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MEMORANDUM OF THE MADRAS LABOUR UNION
an affiliate of the H.M.S.

submitted to

THE NATIONAL COMMISSION ON LABOUR

BY

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Madras - 12

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The Madras Labour Union is the oldest trade union in India, having been formed fifty years ago by Annie Besant, B.P. Wadia and T.V. Kalyanasundaram. Thus, its views, expressed below, on some of the matters covered by the Questionnaire issued by the National Commission on Labour, are based on its long experience.

This union has consistently fought for the abolition of the system of compulsory arbitration. In 1947, it organised a strike for 100 days with all its managing committee members in detention, refusing to submit itself to the process of compulsory adjudication. It is the abiding policy of this union to eschew, as far as is humanly possible, seeking the intervention of the Government or the Ministers. It is the sole recognised union for the manual operatives of the largest composite textile mills in South India - the Buckingham and Carnatic Mills, employing about 13,000 workers. Over the years through collective bargaining it has secured for its members terms and conditions of employment which are superior to those enjoyed by textile workers in the rest of India.

1. The system of vesting reserve powers in Government, to impose compulsory Arbitration, introduced in India under the Defence of India Rules and continued after the war under the Industrial Disputes Act and similar State Laws, has emaculated the growth of traditions of healthy collective bargaining, strong and self-reliant trade Unions, and desirable conventions in the sphere of industrial relations. This in our view is the evaluation of the experience of the last 28 years.

Traditions of genuine collective bargaining can exist and grow when

(a) both the employer and the workers realise that there is no third party who can uni-laterally, or at the request of only of them, resolve the differences.

(b) both parties are free to use the economic sanction of a strike or a lock-out, to induce the other party to reach a settlement.

(c) the Rule of Law prevails, and neither party can use unfair or illegal methods or anti-social methods against the other.

(d) an enlightened public opinion prevails, to induce both the disputant parties to be reasonable.

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A Trade Union has been defined by the Webbs as "a continuous association of wage earners for the purpose of improving the condition of their working lives." The principal methods of improving the condition of the workers' lives are:

(1) Pressurising the employer into continuously improving and liberalising the terms of conditions of employment, through threat of withdrawal of labour or other forms of collective action.

(2) Servicing each member of the Union in the matter of protecting his job security, ensuring that his rights are safeguarded if necessary by moving the Labour Court or the Payment of Wages Authority, and securing redressal of his grievances vis-a-vis the employer or the administrations of the social security legislation.

(3) Bringing about a dead-lock or threatening a dead-lock, and then pressurising Government to intervene on the side of labour or to refer the matters to an Industrial Tribunal to resolve the issue raised by them, and representing the workers in the enquiries conducted by Industrial Tribunal and in any subsequent litigation.

(4) Bringing political pressure to bear on the Government through political parties, or through Central Organisations of labour.

(a) To secure new labour laws or amendments to Labour Laws;

(b) to get better and improved administration of Labour Laws;

(c) to get appointments of Wage Boards;

(d) to ensure that cost of living indices are correctly compiled.

Though the unions survive and grow through the articulation of all the above listed functions, the genesis of any genuine trade union is rooted in

(a) the rousing of the consciousness of the workers, or a substantial number of them, that it is through combination against the employer, that their interests can be safeguarded and advanced.

(b) the ability to marshall the collective will for collective action to apply the requisite sanction.

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(c) the sense of discipline that is infused in the membership to abide by any collective agreement which the members democratically authorise the representatives to enter into.

If the tap-root is allowed to shrivel, the trade union ceases to be a genuine trade union, and becomes a more mechanism to set in motion adjudication proceedings, and a souless and convenient legal entity for the conducting of industrial litigation, or the wing of a political party.

The system whereby compulsory arbitration can be ordered, or resorted to on the motion of one party, which obtains to-day under the Industrial Disputes Act, is the very negation of genuine collective bargaining; because collective bargaining, to be genuine, implies the ability to resort to sanctions. Where the use of sanctions can be prohibited the growth of genuine trade unions, as collective bargaining agencies, is to that extent retarded.

Prior to the coming into force of the system of compulsory arbitration, a trade union could arise and survive, only if it could induce adequate awareness amongst the workers for a combat organisation, and prove its ability to rouse its members for use of collective sanctions, and behave itself in a disciplined manner that would induce the employer to enter into a settlement in the belief, that the discipline created by the Union would ensure the honourable fulfilment of the contract. Consequently, mushroom trade unions had little chance of survival, and even if rival trade unions came into being, reflecting genuine differences about adventuristic and realistic policies to be pursued by the workers, only such unions that could conform or adapt their behaviour to the spirit and compulsions of the collective bargaining process would survive, and the rest would die a natural death.

The variant behaviour patterns induced under a system of free collective bargaining and potential compulsory arbitration deserve notice. Any collective action under the former had the basic motivation of reaching ultimately a settlement, and consequently, even in the most prolonged stoppages of work, caused by strikes or lock-outs, the leadership of the union would restrain its over-enthusiastic members from doing anything which would unduly embitter industrial relations and jeopardise or postpone the reaching of a settlement. The utilisation of sanctions by either party resulted in a catharsis of the emotions, rendering both parties more sober and engendering in each a mutual respect of the economic power of the other party. In the absence of a busy-body third party, it was incumbent on both the disputant parties to find a modus vivondi, in the form of a settlement, which would result in fairly prolonged spells of good industrial relations. For success and survival the trade unions were compelled to have a fairly correct appreciation of the realities and potentialities of any given situation.

The behaviour patterns under a system of Industrial adjudication are totally different. There is no compelling

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necessity for the workers to build up corbat-ready and disciplined organisations. Consequently, much-room trade unions arise, each competing with the other in securing members by raising frequently fantastic competing claims - the smaller the organisation the more ambitious the claims. Greshams Law operates inexorably - bad traditions driving out good ones. Even if a strike should break out, since the perpective of reaching a negotiated settlement is not imminent, there is no restraint in the matter of embittering industrial relations, hence gheros and manifestations of violence against managerial personnel. On the other hand, the over-riding motivation is to create a law and order situation, to pressurise government into taking early and expeditious action through ministerial black-mail of the employer or a reference to adjudication. Any settlement that is brought about through such Governmental intervention seldom results in healthy and cordial industrial relations, because of the absence of any strong self-reliant and disciplined trade-unionism.

In the absence of any disciplined trade unionism, little or no meaningful dialogue can take place on vital issues like productivity bargaining viz. higher wages for higher standards of production, or better terms and conditions of employment for guaranteed industrial peace for an agreed number of years, as trade unions are incapable of accepting the implied respondibilities.

Compulsory Arbitration necessarily implies that the resolving of industrial disputes is a political process, and it is therefore illogical to expect that the trade unions can be defused policially, when their very survival largely depends on the fruitful exertion of political pressures on the Government. Since internal cohesion amongs-t the workers cannot be built on healthy collective bargaining traditions, the only cement of discipline within the trade union is a common political persuasion. The absence of this, under current conditions, will disintegrate a union and reduce to nullity any expectation that whatever settlement is reached will be observed. Since a common political persuasion is the only binding force, every political trend finds it relatively easy to organise a union and ensure at least a dormant survival.

In this politicalisation of the processes of resolving industrial disputes, and with every party in power claiming to be the most vigorous and helpful champion of labour, starry-eyed expectations are built up, that the labour minister can perform miracles, such as reopening factories closed by the economic recession, getting maximum bonus even when losses have been sustained, and securing reinstatement of workers dismissed for brazen acts of violence. Such ministerial interventions in every little disputes only results in prolonging stoppages of work, with resultant losses to the workers, the industry and the community, There has been a spate of strikes in Madras during the last 12 months, and all of them have been prolonged because of ministerial interventions and in no case it resulted in any significant benefits to labour.

The only sad lesson that has to be learnt from all this bitter and frustrating experience is that the time has come to rescue the workers from the well intentioned friends of labour and industry.

We are, therefore, of the considered opinion, that the Industrial Disputes Act and similar State legislations should be repealed and that self-denying ordinance be imposed on the Government, and especially the Ministers, not to interfere in any labour dispute, unless their intervention is sought for by both parties. When this is done, self-reliant unions will grow, mush-room rival unions will disappear and traditions of meaningful and fruitful collective bargaining will be fostered.

In justification of the system of compulsory adjudication the following considerations have been urged:-

1. That the workers are incapable of organising strong trade unions to resist or combat the economic might of the employers, particularly in conditions of severe unemployment, and that industrial workers are financially incapable of being on strike long enough for the employers to feel the economic pinch of the withdrawal of labour.

2. That improvement in wages and terms and conditions can be progressively secured.

3. That the country cannot afford the luxury of loss of production that may be caused, if the workers are free to call strikes and the employers are at liberty to declare lock-outs.

4. That sweet reasonableness, which the judicial process of compulsory adjudication entails, would lead to harmonious industrial relations and would be conducive to the enforcement of industrial discipline without the workers being infuriated into staging strikes.

The above considerations are by and large fallacious. In the organised industries, no employer will be so fool-hardy as to break a strike through recruitment of new hands from among the army of the unemployed; nor, under democracy, will any government be unmindful of the prospects of its future return to office, through providing police protection to such black legs. In the absence of the workers/credit slaves, as in the /being West through effecting purchases on the instalment plan, and being monthly-paid workers (as compared to their being weekly paid in the West) it does not call for any great organising talent to sustain a strike for at least six weeks, in Indian conditions.

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Far from progressively securing improvement in the standard of living, over the last twenty years, under industrial adjudication there has been a steady fall in the real wages of the workers in the organised industries. On the other hand, it is only in establishments and industries where collective bargaining has been allowed free play, that there has been a rise in standards of living of the workers.

Barring a few industries or industrial establishments where a stoppage of work can have wide economic repercussions, as most unions are organised factory-wise, no grave or irreparable hardships can be caused to the community through the exercise of the right to strike or lock-out. On the other hand, fixation of wages through adjudication has normally meant, that the wages have been prescribed without prescribing the work content for the revised wages. There are hardly and industrial establishments which have been closed down, through agreeing to wages that they could not afford. Under collective bargaining the normal concommittant of high wages has been higher efficiencies. If the imperative need of a developing community is rising levels of productivity, and since such rising levels of productivity can be secured only by collective bargaining, India cannot continue to afford the luxury of the lethargy induced by ostentatious declarations of benevolence, which the system of industrial adjudication has in practice implied.

THE ALTERNATIVE:

1. Government should revert to its role of ensuring that there is no violence and no breaches of the law, and that the bona fide exercise of rights are protected.

2. There should be no ministerial intervention in the realm of industrial disputes or industrial relations.

3. The Labour Department should confine itself to the administration of labour laws.

4. To ensure that the Queensberry Rules are observed, Labour Boards should be set up in each state and by the Central Government, under the chairmanship of retired High Court Judges.. Mediatory functions now performed by the Commissioner of Labour and the Conciliation Officers should be transferred to the Boards. The Boards should be charged with the functions of

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(a) hearing complaints about unfair practices and be empowered to issue directive or recommendations for redressal and impose, suitable penalties against the offending party.

(b) appointing fact-finding committees to make independent evaluations, in cases where strikes are likely to cause hardships to the community.

(c) offering the services of mediation officers, where both parties seek them.

(d) banning a strike or lock-out for a cooling off period and/or referring a matter to arbitration, where a stoppage of work is likely to cause severe hardships, or repercussions in related industries.

(e) Employing competent personnel like Chartered Accountants, Industrial Engineers, and utilising their services to help resolve disputes.

(f) registration of agreements reached through collective bargaining, after ensuring that they are bona fide settlements.

(g) administration of the Industrial Employment (Standing Orders) Act.

(h) Price Collection for the compiling of the cost of living indices.

(i) being the appellate authority for appeals against the decisions of private arbitration.

(j) directing law enforcement officers, where the bona fide exercise of rights are sought to be abridged.

(k) registration and de-registration of unions.

5. The passing of simple Labour Relations Law incorporating:

(a) that no strike or lock-out of more than 24 hours duration should take place without 14 days notice being given

(b) prohibition of unfair practices which inter alia should include

(i) recruitment of new workers when a strike is in progress

(ii) admitting to a strike bound establishment workers, unless a majority have signified in writing a desire for resumption of work.

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(iii) participation in a strike of essential service personnel; who such personnel are should be notified to each. Participation in a sudden strike of personnel engaged in processes which are likely to cause losses till certain steps are taken. Such personnel should be allowed a disability allowance to demarcate them beyond d doubt

(iv) victimisation for trade union activities.

(c) the setting up of labour Relations Boards as suggested in the preceding paragraph.

(d) imposing of penalties even on corporate bodies, for violation of the Industrial Relations Law.

(e) requiring that a ballot should be held of the striking workers as and when required by the Labour Relations Board.

6. The Payment of Wages Act should be amended deleting the provisions relating to a deduction of 8 days wages for any stoppage of work without due notice, and allowing for the check-off of union dues. Giving the right to the employer to impose such a heavy penalty as the deduction of 8 days wages for a minor stoppage of work without due notice leads to embittered industrial relations. If a penalty has to be imposed it should be by a duly constituted authority under the law.

7. The Trade Unions Act should be amended to foster the growth of strong self-reliant unions by

(a) requiring that the minimum rate of subscription should be half a per cent of the minimum wage for permanent workers in the establishment or industry.

(b) that the minimum number of workers for the registration of a union should be 33-1/3% of the workers in the industry or industrial establishment, subject to a minimum of 100 men.

The chief protection which the Trade Unions Act confers on unions registered under the said Act is contained in Sections 17 and 18 thereof. Under Section 17, the Officers or members of a union are not liable to be punished for criminal conspiracy under the penal Code for any action pursuant to the objects on which the General Funds of the union can be spent, such as the conduct of trade disputes. Under Section 18, immunity is provided to the union and its officers and members from a civil suit, in respect of any act done in furtherance of a trade dispute. These are valuable rights and should be conferred only

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on sufficiently representative organisations. At the time of the passing of the Trade Unions Act, when trade unionism was in its infancy, it was proper to encourage the formation of unions. But now it is socially necessary and desirable to discourage the formation of mushroom unions. Workers employed in small establishments instead of being encouraged under the law to form tiny organisations should be induced to join general unions.

(c) De-registration of unions or prohibition of membership of registered unions, where the Labour Relation Board has found that where there has been gross and persistent violations of the proposed law governing labour relations.

(d) to encourage stable membership of a union, the Act should lay down that a minimum percentage of the income of the union should be funded, to provide monetary benefits to members in the event of death or accident or prolonged lay-off.

8. The most tragic, and in most cases unsuccessful strikes, take place over retrenchment of workers. They are self-destructive reflex actions of the working class launched in the desperate belief that job security can be ensured by resort to mass action. Such action when the industry is desperately seeking to survive, agravates the general insecurity.

Currently, the Law requires the employer to notify the Government of such retrenchment. This is an inadequate safe-guard. To discourage strike action and to remove the suspicion that the retrenchment is being resorted to for ulterior motives, it is suggested that an employer should be required to secure the express permission of a duly constituted authority, such as an Industrial Court or Labour Relations Board, for effecting retrenchment of permanent hands.

9. Bonus issues are a fertile source of bitter industrial disputes, particularly as there is widespread disbelief in the correctness of the Balance Sheets and Profit & Loss Accounts, published by the companies. The general impression prevalent in the working class is, that in as much as it is not easy under the law, as it stands, to question the accuracy of the Accounts, the only way to get a higher bonus than what appears payable under the Act is to create as much agitation as possible to pressurise the employer into conceding more than what is due under the Payment of Bonus Act. This tendency gets accentuated, because in the establishments where capital and reserve are substantial the amount payable as Bonus under the said Act is much less than what was being paid to the workmen for the same quantum of profits under the Labour Appellate Tribunal Formula.

It is suggested ;-

(a) with a view to reduce the credibility gap,

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that a cell of chartered Accountants be created within the office of the Labour Relations Board, which after getting the requisite clarifications from the concern will furnish, on the payment of a fee, a statement of the work sheet of the Bonus calculations. This will reduce to a great extent the delays currently experienced in resolving disputes relating to Bonus.

(b) By Law, it may be required that the work sheet along with the normally re-quired clarifications and particulars certified to by the Company's Chartered Accountants be published along with the annual statement of the Profit & Loss Account, or

(c) that the Payment of Bonus Act be repealed and legislation brought in providing for a deferred wage payment of 16-2/3% (or 2 months wages) of the annual earnings. Bonus as a form of profit sharing has not in any way created the realisation that the worker will get a fair share of the profits he has contributed to making.

10. The law, providing for an individual worker, aggrieved by a dismissal order moving the machinery of industrial litigation cuts at the basic function, which a trade union performs viz. affording some degree of protection in regard to job security. Many functions of the trade union have been taken away by labour legislation, and the constitution of Wage Boards. If this function is also to be diluted, union security will be further attenuated. It is suggested, that to strengthen trade unionism, the question of non-employment should be agitated only in the form of an industrial dispute.

11. Union security, through which strong and adequately representative unions can be built up, requires strengthening. Currently the only form of security is the immunity from civil or criminal preceedings for actions done pursuant to a trade dispute. Union security has been enhanced in some countries by:-

(a) Providing for compulsory recognition of representative unions and requiring employers to negotiate in good faith with such unions.

(b) introducing check-off facilities to recognised unions.

(c) the employers being compelled by the union to agree to

(i) a union shop i.e. that it shall be a condition of continued employment beyond a stipulated period after recruitment that the worker shall pay dues to the union or

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(ii) a closed shop viz. that recruitment of employees shall be only from amongst panels of names submitted by the union

Under Indian conditions the question of recognition of unions is bedeviled by the system of compulsory adjudication, as the requirements of the Code of Discipline are in conflict with the provisions and procedures under the Industrial Disputes Act. An employer is required under the Code to negotiate with a representative union but any minority union can raise a dispute and compel the employer to negotiate with it before the Conciliation Officer or get a hearing by the Industrial Tribunal. It is this facility which gives viability to rival unionism. It requires supreme courage, under current conditions, for a recognised union to agree to any sansible form of deployment of labour, or re-assignment of tasks, or variation of the channels of promotion, for fear of the agreement being questioned in proceedings under the industrial Disputes Act.

This aspect of the question will solve itself, if the system of compulsory Arbitration is dismantled. Nevertheless, it is suggested that a convention be set up that no cognizance should be accorded through taking up in conciliation or mediation proceedings any dispute raised by a minority union, unless a strike paralysing work warrants any intervention. If such a code is sincerely observed it will go a long way towards strengthening of representative unions and consequentially the process of collective bargaining.

Further, it is suggested that any benefits secured by a settlement with the recognised unions should by law be prohibited from being extended to employees who are not members of the union, unless it is so stipulated in the settlement. The current practice of extending benefits secured by settlements to non-members of the unions are bound by any obligations agreed to in the settlement, whereas the non-members have all the benefits, without any of the concommittant obligations. The benefits may be extended to non-members only if they are required to pay the dues to the union during the curency of the settlement, irrespective of whether they are, or are not, admitted as members of the union, and accept in writing that they will be bound by the settlement, The current practice of extending all benefits to members and non-members encourages cynical free-riding and social irresponsibility, in addition to discouraging the growth of strong unions. If a citizen is prohibited from getting a free ride, enjoying the benefits provided by a welfare state, the same considerations should obtain in the matter of a non-union member being allowed the benefits obtained through the toil, trouble and nervous tension undergone by the union members.

is reprehensible particularly because the members

We are not in favour of any law prescribing compulsory recognition of unions. The quality of recognition cannot be easily prescribed by law. Every strong union will secure the type of recognition that it deserves, and weak and

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irresponsible unions will die out, if the law and the industrial relations practices do not provide artificial aids to survival. Such props which provide for alternative forms of representation should be knocked down. The requirement to form a Works Committee providing for union members and non-members to create a rival representative body should be annulled. In its place grievance procedures should be installed in consultation with the recognised union.

The example of the compulsory recognition of unions which obtains in the United States, is frequently quoted. In our view, the circumstances that obtain in India are totally and vitally different to those in the U.S.A. The Wagner Act was introduced not as a cure to strengthen unionism and thereby to augment purchasing power, to lift the country out of depression. In India the social motivation is totally different to what obtained in the United States. Further the enactment was made during the height of the sit-in strike caused by employers refusing to recognise any union. Here in India, most employers have reconciled themselves to the inevitability of recognising unions. Some employers do not want to accept the responsibility of recognising one of several competing unions. They would like some certification issued by some external authority, as to which union they should recognise. There is no need to oblige them. Every employer gets the union and the union behaviour he deserves, and no law will utilimately help him out. He will have to learn the arts of maintaining good industrial relations the hard way. The only protection necessary for the workers against a mala-fide settlement being reached with a company-sponsored union is the one suggested in the paragraph above, relating to the functions of the Labour Relations Boards which can register or refuse to register a settlement, if it considers it mala-fide.

/to the disease of rival unionism, but as a filli-p to

It is further our view, that compulsory recognition of unions by law will create more problems, and be more fruitful of litigation and embitterment, than they will cure.

W A G E S:

A Wage Board in theory provides a forum for collective bargaining. But in practice, in very few industries are the workers organised in sufficiently strong federations covering effectively the whole of the concerned industry to ensure, that real collective bargaining takes place.

Under the guise of its being a collective bargaining process, little or no genuine effort is made to evaluate the mass of information which the Wage Boards ritually collect through questionnaires and perpatetic tours at irregular intervals, prolonging unduly and unnecessarily the period of gestation of their labours. Since there has been no genuine collective bargaining, implementation of their recommendations, which are deliberately vaguely worded to secure unanimity within the Wage Board, is an unwarranted and agonising process.

The net result is, the appointment of wage boards, in most industries, is a convenient device to prolong the period of a wage-freeze, detrimental in the long-run to the workers and the concerned industry.

If the system of prescribing wages by wage boards is to be continued, it is suggested that a central organisation be set up, with personnel as competent as those who staff the Tariff Commission. This organisation should evaluate the problems of the industry, such as the regional variations in costs, the needs for modernisation of the industry, the relative levels of productivity on the basis of inter firm comparisons, both within and outside India, the innate vitality of the industry to marshall the requisite response through higher managerial efficiencies to meet the challenge of increased wages, and all the other cognate matters on which informed conclusions relating to wage determination may be reached by the Wage Boards, according to its wisdom, and the inherent bargaining capacity of the employers and the organised workers in the industry.

Wage Boards and Industrial Tribunals have so far failed to tackle the problem of the ever-narrowing differentials between unskilled and skilled workmen and the relationship of the wages and terms and conditions of employment of direct manual labour and its costs to indirect wage costs, and the proportions thereof within the total wage bill, and

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the extent to which the current trends are healthy or are potentially explosive.

One may legically defend a system of dearness allowance providing temporarily a rate of neutralisation of less than 100% of the increased cost of living index, if the increased level of prices is due to scarcities caused by the failure of the monsoons. But to prepetuate a system ever two decades when the per capita rational income has been rising, of reduced rates of neutralisation below 100% at all wage levles, is to fly in the face of the stated objective of securing for the workers rising levels of real wages.

It is our opinion that continuance of the system of prescribing wages on the basis of pre-war prices, supplemented by a Dearness Allowance which is frequently five to six times the level of basic wages, is detrimental to all concerned, and particularly in respect of piece-rated workers. Thus a piece-rated worker whose basic pay is Rs.40/- and whose dearness allowance is Rs.160/- is allowed only 40 paise extra, if he improve his efficiency by 1%, whereas the real value of his extra effort is at least Rs. 2.00. Since he is cheated by an anachronistic pattern of wages of what is morally due to him, the piece-rate system, in many establishments have long ceased to be incentive schemes. Merger of dearness allowances and pay will liberalise their retirement benefits such as gratuity.

It is also suggested, that special machinery be set up to facilitate negotiations and installation of incentives schemes, ensuring a fair share to the workers of the gains accruing because of their conscientious effort and consequential productivity.

LEAVE FACILITIES:

The tradition has set in, that men classified as staff are eligible to more liberal leave and holiday facilities than manual workers. This tradition survives through the force of inertia, and not because of any rational considerations.

It is urged that the manual workers is as deserving of as much leave and holiday opportunities for recuperation, as the clerical staff, and that steps should be taken to liberalise the leave and holiday facilities for manual workers to the level allowed to the non-manual.

FRINGE BENEFITS:

It is suggested that legislation be brought forward requring employers to set apart a prescribed percentage of the gross profits, for providing amenities including construc-tion of houses.

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CONCLUSION:

Lastly it is urged that if the system of compulsory adjudication is to be continued, the textile industry, which has been classified in Madras State continuously since 1947 as a Public Utility Service, though mills are closing down for lack of demand for their products should be removed from the said classification. The present classification is only a device to deprive them unfairly of the right to strike.

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