LEGAL PROBLEMS FACING TRADE UNIONS IN PAPUA NEW GUINEA

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Trade unions in Papua New Guinea face formidable legal risks if they engage in industrial action. For a fledgling movement these risks could pose a serious inhibiting factor on growth and development. In this article I will outline in some detail what the risks are. In addition I will re-emphasise a point that has been made before, namely, that the beningn over-regulation of unions and their affairs acts as a further inhibitor of what should be a burgeoning trade-union movement.[1]

"Until the workers' associations do show signs of being able and willing to use the strike if necessary, then the observer can only accept the judgement of a modern Papuan union leader that they 'have not yet filled the bill as tough bargainers.'"[2] Willingness to strike is affected by the legal risks involved. What are these risks? (In discussing these risks, it is important to point out that the risks attach to individual trade unionists as a rule rather than to trade unions as such. If the contrary is so, it will be apparent from the context.)

I. RISKS OF CRIMINAL PROSECUTION

Trade unionists engaged in industrial action can risk criminal proceedings. Obviously if trade unionists commit "normal" crimes - for example, if they do violence to people or property - they run risks of prosecutions.

1. Criminal Conspiracy

Not so obvious is criminal conspiracy -- a crime which trade unionists can commit by the nature of their work. If

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1 Martin, "Tribesmen into Trade Unionists: the African Experience and the Papua-New Guinea Prospect" *Journal of Industrial Relations* (1969) 125.

2 Martin, *op. cit.*, 149. The unionist was the late Paulus Arek, M.H.A.

two or more persons join together to do something unlawful in itself or to do something by unlawful means, such a combination is called a conspiracy. The "something unlawful" need not necessarily be a crime; it is sufficient if a civil wrong such as a tort is being planned. Thus the word "unlawful" has a wide meaning. Excluded from it is acting in restraint of trade. Section 33 of the *Industrial Organizations Act* 1962-1973 specifically provides this exclusion.

Trade unionists are given some protection by section 543A of the *Criminal Code*. This protection is given so long as (i) they are conspiring "in contemplation or furtherance of an industrial dispute;" and (ii) they are not planning to do something which is itself a crime, or to do it by criminal means.

An "industrial dispute" is defined in section 4(1) of the *Industrial Organizations Act*. It is given a wide meaning though there is one type of dispute which is exclude, namely a dispute arising out of an attempt to enforce a closed shop.[3]

The protection offered by section 543A is severely limited by the second proviso above, namely that the unionists must not be planning to do something which is itself a crime, or to do it by criminal means. Because of section 67 of the *Industrial Organizations Act*, it is virtually impossible for a unionist to organize a strike or other industrial action without committing an offence under this section. The section prohibits unionists from advising or inciting fellow members to break the terms of an award, or to refrain from working for an employer who is bound by an award, or to "go slow" or to hinder in any other way the smooth operation of the provisions of an award. Therefore it is a punishable offence to strike or to prepare for a strike where an award applies. It follows that if two or more people join together to plan a strike or other obstructionist industrial action, they will be open to a charge of criminal conspiracy.

Of course there are pragmatic considerations which would possibly render this legal risk nugatory in most circumstances. But I am concerned with the potential that exists in the law for curbing union activity. And it is not fanciful to foresee in the not-too-distant future a situation where certain power groups will be all out to "clobber" the unions.

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3 See sec. 4(3) of the *Industrial Organizations Act*.

2. Picketing

This is called "intimidation of workmen and employers" and is a crime under section 534 of the *Criminal Code*. But if it is done "in contemplation of or during the continuance of any industrial dispute" and is done "peacably and in a reasonable manner", then picketing is protected from criminal prosecution by the proviso to section 534.

3. Offences under the industrial legislation

There are two provisions which constitute offences and which could affect industrial action. Section 49 of the *Industrial Relations Act* 1962-1971 imposes a penalty on anyone who contravenes or fails to comply with a provision of a registered award, common rule or a registered determination of the Minimum Wages Board. The question which must be answered in relation to this section is whether going on strike or other industrial action such as "going slow" would constitute a breach of an award. Sykes and Glasbeek answer this question in the negative: "... the award does not as a rule impose an obligation on the employee to work. Such an obligation only arises by the employee agreeing to do so, that is, by entering into a contract of service."[4] However if the award contains clauses which set out the mode of performing work--for example, starting and finishing times, working of particular shifts, etc.--then it could be argued that a strike constitutes a breach of an award. Sykes and Glasbeek argue that these sorts of clauses do not amount to the creation of a general duty not to discontinue work, as such an interpretation would "run counter to the general policy of not placing fetters on the right of the workman to leave his employment for non-industrial reasons."[5] Therefore the bulk of the obligations in an award are imposed on the employer and not on the employee. The major obligation of the employee - to work - springs from contract and not from the award.

If an award contains a "bans" or "no strike" clause, then going on a strike would constitute an offence under section 49. At present no award in Papua New Guinea contains such a clause.

The other penal provision - section 67 of the *Industrial Organizations Act* - is a copy of section 138 of the Commonwealth

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4 E. Sykes and H. Glasbeek, *Labour Law in Australia* (1972) 544-5.

5 *Ibid.*

Conciliation and Arbitration Act 1904-1970. The section makes it an offence for trade unionists, whether parties to an award or not, to advise, encourage or incite other unionists to act contrary to the terms or the spirit of an award. There is no doubt that the provision hits at striking. Section 67(1)(a)(iii), when read selectively, provides: "An officer... [etc.] of an industrial organization ... shall not ...(a) advise [etc.] ...a member of an industrial organization which is bound by the award to refrain from ...(iii)...working ... with an employer who is bound by the award."

It is to be noted that the provision does not hit at non-unionists who incite others to go on strike. Nor does it punish unionists who incite non-unionists to take industrial action contrary to an award. Further, a defence is provided by section 67(3) if the conduct complained of was "(a) unrelated to the terms and conditions of employment prescribed by the award; or (b) arising out of a failure or proposed failure by an employer to observe the award." Intent is necessary for the conduct charged to be punishable, but, as Sykes and Glasbeek point out, the courts have been reluctant to find a lack of the requisite intent.[6]

In the Legislative Council this section was tacked onto the Industrial Organizations Bill without any debate, though there was lengthy discussion about the other provisions of the industrial legislation. It seems clear that it was added as a concession to those who expressed opossition to the essentially pro-union flavour of the 1962 legislation. It was a very large concession because it hits directly at the very essence of trade-union activity. Sykes and Glasbeek comment: "Manifestly [the section] ... has very wide application. ... [It] is not calculated to foster good industrial relations, despite the obvious policy to this effect which underlies its enactment."[7]

Again the pragmatic considerations are important. Since there have been no prosecutions under section 67, it could be argued that, with the government predominantly sympathetic to

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6 *Ibid.* at 539; and see *Pegg v. Taylor* (1959) 1 F.L.R. 274; *Bennett v. Milliner* (1959) 1 F.L.R. 312.

7 *Ibid.*, 540.

unions, no danger exists in section 67. If this is so, then why is there a need for the section? It is possible that a future government will be less sympathetic to unions, particularly if they become powerful. If this should happen a powerful anti-union weapon exists in section 67.

II. RISKS OF CIVIL ACTION

A far greater pontential threat to unions is the risk of civil action which could result in crippling damages being awarded. At least five kinds of civil actions can be brought against unions or unionists engaged in industrial action.

1. Breach of Contract

An employee who goes on strike breaks his contract of employment and can be sued for damages by his employer. However this is most unlikely to happen. It is seldom worth the employer's while to sue for breach of contract because the employee usually does not have any money, because it takes far too long to bring an action and because the employer may find it difficult to prove he has suffered any damage as the result of an individual employee's actions.

2. Civil Conspiracy

Of far more practical significance is the tort of civil conspiracy. Where two or more people join together to do an injury (non-physical) to another, if damage results to that other he can bring a civil action against the conspirators.[8] Like criminal conspiracy, it is the *combination* which creates the wrong. The injury need not be an actionable wrong if committed by an individual. Thus it is not actionable for one individual to induce another not to enter into a contract of employment with a third party. But it is actionable if two or more persons do this.

No protection from civil conspiracy is given to trade unionists by the industrial legislation in Papua New Guinea. In England, in response to the case of *Quinn v. Leatham*,[9]

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8 *Quinn v. Leathan* [1901] A.C. 495.

9 *Supra.*

protection was given by section 1 of the *Trade Disputes Act* 1906. This section provides that an act done in pursuance of a combination shall not be actionable in tort so long as (i) the act is done in furtherance or contemplation of a trade dispute; and (ii) the act would not be actionable if done by an individual.

The need for this section has been reduced by decisions of the courts subsequent to *Quinn v. Leatham*. It is a defence at common law if the motive of the combiners was to protect their trade or ordinary group interests. The courts had displayed a discriminatory attitude to trade unionists, permitting this defence for traders and employers but not for unionists. For example, it was held in *Mogul Steamship Co. v. McGregor, Gow and Co.* that it was legitimate for traders to seek a monopoly through such tactics as undercutting, boycott and black-listing.[10] Yet similar tactics by trade unionists in *Quinn v. Leatham* were declared illegitimate. Finally, *Crofter Hand Woven Harris Tweed Co. v. Veitch* established that the defence extended to trade union activities.[11]

This defence, however, imposes a burden on the unionists to establish that they have a legitimate trade motive. The section in the English act relieves them of this burden. But the section is not without its difficulties. Obviously a lot turns on the meaning of "trade dispute" (in Papua New Guinea "industrial dispute").[12] In England inter-union disputes, sympathetic actions and closed shop disputes all come within the definition of "trade dispute," but closed shop disputes are specifically excluded in Papua New Guinea.[13] A further difficulty arises because of the condition that the act cannot be one actionable if done by an individual. Does the word "actionable" refer only to tort or does it have a wider meaning? For instance if a unionist in furtherance of an industrial dispute conspired with other unionists to do some act which infringed a legislative provision, would this remove the protection of the section?[14] To avoid this difficulty

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10 [1892] A.C. 25.

11 [1942] A.C. 435.

12 See M. Hickling (ed.) *Citrine's Trade Union Law* (1967) 554, 582 and 597-608.

13 See sect. 4(3) of the *Industrial Organizations Act*.

14 Sykes and Glasbeek argue at 343-4 that "actionable" means in tort only.

the words "in tort" should be added after the word "actionable." A section similar to section 1 of the *Trade Disputes Act* 1906 should be enacted in Papua New Guinea with the suggested modification.

3. Interference with Contractual Relations

It is an actionable tort for a person knowingly to induce another to break a contract.[15] The scope of this tort has been extended to a situation where a person causes another to cease performing under the contract even though such non-performance does not constitute a breach of contract.[16] In *Torquay Hotel ltd. v. Cousins* the unionists persuaded oil truck drivers not to supply the hotel with fuel oil. This interruption of supply did not constitute a breach of contract because there was a clause in the contract between the hotel and the oil suppliers which stipulated that the suppliers would not be liable for breach of contract for failing to supply when that failure to supply was caused by industrial action. It was held that the unionists were liable even though no actual breach of contract had been induced.

This tort constitutes a threat to union activity. It inhibits any action which would result directly in a breach or interference with contractual relations.[17] Thus strikes themselves and secondary boycotts (the situation in the *Torquay Hotel* case) are threatened.

Limited protection from this risk is purportedly given in Papua New Guinea by section 32 of the *Industrial Organizations Act* so long as the act complained of is done "in contemplation or furtherance of an industrial dispute." This section protects unionists against liability only for acts which:

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15 *Lumley v. Gye* (1853) 2 E. & B. 216; 118 E.R. 749.

16 *Torquay Hotel Ltd. v. Cousins* [1969] 2 Ch. 106.

17 If the breach or interference is caused indirectly, the tort is not established. *D.C. Thomson & Co. Ltd. v. Deakin* [1952] Ch. 646. However the scope of this tort was considerably widened by *Stratford & Son Ltd. v. Lindley* [1965] A.C. 269. For a ful discussion, see Citrine, *op. cit.*, 579-590.

(i) induce someone to break a contract *of employment*; or

(ii) interfere with

(a) the trade, business or employment of some other person; or

(b) the right of some other person to dispose of his capital or his labour as he wills.

Thus, under paragraph (i), protection is not given if the union or unionist persuade someone to break a contract other than a contract of employment (i.e. the *Torquay Hotel* type of situation). But could it be argued that paragraph (ii) does protect the unionists in the *Torquay Hotel* type of situation? The words certainly seem to do this. However this view was overruled by the House of Lords in *Rookes v. Barnard*.[18] As a result, paragraph (ii) of this section has no effect whatsoever.[19]

The protection promised by section 32 is further limited.[20] Because of the word "only" in the section if the unionist commits any other illegal act in the course of inducing someone

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18 [1964] A.C. 1129.

19 For a detailed critique of *Rookes v. Barnard* see K. Wedderburn, *The Worker and the Law* (1965) 261-275.

20 Sec. 32 reads: "No suit or other legal proceeding shall be maintainable in a civil court against a registered industrial organization or an officer or member of a registered industrial organization in respect of an act done in contemplation or in furtherance of an industrial dispute to which a member of a registered industrial organization is a party on the ground *only*[writer's emphasis] that the act -

(a) induces some other person to break a contract of employment; or

(b) is in interference with -

(i) the trade, business or employment of some other person; or

(ii) the right of some other person to dispose of his capital or his labour as he wills."

to break his contract of employment, then the section affords no protection at all. In Papua New Guinea, this virtually robs the section of any effect because, as pointed out above, section 67 of the *Industrial Organizations Act* makes it impossible for unionists to take any industrial action in an industry to which an award applies without committing some offence. There is some doubt on this point. It is not clear whether the additional illegality is confined to tortious or other civil wrongs or whether it also includes statutory offences.[21] But the uncertainty is sufficient to make the "protection" offered by section 32 highly unreliable.

A further limitation on the rapidly shrinking protection offered by section 32 is that the section protects only "a registered industrial organization or an officer or member of a registered industrial organization" and the dispute must be one "to which member of a registered industrial organization is a party." In view of the fact that under section 11 of the *Industrial Organizations Act* registration is compulsory, this limitation is perhaps not as serious as the others outlined above. In theory no union or unionists can exist without being registered.

In summary, the only "protective" provision in the Papua New Guinea industrial legislation is practically useless. In order to remedy this situation, it would be necessary to leave out the words "only" and "of employment" in the section. It would also be necessary to enact a further provision neutralizing the decision of *Rookes v. Barnard*.

4. The Tort of Intimidation

Rookes v. Barnard raised serious new threats both against employees who threaten to go on strike and against trade union organizers of such industrial action. If A by a threat (only) to do something unlawful causes B to do something which causes financial injury to C, C has a cause of action against A. This tort can involve two parties too. In *Rookes v. Barnard* employees of B.O.A.C. and a union official treatened B.O.A.C. that if the company went on employing Rookes (who had left the union and would not rejoin it) the employees would go out

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21 See *Cunard Steamship Co. v. Stacey* [1955] 2 Lloyd's Rep. 247 where the question was considered but not decided.

on strike. B.O.A.C. then terminated Rookes contract of employment and the strike was averted. Rookes sued the employees and the union official who had treatened B.O.A.C. The House of Lords held that making such a threat is an actional tort if damage is thereby caused. Furthermore, because the employees and the trade union official acted in combination they were all liable for civil conspiracy as well.[22]

The essence of this tort is that the tortfeasor threaten to do something *unlawful*. Is threatening to break a contract of employment a threat to do something unlawful? The origins of this tort would seem to suggest that the threatened act must be some act of physical violence. But the House of Lords found that breaking a contract of employment was unlawful. This is trenchantly criticized by Wedderburn. He contrasts the rights and duties created by contract to those imposed by the laws of tort and crime: "In contract, no duty common to all is broken, no inherent right invaded; the obligation is self-assumed, the right self-created."[23] In Papua New Guinea the penalty provisions of the industrial legislation further broaden the scope of the threat posed by the tort of intimidation. If unionists or employees threaten to break an award, they can be sued under the *Rookes v. Barnard* doctrine. This hits at the very core of union activity. The "right to strike" is wholly illusory so long as this tort remains part of the common law.[24]

In Papua New Guinea, unions which are just beginning to get on their feet find themselves in an extremely vulnerable position. This situation should be changed. To free unions from the tort of intimidation would necessitate an additional legislative provision along the lines suggested by Wedderburn, namely to insert a third paragraph into section 32 of the *Industrial Organizations Act*. This would ensure that an act done in contemplation or furtherance of an industrial dispute would not be actionable on the ground that "it constitutes or contributes to intimidation by a threat to commit, or to procure, a breach of contract or a threat to commit an offence

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22 This is so even though it is quite unrealistic to argue that the threat, if made by one employee only, would have intimidated B.O.A.C.

23 Wedderburn, *op. cit.*, 265.

24 For general reviews of the tort of intimidation, and its relation to the other industrial torts see Wedderburn, *op. cit.* 261-275; Sykes and Glasbeek, *op. cit.* 333-360; (1965) 28 M.L.R. 205; (1965) 81 L.Q.R. 116; (1970) 86 L.Q.R. 181.

under section 49 of the *Industrial Relations Act* or under section 67 of this Act."

5. Trespass

There have been one or two cases in Papua New Guinea of union officials either being sued or being threatened with an action for trespassing on company land when they have been going about their business of looking after the interests of employees. This again should be protected by legislation. The normal way is to provide for a right of entry onto business premises for union officials who are attending to union business.

III. DO UNIONS HAVE TO PAY COMPENSATION?[25]

If an employer or an employee successfully sued a union, the result would be disastrous for the union. If substantial damages were awarded, it would mean bankruptcy. In Papua New Guinea, a union can be sued in its own name. Section 30 of the *Industrial Organizations Act* states that a registered union is a body corporate, and section 34 provides that an unregistered union can also be sued.

But could union money be used to pay damages? At common law, the *Taff Vale* case established that it certainly could.[26] "The effect of the case was to inflict upon trade unions and their activities a form of legal paralysis which the legislature was obliged to remove."[27] In England *Taff Vale* was overcome by section 4(1) of the *Trade Diputes Act* 1906. In Papua New Guinea some protection is given by section 35 of the *Industrial Organizations Act* in that damages cannot be paid out of a provident, benevolent or other fund kept apart for the benefit of its members except by order of the court giving judgement for damages. Whether the words "other fund kept

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25 The discussion so far has dealt with the risks that *individual unionists* run into in taking industrial action. But the union itself can also be sued for civil conspiracy (it can conspire with its members: see *Egan v. Barrier Branch of Amalgamated Miners Association* (1917) 17 S.R. (N.S.W.) (243); for interference with contractual relations; and for intimidation.

26 *Taff Vale Railway v. Amalgamated Society of Railway Servants* [1901] A.C. 426.

27 Citrine, *op. cit.*, 551.

apart for the benefit of its members" would cover a strike fund is not clear. Assuming the words would not be given this wider meaning, the implications of section 35 that (a) it is possible for a provident or benevolent fund to be depleted if a court so orders; and (b) strike funds and other general revenue can be used to pay damages for a court action. As a result, unions can be reduced to complete ineffectuality, just at the time when they are starting to acquire enough money to be effective.

A legislative provision is needed to protect union funds, but not one in the same terms as section 4(1) of the English *Trade Disputes Act* 1906, which went so far that it protected unions against paying for *any* tort liability. Thus, pedestrians injured by union vehicles could have no redress against the union. This has been remedied in England by the 1971 *Industrial Relations Act*. What is needed is for the words "in contemplation or furtherance of an industrial dispute" to be added to section 4(1).

IV. ARE THESE LEGAL RISKS PRACTICAL RISKS?

The legal risks facing unions, if they take industrial action, are considerable. But are they practical risks? In Australia, only Queensland has protective provisions. It has been argued that protection is unnecessary, in that the unions' lack of funds constitutes their strength, making any legal action against them impractical. And if an employer were to pursue an action, then the union would become a martyr which would hurt the employer more than it would benefit him. But is this the way to promote industrial harmony? Viable unions are essential for proper industrial relations, as was recognized by the Papua New Guinea government in 1962 when the industrial legislation was passed. The legislation did not envisage penniless unions whose only immunity from serious legal threats was their parsimonious state. Indeed the legislation made a half-hearted and unsuccessful attempt to protect unions.

In arguing that this protection should be real and not illusory, I am looking forward to a time, which I hope will not be too far distant, when the strength of the unions is real, when they have money to support welfare programmes for members and industrial action when necessary. Only when they have money will the unions start to be viable. But that is also the time when they become most vulnerable to civil suits. It is in this situation that protection will be most needed. I would therefore strongly advocate that the necessary legislation be passed sooner rather than later. However, the legislation should not be so cumbersome that protection becomes over-regulation. In some areas this has already occured.

V. *OVER-REGULATION*

Unions in this country are furtunate in that they are actively encouraged by the government. The *Industrial Organizations Act* and the Bureau of Industrial Organizations bear witness to this. However there is a negative side to this government interest. The legislation covering industrial activity is unduly complicated. Unions are over-regulated.

As a result, many legal provisions are simply not complied with. This in turn brings the law into disrepute because it is broken so often. For instance, the Schedule to the *Industrial Organizations Act* provides that there be certain rules in the constitution of an industrial organization. Unions do incorporate these rules into their constitutions, but they do not observe many of them:

(i) Unions sometimes alter the rates of annual contribution without observing the proper procedures of a general meeting, secret ballot, etc.

(ii) Executive elections are normally conducted within the rules--except that the union is supposed to supply the returning officer with a current list of all financial members. This is rarely done.

(iii) Many unions do not hold their elections annually. thereby breaking their own rules.

(iv) Accounting provisions are seldom observed. Audits are not carried out once a year although unions' constitutions stipulate an annual audit. Very few unions even have auditor. As a consequence misuse of funds has been known to happen.

(v) Very few unions hold monthly executive committee meetings or annual general meetings as dictated by their constitutions. As a result the union is often run by the secretary or the president instead of by the executive committee as a whole.

A union which breaks its own rules is not perse committing an offence under the *Industrial Organizations Act*, unless a complaint made and a court orders that the rules be observed under

section 52 of the Act.[28] However, it is acting beyond its powers if it does not observe its own rules, and anything which has been done unconstitutionally may be challenged. For instance if members have been paying dues according to a rate determined unconstitutionally, theoretically the members can claim back their dues. This would cause a chaotic situation.

The solution to the above problem is two-fold. First, the rules should be simplified. For instance, are the rules envisaged in (ii), (iii) and (v) of the above examples absolutely necessary? Second, a vigourous education and training programme would ease the problem.[29]

As well as breaking their own rules, unions also break the law as laid down in the two Acts. For example, the failure to carry out annual audits is a breach not only of the union's rules but also of section 59 of the *Industrial Organizations Act*. If unions do not send annual reports of their accounts to the Industrial Registrar they are infringing section 59(4). Failure to send annual lists of financial members is also an infringement. Any of these omissions incurs a penalty of $20 for each week of default under section 61(3). The fine is unenforceable, but is in fact not enforced.

Under the *Industrial Organizations Act*, registration is compulsory, but during 1974 two unions operated for at least six months without being registered. They were therefore operating illegally, according to the Act. Under section 72 the officers of those unions are liable to a fine of $200, plus $10 for each day that they fail to apply for registration. And under section 28 they can be fined a further $200 plus plus $10 a day for acting on behalf of an unregistered industrial organization.

Strikes are usually conducted illegally. Under section 19(1A) of the *Industrial Relations Act* an employer or union must notify the Department of Labour if a dispute is likely to give rise to a strike or a lock-out. Under their own rules

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28 Except where specific provision has been made, as with some of the accounting provisions.

29 The efforts of the Bureau of Industrial Organizations in regard to training should here be acknowledged.

unions must hold a secret ballot before going on strike. In only one strike between June 1973 and June 1974, that of the Port Moresby Waterside Workers, were these requirements observed. It is uncertain who has to pay the fine under section 19(1A). The section says that the employer *or* the industrial organization (union) should notify the Department of Labour. Does this mean that *both* can be fined if no notification is made?

These problems are mainly the product of over-regulation in a society that is not accustomed to regulation. Both the government and the unions can make efforts to cure these problems - the government by simplifying industrial laws and the unions by educating themselves about the laws. On the government side this may require a fundamental re-thinking of the philosophy behind industrial legislation. Is it possible to achieve the admirable aim of promoting and encouraging unions without at the same time swamping them with a legal waterfall? There is a great danger in having system in which the law is daily flouted. If the law does not have to be observed in some respects, it may well be asked, why should it be observed in others?

VI. UNIONS AND OBSERVANCE OF THE LAW

Government agencies are understaffed and cannot carry out the task of enforcing laws that benefit workers. The unions, on the other hand, so long as they can organize, have more than an adequate number of men and women to ensure that laws are observed. The unions could "blow the whistle" (to use Ralph Nader's expression) on employers who are disregarding the law.

In 1972, when the rural minimum wage was $5.90, almost 30 per cent of employers were paying under $5.00 and 82 per cent were paying under $6.00.[30] Paying under-award rates is illegal. In any particular rural area it is well-known that certain plantation owners pay under-award rates. Yet they are not prosecuted.

The *Industrial Safety, Health and Welfare Act* 1961-1970 must be the concern of unions. The number of industrial safety officers is at present not sufficient to inspect all work places for violations of the Act, but unions could bring to their notice safety or health hazards at factories, plantations or plants.

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30 These figures were obtained by the author from the Bureau of Industrial Organizations.

There are many instances of injured workmen not receiving the compensation due to them under the *Workers' Compensation Act* 1958-1973. This happens sometimes because they do not know their rights and sometimes because the employer starts to process the claim and allows it to lapse. Unions should be actively involved in pressing claims for their members.

In urging unions to become increasingly involved in blowing the whistle on law-breaking employers, it must be qually urged that unions get their own house in order by complying with the law themselves. It may appear that I have different attitudes to unions and to employers when it comes to law breaking. To some extent I have. Unions are over-regulated and to that extent have an excuse, but employers are not over-regulated. They are obliged to maintain certain minimum standards, to provide a safe system of working, to pay at least the minimum wage and to look after their employees when they are injured. These are not unreasonable requirements and there is little excuse for not complying with them.

Nevertheless, unions will be open to charges of illegality themselves if they do not correct their present failures in observing the provisions of the industrial legislation. At the same time the government must modify the legislation so that the unions' task of compliance is made easier.