similarly any breach of the code by the employers should be made penal.

(9) The life of the settlements and awards under the present law is too short. They should be given a much longer life in the interests of more lasting industrial peace.

(10) The present form of the ban on strikes and lock outs is of not much use. Only stay in strikes and demonstrations as well as 'go slow' tactics should be prohibited and made penal. Peaceful strikes outside the establishment should be permissible. Similarly lock-outs for good and reasonable cause should be permissible at all times. It is suggested that unfair labour practices may be clearly and specifically defined as far as possible both in respect of employees and employers and all such acts of unfair labour practice should be prohibited and made penal.

(11) There has been a tendency on the part of the Judiciary to make erosion into the field of management functions. It is suggested that an attempt should be made to define precisely what constitutes management functions and courts should not sit in judgment upon such functions.

(12) Grievance machinery and procedure should also be written into the law and it should be compulsory for each establishment to set up a domestic forum which should work from day to day for the redressal of the day-to-day grievances of individual employees.

(13) At present there is no restriction on formation and functioning of unions with the result that there is too much of union rivalry which prevents the maintenance of industrial peace. It is suggested that only one union should be allowed to be formed and function in one establishment.

(14) The unions should be free from political influence. It is, therefore, suggested that no person having connection with political parties should be allowed

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to function as an office bearer of the union. For the smooth working and healthy functioning of a trade union, it is also suggested that no dismissed employee should be entitled to become an office bearer or a servant of a trade union.

(15) The present penal provisions of all labour laws which authorise the imprisonment of the delinquent on conviction are also to some extent responsible for strained relations. It is suggested that all contraventions of labour laws should be punishable only with fine and the fine so collectdd should go to a Fund which should be used for the welfare of labour.

(16) The present industrial law permits reinstatement of an employee who is found to have been dismissed or discharged without good reasons. Such orders of reinstatement are to a large extent responsible for strained relations. It is suggested that in all such cases where reinstatement is ordered an option should be given to the employer either to reinstate or to pay compensation which may be adjudged to be adequate relief in lieu of reinstatement.

(17) Matters covered by any statute should not fall within the definition of an 'industrial dispute' and should not form the subject matter of a term of reference for adjudication.

Yes.

No. On the contrary the contact between employer and employee in small scale industry is direct.

30. Preference should be given to local people but there should be no compulsion.

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