

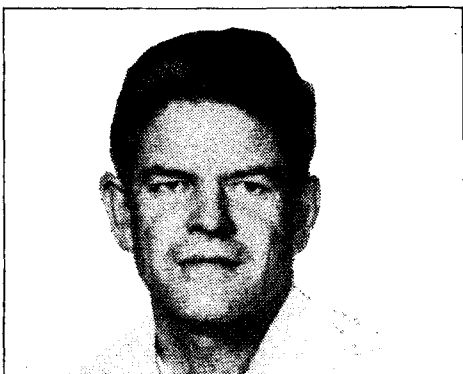
STAUGHTON LYND

LABOR & THE LAW

Do workers have the right to refuse to do unsafe work?

IN A LABOR LAW CLASS I AM teaching, a number of union members expressed confusion about a recent national article concerning the case of Marshall v. Daniel Construction.

The case concerned an iron worker in Georgia who, together with his crew, came down from a work station 150 feet above the ground because of high winds. The iron worker, Jimmy Simpson, refused to go back to work and was discharged. The Secretary of Labor took the dis-



charge to federal court. He argued that Simpson's refusal to go back to work was protected by an OSHA (Occupational Safety and Health Administration) regulation which gives a worker the right not to perform an assigned task which he or she reasonably believes creates a real danger of death or serious injury.

The federal district court held that the regulation was contrary to the intent of Congress in enacting OSHA, and therefore, that Simpson was not protected by it. The circuit court of appeals affirmed.

The U.S. Supreme Court decided not to review the decision. This does not necessarily mean that the Supreme Court agreed with the decision. Often the Supreme Court waits until several circuit courts consider an issue before reviewing a case in which the issue is presented.

Moreover, the action of the Supreme Court does not mean workers no longer have the right to refuse unsafe work.

In the first place, many contracts permit a worker to refuse to do unsafe work. An example is the Basic Steel Contract. Article IX, Section 3 of the contract currently in effect between Youngstown Sheet and Tube and the Steelworkers states:

"If an employee shall believe that there exists unsafe condition, changed from the normal hazards inherent in the operation, so that the employee is in danger of injury, he shall notify his foreman of such danger and of the facts relating there-

to. Thereafter, unless there shall be a dispute as to the existence of such unsafe conditions, he shall have the right, subject to reasonable steps for protecting other employees and the equipment from injury, to be relieved from duty on the job." (If there is a dispute the employee has the right to be relieved if the Chairman of the Grievance Committee agrees with the employee.)

The Marshall case does not affect such contractual rights. It had to do only with rights under OSHA.

In the second place, Section 502 of the National Labor Relations Act (29 United States Code, Section 143) states:

"Nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions of work...be deemed a strike."

The Marshall case does not affect this statutory right. To be covered by Section 502, employees must (a) refuse work as a group, and (b) have some objective evidence for their belief that the work is unsafe. Under circumstances where employees can meet these two conditions, Section 502 provides just as much protection as the OSHA regulation found to be invalid in the Marshall case.

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RICHARD L. SKLAR

To talk or not to talk: Zambia Pres. Kaunda's Decision in Zimbabwe

THERE WAS A RAY OF HOPE DURING THE RECENT VISIT OF Ian Douglas Smith, prime minister of Rhodesia, to the U.S. He and his three African co-members of Rhodesia's ruling Executive Council, namely, Senator Jeremiah Chirau, Bishop Abel Muzorewa, and Rev. Ndabaningi Sithole, agreed to attend an all parties conference with leaders of the Patriotic Front guerrilla alliance. The hope created by this unexpected concession, however, was all but extinguished by the assault against guerrilla camps in neighboring Zambia and Mozambique, conducted by Rhodesian troops while the Rhodesian leaders, themselves, were still meeting with American officials in Washington. The appearance of irresponsible conduct on Smith's part was not altered by his subsequent denial of prior knowledge about the deadly raids.

Angered and dismayed, the guerrilla leaders and their allies (the Patriotic Front) appeared to back away from negotiations with the internal Executive Council. Julius K. Nyerere, President of Tanzania and chairman of the front-line president's committee, stated that an all-parties meeting with "no preconditions," as Smith had stipulated, would not be acceptable to the guerrillas. He added that Smith would have to accept the Anglo-American proposals of 1977 as the basis for negotiations.

It is, however, doubtful that Nyerere would wish to resurrect the elaborate Anglo-American proposals in their entirety. For example, the proposal to appoint a British Field Marshall, Lord Carver, as sole executive and legislative authority for a six-month transition period, is as unacceptable to the Patriotic Front as it is to the internal government. The idea has already been scrapped by British and American negotiators in favor of a representative ruling council.

Another one of the Anglo-American proposals would establish a fund, managed by the World Bank, to facilitate foreign investment and capitalist development projects primarily. This approach is contrary to both Nyerere's personal philosophy and socialist principles of his preferred faction in the Patriotic Front.

Nyerere's endorsement of the Anglo-American proposals would probably be

limited to these specific features: (1) democratic elections, administered by an impartial authority, and without provision for the disproportionate representation of minority racial interests; (2) the formation of a new Zimbabwe army that would be insulated from existing political conflicts. (Zimbabwe, it should be noted, is the African name for Rhodesia; all factions, including Smith's own party, accept it as the official name for the country once independence with majority rule has been attained.) These goals can only be pursued via negotiations.

While Nyerere attempts to reconcile conflicting principles, Kenneth D. Kaunda, President of Zambia, is torn by irreconcilable urges and needs. His defense force could neither repel nor punish the deep intrusion into Zambia by Rhodesian troops. Shortly before this humiliating experience, Kaunda had given in to economic pressures and restored rail transport (suspended in 1973) between Zambia and Rhodesia in order to import urgently needed fertilizer and export an immense backlog of copper.

Deeply in debt to the International Monetary Fund, Western governments and transnational banks, Zambia needs a cooperative relationship with her natural sister-state across the Zambezi river. She cannot afford to abandon the pursuit of racial justice by peaceful means.

Hardest hit by the latest Rhodesian attacks were Zambia-based elements of the Zimbabwe African People's Union (ZAPU) and its military wing, the Zimbabwe People's Revolutionary Army (ZIPRA).

This movement is supported by the peoples of western Zimbabwe; it is backed militarily and politically by the Soviet Union and Cuba. ZIPRA units undergo training in Angola and operate against Rhodesia from forward bases in Zambia.

Joshua Nkomo is firmly in the saddle as leader of the ZAPU/ZIPRA movement. Since his release from detention in November, 1974, Nkomo has alternately and simultaneously negotiated with the Smith regime and fought it in the battlefield. His emphatic rejection of further negotiations, following the destruction of ZAPU base camps in Zambia by Rhodesian raiders, cannot be taken at face value.

Nkomo's power of decision is limited by the fact that he cannot govern Zimbabwe without the support of truly representative leaders from the northern, eastern, and southern sections of the country. His Ndebele-Kalanga coalition accounts for little more than 20 percent of the African population. Although the Kalanga are Shona-speaking, the vast majority of Shona-speakers, including the numerous Karanga, Zezuru, and Manika peoples, support rival leaders and movements.

In the eastern portion of the country, guerilla operations are dominated by the Zimbabwe African National Union (ZANU) and its military wing, the Zimbabwe African National Liberation Army (ZANLA). This movement, based in Mozambique, relies largely upon China for training and supplies. Its chief political spokesman, Robert Mugabe, has less freedom of personal action than Nkomo. Mugabe's power of decision is severely restricted by his guerilla chieftains, notably Joshua Tongogara, the charismatic leader of Karanga guerillas, who are predominant in ZANLA.

Mugabe's personal influence is based mainly upon his reputation for revolutionary integrity rather than sectional support. In that respect, he is similar to his adversary, Sithole, whom he displaced as leader of ZANU in 1975. His political

situation at present is precarious.

If Nkomo decides to negotiate with the internal regime, Mugabe must lead his own party out of isolation to the bargaining table. Yet it would be difficult for Mugabe to precede Nkomo to the table because his "followers" would rather fight than talk. If he goes to the table prematurely, he may go alone and empty handed. Would it be better for him to decide, in agreement with Nkomo, to spurn the table and intensify the war? Only, it would appear, if China and Mozambique are prepared to back that course of action. Without full backing by China, in particular, ZANU would soon become a junior partner in the Patriotic Front.

If China wavers in her support for ZANLA, if Mozambique grows weary of the fratricidal war, then Mugabe would probably urge Nkomo to go with him to the table together. This, of course, is what Britain and the U.S. would like to see.

Nkomo's attitude will be influenced by Soviet policy. Should Zambia turn to the Soviet Union and/or Cuba for assistance in strengthening her defenses against Rhodesia and South Africa, the Soviet government would probably advise Nkomo to spurn early negotiations. However, a Soviet/Cuban military presence in Zambia might jeopardize Kaunda's own position and that of his good friend, Nkomo, as well. In extremis, Kaunda has turned to Britain for military support, not to the Soviet Union. And Britain has agreed to set up an air defense system in Zambia.

Time and again since the second world war, Zambia (formerly Northern Rhodesia) has been the key to political developments in central Africa. At the present time, Angola's turn toward rapprochement with both Zambia and Zaire has strengthened the hand of Kaunda. If Kaunda wants talks, they will be held. It is hard to see what he or Zambia has to gain by their deferral.

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IN DEPTH

Official and real unemployment rates: the growing gap

BY HARRY BRILL

FOR GOOD REASON, POLICY MAKERS AND CITIZENS ALIKE closely watch the official monthly unemployment rate reported by the Labor Department. This rate measures the difficulty experienced by unemployed job-seekers in finding work, and so ranks among the important indicators of the state of the economy, influencing monetary and fiscal policies when joblessness rises. In fact, the official unemployment rate at the state level serves to trigger billions of dollars in federal funds to the various states.

Certainly evaluating the accuracy of the unemployment rate is no mere academic exercise, but one that is worthy of very careful scrutiny. To evaluate how reliable these statistics are requires addressing essentially two very different issues.

First, does the magnitude of measured unemployment actually reflect labor market conditions, or does it understate or exaggerate what is occurring?

Secondly, are the *trends* in the labor market accurate as recorded by the official statistics? For example, does a dip in the unemployment rate really signify an actual decline in joblessness? The issue of trends must be considered separately because although the level or reported unemployment could be inaccurate, the biases may be consistent enough to reflect whether unemployment is actually rising, falling, or stable.

Each month interviewers employed by the Bureau of Census on behalf of the Department of Labor contact 56,000 households to inquire about the labor force activities of the respondent and other members of the household.

The unemployment rate, computed from these survey responses, is the percentage of the total civilian labor force (employed plus unemployed) who are unemployed. In 1977, the year for which an estimate of the real unemployment rate will be attempted, the average monthly size of the labor force, that is, those who were working and seeking jobs, was about 97,400,000. About 6,800,000 were jobless, so the official unemployment rate was 7 percent.

Unemployed and uncoun- ted.

The questions the interviewers ask to determine whether members of the households are unemployed are based upon a somewhat restricted definition of unemployment. In order to be counted as unemployed, one must have been actively seeking work within the past 28 days. But many people without work do not qualify—including those individuals who have tentatively given up the job search because they are convinced that they are unable to find jobs.

Generally speaking, the worse the unemployment situation, the more people become discouraged. The Labor Department estimates that the average number of discouraged workers in 1977 was 1 million, which if included in the unemployment statistics, as they should be, would add over 1 percent to the official unemployment rates.

There are also enormous numbers of women—the poor and the not so poor as well—who need to work but cannot because of inadequate child care facilities. According to the Household Survey, which periodically inquires about those who want a job now but are not seeking work, more than 1,200,000 women explained that they are constrained from doing so by their home responsibilities. From the perspective of employers, these women are out of the labor force because, practically speaking, they are unavailable for work. But from their own perspective these women are unemployed.

Others want jobs but do not look actively because they are convinced the market does not want them. Over 750,000 disabled and sick people informed the census interviewers that they want jobs now. They realize that they are—or could be—capable of working, but have internalized the bias of employers toward the handicapped and so do not actively seek jobs.

There were also 1.5 million students in school who were not counted as unemployed but want jobs now. Many of these young people need some income while attending school. They have not recently been seeking work because they have been unable to find jobs, not because they are students. In fact, many of these young people are being encouraged to warehouse themselves in educational institutions because jobs are not available.

Beside discouraged workers, students, disabled and sick persons, and those with household responsibilities who want jobs now although they had not been actively seeking work within the past 28 days, there are another 1,400,000 persons who have not been seeking work for "other reasons." We can speculate that among these are unemployed men who, although

their wives are working, want to work as well. Also, about 20 percent of those in the "other" category are 60 and over, which suggests that some are not actively searching for jobs because of age discrimination.

Disguised unemployment.

Altogether, there are almost six million persons who want a job now but have not been recently active in the labor market. Although only a million of them are classified as discouraged workers, these others have also been discouraged from seeking employment. Most of these almost five million individuals are among America's disguised unemployed, who have been neglected in the Labor Department statistics. If it is very cautiously assumed that only one-third really want jobs now, about 1.6 percent would be added to the official unemployment rate.

Another substantial group who are not counted as unemployed are parttime workers who want full-time jobs. Employed, to be sure, but only partially, these people are affected by slack work, bad weather, or inability to find full-time jobs. On the average, they work about half time, so that two of these part-time workers are the equivalent of one person who is unemployed—but are not counted in the unemployment rate at all. Since the Labor Department estimates 4.5 million such workers in 1977, this equals 2.25 million full-time unemployed, which is about 2.3 percent of the labor force.

Also excluded from the unemployment count are more than 750,000 workers in the category "unpaid vacations." Numerous establishments close down during vacation periods, leaving many employees without pay. An unpaid vacation is, after all, only a euphemism for a temporary layoff. Workers temporarily laid off because of weather are also classified as employed.

The Labor Department does not specify how many of the 230,000 workers per year who are laid off because of weather conditions are not paid. Probably most, but if we assume that only 100,000 of weather-related layoffs are unpaid, and then add on the 750,000 with unpaid vacations,

there were then 850,000 unemployed workers on these temporary layoffs, which adds 0.8 percent to the unemployment rate.

Two other omissions from the unemployment figures are worth noting. Since 1967, individuals who are 14 and 15 years of age, which is an age group whose unemployment rate is well above average, are no longer included in the aggregate unemployment rate. There is no other industrial country that counts only those 16 years and older in computing unemployment.

Liberal definition.

Also, there are almost half a million unpaid family workers in non-agricultural industries who are counted as employed though they receive no remuneration. Strictly speaking, persons doing work without pay are not defined as unemployed.

It may be that these individuals are receiving room and board in exchange for their labors. Perhaps some of them are involved in the family business as an investment in the future. It is also likely that many of those who work without pay are retreating into the family business because they are unable to obtain jobs elsewhere. For caution's sake, all the unpaid workers and young teenagers will be excluded in estimating real unemployment.

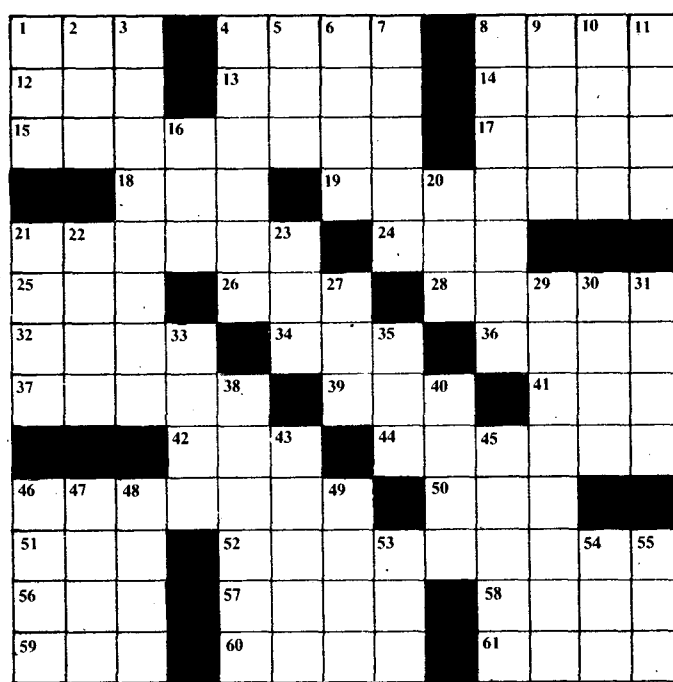
The Labor Department's habit of liberally defining employment to include tremendous numbers of people who are not receiving pay while being highly restrictive on who is counted as unemployed clearly biases the official unemployment rate toward underestimating the real extent of unemployment. The uncoun-
ted unemployment rate thus far, is as follows: discouraged (who say so) 1.0, other discouraged 1.6, part-time unemployed 2.3, temporary layoffs .8. This adds up to 5.7 percent.

Adding the uncoun-
ted unemployed to the official unemployment rate for 1977 (7 percent) yields, a real unemployment rate of 12.7 percent.

Harry Brill is a professor of sociology at the University of Massachusetts, Boston.

Capping the Clues

By Jay Shepherd



ACROSS

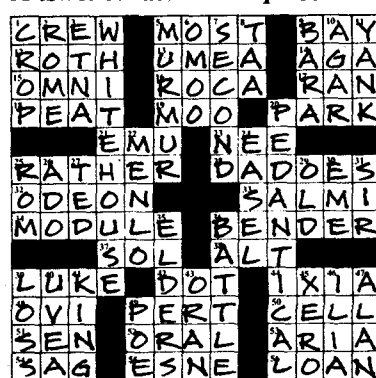
- 1 Pouch
4 Originate
8 Hardy girl
12 Mythical mountain
13 Vetch
14 Celebes ox
15 Photographic accompaniment, often
17 Pork dish
18 Measure
19 Actress Parsons
21 Stings
24 Yang's counterpart
25 ____ polloi
26 Maple tree product
28 Unfamiliar
32 Florence's river
34 Switch
36 Fulfill
37 Deportment (archaic)
39 Seaman
41 Gov. group in FDR's time
42 Decade's number
44 Guide
46 Philologist, for one
50 Former heavy-weight champ
51 "My name is ____" (Saroyan)
52 Ignominious headwear
56 Soviet river
57 Israeli port
58 Past
59 Eager
60 Yank's opposition
61 Dove's symbol

DOWN

- 1 ____ 'em! (attack!)
2 Nabokov novel
3 "____" Courageous"
4 Tasks

- 10 Potter's need
11 Reasonable
16 Craggy hill
20 Pedro's uncle
21 Type of carpet
22 Greedy one's cry
23 Espied
27 Mrs. Nixon, to friends
29 Race of sorts
30 To be (Fr.)
31 Word with guard
33 Empire or footstool
35 Sal of song
38 Japanese delicacy
40 Responds
43 Crusader Ralph
45 Robinhood's quaff
46 Did like the Titanic
47 Canadian Indian
48 Own
49 Word with slide
53 Seize, journalist style
54 Khan
55 Skin affliction

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