LABOUR ~~DEPTMNT~~ DEPARTMENT

1987

Judgment reserved in GFSA/NUM issue

9/1/87 · B/DAY

ALAN FINE

JUDGMENT was reserved yesterday in the Transvaal Supreme Court in an application by Gold Fields challenging an Industrial Court order obliging it to facilitate a strike ballot at four of its mines.

The order was made in favour of the National Union of Mineworkers (NUM) last year and followed the declaration of a wage dispute.

Gold Fields argued before Mr Justice L Harms that the Industrial Court had misdirected itself in making the order because the NUM had not established a clear right to hold a ballot

● In another development related to the wage dispute, an NUM spokesman reported yesterday that miners at Gold Field's Kloof mine were notified this week that they are to receive wage increases soon

Gold Fields industrial relations spokesmen could not be reached yesterday to confirm the planned increases nor to comment on the reasons for them.

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Mining company wins appeal

Gold Fields SA has won an appeal in the Pretoria Supreme Court against a decision of the Industrial Court which gave the National Union of Mineworkers (NUM) the right to strike ballot facilities on four mines at which it was not recognised.

After deadlock in last year's wage negotiations the NUM wished to hold strike ballots at seven Gold Fields gold mines.

While the Chamber of Mines had granted increases ranging from about 19,5 to 23,5 percent, Gold Fields refused to budge from its unilaterally declared increases ranging from 15 to 20 percent

The company refused strike ballot facilities at its Kloof, East Driefontein, Venterspost and Doornfontein mines, saying the NUM was not recognised at these mines.

Gold Fields agreed to strike ballots at West Driefontein, Deelkraal and Libanon gold mines where the union was recognised in certain bargaining units at the time The union tooks its case to the Industrial Court which granted strike ballot facilities at all the mines.

Yesterday the Pretoria Supeme Court upheld an appeal by Gold Fields against the Industrial Court decision and ordered the union to pay costs for both parties in the Supreme Court and Industrial Court hearings

Supreme Court upholds appeal

15/1/87 · BUS DAY

ALAN FINE

THE Pretoria Supreme Court yesterday upheld an appeal by the Gold Fields group against a decision of the Industrial Court ordering it to facilitate strike ballots at four of its mines.

The Industrial Court order followed an application by the National Union of Mineworkers (NUM) last year after a deadlock in wage negotiations. Gold Fields refused to allow the NUM to ballot at four mines where it was not recognised.

The NUM has been ordered to pay costs for both the Supreme Court and the Industrial Court hearings. Written reasons for the judgment are expected to be made available by the end of the week.

Meanwhile, a conciliation board considering a unilateral wage increase granted by Gold Fields during last year's wage negotiations, is due to meet for the second time today.

At the first meeting last week, the NUM proposed that the company should agree that the increases constitute an unfair labour practice, that it should undertake not to grant increases without negotiations in future, and that it pay the union's legal costs.

Striking at the heart of labour relations

16/1/87 165 Weekly Mail

Sympathy strikes may be outlawed if a new draft Bill on labour relations becomes law. CLAIRE PICKARD-CAMBRIDGE looks at suggested changes in the draft legislation.

UNDERNEATH the shiny face of the draft Bill amending South Africa's Labour Relations Act are some dark, worrying features

The feeling among legal experts is that the main aspects of the draft legislation are beneficial — but there are some retrogressive and ambiguous provisions

A key proposal is the creation of a special labour court manned by Supreme Court judges, which will hear appeals against Industrial Court decisions and could handle cases brought to it directly if Ministerial regulations allow this

Labour experts agree that a special labour appeal body is needed, but say its success will depend on the appointment of judges with a sensitivity to labour matters

A serious concern will be the inability of these courts and the existing industrial courts to hear applications for urgent relief following the proposed scrapping of section 17 (11)(a)

The industrial courts currently have the power to hear urgent disputes of right, but the new Bill could remove this — the only mechanism in labour law for the resolution of immediate problems

One leading labour lawyer says "Time is of the essence in labour disputes. Without this provision, parties will only be able to go to the Supreme Court, which doesn't always understand the urgency and complexity of labour matters"

Another legal expert disapproves of the special labour court's potential to serve as a court of first instance in hearing unfair dismissal and unfair labour practice (ULP) cases This would give it almost the same powers as the industrial court, he says, raising fears that the authorities could be downscaling the industrial courts

New secrecy provisions, making it a criminal offence to disclose the outcome of industrial court cases without the consent of the court's president, have been widely condemned

Clive Thompson, editor of the *Industrial Law Journal*, says the development of a coherent legal approach would be seriously hampered by the secrecy provision

"It is in the public interest that judgements be published The only exception should be to allow a party to argue before the industrial court that certain evidence is confidential and should not be made available for general distribution when the judgement is published," he said

The creation of new ULPs in the Bill is likely to generate the most controversy because their terms are so wide-ranging.

Professor PAK le Roux of Unisa's mercantile law department says some of the new ULP definitions are vague and still need a lot of work One example is a clause making it unfair for one worker to be replaced by another under less favourable circumstances — apparently a sop to white workers by discouraging racial undercutting

While most unions are likely to welcome this clause, it will mean employers' hands will be tied Even salaries, irrespective of seniority, will have to be retained if the clause isn't redefined clearly

Le Roux says the exact scope of new clauses which make it illegal to have sympathy strikes, and unfair to launch secondary boycotts involving employers and employees not directly party to a dispute, are unclear

The clause making discrimination on grounds of race, sex or religion unfair has been welcomed, although it is largely of symbolic importance because the old ULP definition could encompass this But at least one lawyer suspects that the remaining job reservation provisions in the Mines and Works Act will continue to take precedence over the new ULP amendments

The most critical clause in the new ULP definition makes it a duty, for the first time, for representative unions and employers to bargain with one another This could signal the end of the recognition disputes between companies and representative unions

The clause is vital because it gives the court the power to decide whether employers have to bargain at plant level rather than at industrial council level, if unions request this A leading lawyer says this clause may reverse the Metal and Allied Workers' Union v Hart case, where the court found there could not be a duty to bargain at plant level if this duty already existed at industrial council level

Legal strikes have still not been decriminalised and the Bill does not clarify the circumstances under which legal strikers should enjoy protection However, it will still have to be seen whether the courts will treat illegal strikes as ULPs

Mark Anstey, new director of the University of Port Elizabeth's Industrial Relations Unit, is also concerned about a new ULP in the draft Bill which applies to an employer organisation or union taking action without authorisation from its members

"Some unions give representatives a fairly open mandate, while others do not Who will decide what kind of mandate is fair and under what circumstances? I suspect this is the product of employers looking for certainty in circumstances which do not lend themselves to it," he says

Another important feature of the Bill is the separation of an unfair dismissal from an ULP Some feel this is a positive move — but critics say there's no clear provision against selective dismissals and selective rehirings, and arbitration procedures for an unfair dismissal seem unnecessarily convoluted

In terms of the Bill, it is no longer a ULP to selectively re-hire dismissed workers according to objective criteria This allows employers to hire new workers after a strike and only re-engage a portion of their old staff, albeit using "objective criteria" This is retrogressive because any selective re-engagement may be unfair under the existing ULP definition

Simplified procedures for conciliation board applications will speed up dispute resolution, and allow quicker access to the industrial court if board meetings fail to result in agreement

In future, the appointment of a conciliation board will not depend on Ministerial discretion but will be an automatic procedure, handled by a Manpower Department official This has been welcomed because it will prevent controversies arising, as in the past, over suspected political interference But the new time limits in which conciliation board applications have to be lodged are felt to be a little stringent Grievance procedures at factory level could be undermined if parties have to apply for a board before initial negotiations have stalemated

There is confusion about whether industrial councils are still obliged to settle disputes only with the consent of affected parties If the Bill allows industrial councils to resolve disputes without the consent of parties (who may not be directly represented on the council), this could block opposing parties from going to the industrial court

This question, and others, will receive more attention when the Bill is discussed at a conference at the Wits Law School from January 22 to 24

The coming month will also, clearly, be a crucial period for parties wanting to make representations to the Manpower Department before the deadline lapses on February 6

FIN MAIL

MINE LABOUR (28) (165) 16/1/87.

No way to one way

Almost unnoticed at the end of 1986, the Supreme Court handed down a judgment which goes a long way towards resolving a long-standing membership dispute between the mining industry's three officials' associations

The case involved a review of an Industrial Court (IC) ruling dating back to February 1982, in which the labour court found that the "one way traffic rule" is an unfair labour practice That the Supreme Court judgment came nearly five years after the IC verdict, is testimony to the long and bitter fight over the issue

The "one way" rule came into being in 1973 when the SA Technical Officials' Association (SATOA) was constituted as a union representing two categories of mineworker — winding engine drivers and reduction plant employees Previously, these workers had been obliged to join the Mine Surface Officials' Association (MSOA) if they worked on the surface, or the Underground Officials' Association (UOA) if they worked underground

As a latecomer, SATOA had to reach a compromise with the MSOA and UOA over who would be eligible for membership Eventually it was agreed that winding engine drivers and reduction plant employees working on surface could choose between SATOA and the MSOA, while those working underground could choose between the UOA and SATOA It was also agreed that SATOA members could resign to join either the MSOA or the UOA But — and this is where the "one way" rule came into play — members of the MSOA and the UOA were not allowed to resign to join SATOA

A key factor in this agreement was that it was due for review after three years When this time had elapsed and SATOA proposed that the "one way" rule be scrapped, the MSOA and UOA blocked its efforts SATOA responded by going to the IC In determining that the "one way" rule constitutes an unfair labour practice, the IC ordered that all winding engine drivers and reduction plant personnel employed after February 28 1973 — the day before SATOA was officially launched — should be free to join any of the three officials associations

But SATOA's battle was not over What followed was a tortuous series of hard-fought court cases involving the MSOA and SATOA The first step came when the MSOA asked the Supreme Court to review the IC's judgment SATOA countered in June 1982 by challenging the Supreme Court's right to review IC decisions When the Supreme Court ruled that it was within its power to review IC judgments, SATOA took that decision on appeal

Late in 1985, the Appeal Court held that the Supreme Court did indeed have the right to review IC decisions The way was thus finally opened for the Supreme Court to consider the MSOA s contention that the IC erred when it made its decision in 1982

The review judgment of December 12, vindicates the IC's ruling

The decision is an obvious boost for SATOA, which has only 3 400 members The big question now is whether the MSOA and UOA, both of which have about 18 000 members, will let the matter rest or apply for leave to appeal MSOA general secretary Robbie Botha says senior counsel is examining the judgment UOA general secretary Tom Rich refused to comment

It has been speculated that if no further court action arises from this dispute, there could well be an attempt by the ultra-conservative Mineworkers' Union (MWU) to challenge the mining industry's allocation of occupations agreement That agreement, when combined with the industry's closed shop agreement, effectively means that all whites, barring officials and learners, have to join a union and that the choice of which union is determined by the job they perform The MWU would like to see the allocation of occupations agreement abolished

If the MWU did want to embark on such a venture, it would have to weigh up several factors — for the "one way" rule is quite clearly a different matter to the allocation of occupations agreement However, in the political climate of today, the right wing union may well decide to chance its luck ■

CAPE TIMES 17/1/87

Labour law changes 'will favour bosses'

Labour Reporter

MANAGEMENT has more to gain than the unions from proposed changes in the labour law due to be debated in Parliament later this year, according to two South African labour experts

A labour law specialist, Mr Rod Harper, and a top industrial relations consultant, Mr Mike Beaumont, have warned that the Draft Labour Relations Amendment Bill, published in December, would be seen by some trade unions as "union bashing"

Speaking at an industrial relations seminar in Cape Town, the two described the bill as "compromise legislation" but primarily a "management bill".

They referred specifically to one of the new definitions of an unfair labour practice which prohibits a trade union from "directly or indirectly hindering" an employer from negotiating with workers who are not union members

The bill favoured a "multi-union situation" and was in direct conflict with the Congress of South African Trade Unions whose aim is "one union, one industry", Mr Harper said

He said a clause requiring both unions and employer bodies to obtain "prior authorization" from members before taking any action or concluding an agreement was a "contentious provision" as unions would resent being questioned on authorization

One of the compromises in the new legislation is that it permits consumer boycotts under certain conditions

Although it would be considered an unfair labour practice to launch boycotts against a company not involved in a dispute with its employees, the same does not apply where the employer and employees are in dispute

The bill also outlaws sympathy strikes at plants not directly involved in a dispute, industrial action while a dispute is still being processed by the Industrial Court, and intermittent strikes

Mr Beaumont said one of the major developments embodied in the bill was the clause which outlawed unfair discrimination on the grounds of race, sex or religion

Mr Beaumont and Mr Harper welcomed the establishment of a special labour court, staffed by Supreme Court judges, to hear appeals against Industrial Court decisions, saying this would eliminate the tension between Industrial Court decisions based on fairness, and Supreme Court decisions based on common law

Industrial court is succeeding, lawyers told

By Susan Pleming

The number of strikes and work stoppages in South Africa jumped from 100 in 1979 to more than 600 in 1986, the Director General of Manpower, Dr P J van der Merwe, said last night

Opening a three-day conference on the Industrial Court held by Association of Law Societies of SA, Dr van der Merwe said conflicts in the workplace stemmed from many causes, such as differences of objectives, interests, values, attitudes and approaches

"Conflicts also arise from miscommunication between the participants Most systems of labour relations, in fact, presuppose the possibility of disagreement and disputes," Dr van der Merwe said.

There had been a huge growth in the trade union movement, he said The membership of registered and unregistered trade unions increased from 800 000 in 1979 to almost 2 million at the end on 1985 The number of trade union organisations increased from 200 in 1979 to almost 300 in 1986

The number of cases in the Industrial Courts had also increased In 1979 there were four cases compared with 801 in 1985 and about 2 000 in 1986

INFORMAL FORUM

Dr van der Merwe said the Industrial Court was intended to be an informal forum to which everyone would have easy access

"The idea was that this court should be inexpensive and that it should be in a position to avert the unnecessary use of the strike and lockout weapons The success which it is achieving in this task is illustrated by the fact that approximately 60 percent of all reinstatement order applications dealt with in 1985 were either settled or withdrawn"

But, Dr van der Merwe said, the Industrial Court had experienced difficulty in attracting a sufficient number of experienced and suitably qualified permanent members

The administration of the court had been computerised to some extent in an effort to streamline its functional and clerical duties

Dr van der Merwe commended the organisers of the conference and said it could not have been held at a more appropriate time

"I have no doubt that this conference will contribute to a better understanding of the difficult day-to-day problems with which we are faced in the labour field and to a legislative framework which is more suited to our present needs"

MWU in dispute on training

ALAN FINE

THE Industrial Court is to be asked to adjudicate in a dispute between the whites-only Chamber of Mines and the Mineworkers' Union (MWU) over the training of coloured winding engine drivers, according to a chamber spokesman

The chamber declared a dispute with the MWU last month, alleging an unfair labour practice, when the union rejected a proposal that its members assist in

● To Page 2

Dispute over coloured trainees

● From Page 1

training coloured winding engine drivers on the same basis as they assist white trainees.

Yesterday a conciliation board meeting in Johannesburg failed to resolve the dispute.

The Mines and Works Act presently bars all except whites and some classes of coloureds from qualifying as "scheduled persons" and carrying out 13 types of skilled work on the mines, including that of winding engine driver.

But a Bill abolishing this job reservation is due to be passed by Parliament this year, probably soon after the general election. The MWU has fought bitterly against such a move for several years

MWU general secretary and CP candidate for Carletonville Arrie Paulus declined to comment on the dispute, saying it was sub judice

Industrial councils are warned

18/2/87
B Day

APPLICATIONS for exemptions from industrial council agreements must be handled with greater speed and sympathy by the councils, says Manpower director-general Piet van der Merwe, said yesterday

He told a meeting of the Consultative Committee of Local Industrial Councils in Cape Town of the complaints against the councils

They included the unhelpful attitude of some councils to exemption applications

This applied particularly to small businesses and the enforcement of unrealistic service conditions in platteland areas

There were also complaints of council officials acting "arrogantly and bombastically" in their dealings with employers and their long delays in answering inquiries

Applications for exemptions were sometimes refused without any reason, he said

Cape Times 18/2/87

Mine dispute goes to IC

JOHANNESBURG. — The Industrial Court is to be asked to settle a dispute between the Chamber of Mines and the whites-only Mineworkers' Union (MWU) over the training of coloured winding engine drivers, according to a chamber spokesman. Yesterday a conciliation board meeting failed to resolve the dispute.

Court upholds Mawu judgment

ALAN FINE

THE Natal Supreme Court has upheld an order by the Industrial Court reinstating 113 employees of Natal Die Castings (NDC) in terms of Section 46 of the Labour Relations Act.

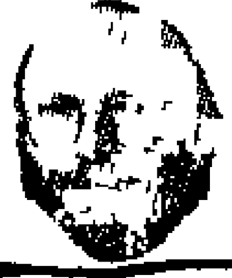
The company has appealed against the judgment.

The Industrial Court case between NDC and the Metal and Allied Workers' Union (Mawu), concluded in January, was a landmark judgment in that it was the first time the courts decided to reinstate workers dismissed while participating in an unlawful strike.

The court also said the company's failure to negotiate in good faith constituted an unfair labour practice.

Mr Justice Kriek said yesterday the fact that the strike was unlawful might be relevant in determining the fairness or otherwise of the company's response, but it did not automatically deprive the Industrial Court of the jurisdiction to consider whether the company had acted fairly in all circumstances.

LABOUR AFFAIRS
DICK USHER



Supreme Court gives protection to strikers

W/E ARGUS 28/3/87

AN important Supreme Court judgment about the right to strike and protection of strikers' jobs was handed down in the Natal Division recently

It involves an Industrial Court case sent for review in which 113 workers, members of the Metal and Allied Workers' Union (Mawu) dismissed by Natal Die Casting in May 1985 were reinstated retrospectively to September 1985

The Industrial Court held that the dismissal was an unfair labour practice and that the failure or refusal by the company to negotiate in good faith was an unfair labour practice

The company applied to the Supreme Court in February 1986 to review the decision and to interdict Mawu and the workers from giving effect to the decision

According to a statement from Mawu, the Supreme Court rejected the company's arguments and confirmed the Industrial Court's decision

Mr Justice Kriek said that the fact that a strike was unlawful might be relevant in determining the fairness or otherwise of a company's response, but it did not automatically deprive the Industrial Court of jurisdiction to consider whether the company had acted fairly in all the circumstances

He pointed out that the company's argument overlooked the approach to labour relations into the Act as a result of the recommendations of the Wiehahn Commission

"This finding is very important It indicates that not only may the Industrial Court protect lawful strikers but it also has the jurisdiction to protect unlawful strikers in certain circumstances," said Mawu

"The decision also states quite unequivocally that the Industrial Court does have the power to to reinstate striking workers under Section 46(9) whether the strike is lawful or not

"Although the court found that the illegality of the strike is relevant to the fairness, it does not hold that illegality is decisive"

Mawu said this was the first decision of the Supreme Court which considered and approved the reinstatement of strikers under Section 46(9) of the Labour Relations Act

Previously the Supreme Court in the Transvaal had only considered the temporary reinstatement of strikers under Section 43 in the Marievale case

"This decision makes it clear that the dismissal of strikers may in appropriate circumstances constitute an unfair labour practice

"The Supreme Court's decision also makes it quite plain that a failure to negotiate in good faith with the trade union may in appropriate circumstances constitute an unfair labour practice"

Basically, the decision confers a limited right to protection from dismissal in the case of strike action

Textile union wins seat on cotton council

Labour Reporter

A LENGTHY court battle has ended with the National Union of Textile Workers (NUTW) being awarded one seat on the industrial council for the cotton textile industry

A union spokesman said today this was an important breakthrough for the NUTW

"Until the Industrial Court made this ruling we were excluded from the industrial council through the veto of the sitting union," he said

NUTW first applied to the court more than a year ago to challenge the veto on its application for council membership

In August last year the court ruled that NUTW should be admitted.

"But then the council changed the criteria for representation, which we felt was done specifically to keep NUTW out, so we appealed to the court again," the spokesman said.

WLE ARGUS 23/5/87

LABOUR AFFAIRS

DICK USHER

'Illegal' strike poser

THERE are a lot of employers, and some labour lawyers, who think that an "illegal" strike by employees leaves them in an unassailable legal position

Their understanding is that, should they dismiss workers, an ensuing Industrial Court action for reinstatement would fail

Not only is this a strictly "legalistic" position which ignores the concept of equity and fairness which is incorporated in the Labour Relations Act, it is also not necessarily true

This is demonstrated by several cases — first the Marievale case and then a more obscure ruling involving Trident Steel, both in the Transvaal

But an even clearer ruling was given in Natal in a case involving the Metal and Allied Workers' Union (Mawu) and Natal Die Casting, which may eventually provide definitive clarification

The company has been granted leave by the Appeal Court in Bloemfontein to appeal against the dismissal in the Durban and Coast division of the Supreme Court of its application for a review of an Industrial Court decision

In January 1986 Mr H Fabricius ruled in the Industrial Court, in terms of Section 46(9) of the Labour Relations Act, that the dismissal of 113 workers by Natal Die Casting in May 1985 constituted an unfair labour practice, that the failure or refusal by the company to negotiate in good faith was an unfair labour practice and that the workers should therefore be reinstated retrospectively

In February 1986 the company applied to the Natal Supreme Court to review this decision and interdict the union and the workers from giving effect to the ruling

Judgment was handed down in February this year

Mr Justice Kriek ruled that although the fact that a strike was unlawful might be relevant in determining the fairness or otherwise of a company's response, it did not automatically deprive the Industrial Court of jurisdiction to consider whether the company had acted fairly in all circumstances

He said the company's argument overlooked the approach to labour relations introduced in consequence of the Wiehahn Commission

Although the court found that the illegality of the strike was relevant to the fairness, it did not hold that illegality was decisive

This was the first ruling by a division of the Supreme Court which approved the reinstatement of strikers under Section 46(9) of the Act Previously there had only been a Section 43 ruling by the Supreme Court in the Transvaal about the temporary reinstatement of strikers

The Natal decision was important in two respects

- It made it clear that the dismissal of strikers might, in appropriate circumstances, constitute an unfair labour practice, and

- Made it plain that a failure to negotiate in good faith with a trade union might, also with due consideration for the circumstances, be an unfair labour practice

It will be interesting to see what view the Appeal Court takes, because its ruling will have a extremely important consequences for industrial relations

As it stands, the Natal ruling means employers will have to think very carefully before dismissing workers engaged in a strike and makes it much more difficult for companies to refuse to negotiate with a bona fide trade union

DRIVING SCHOOL
of DAVID PHAHLADIRA, BOX 3
House No. 267

'Fired' Putco men go back

CP Correspondent

MORE than 230 bus drivers "dismissed" by Putco last November must be reinstated and given back pay

This order – which will cost the transport giant about R350 000 in two months' arrears pay – was handed down on Wednesday by the Industrial Court after the Transport and General Workers' Union brought an application challenging the validity of the drivers' sacking

They were dismissed shortly before management decided to shut down its southern Durban operation, which had served the major areas in the south since 1982 Over one million passengers a month were estimated to be affected by Putco's closure

In its judgment the court said the trouble began with a dispute between a worker and a member of Putco management

When this was not settled, over 200 drivers took industrial action by not collecting fares for the whole day on October 24 last year

This was estimated to have cost Putco R120 000 As a result all the drivers were sacked and TGWU, an affiliate of Cosatu, challenged the fairness of the dismissals

Soon after they were fired, the operation in the southern Durban area was closed down, as management said they could no longer guarantee the safety of the drivers who were kept on

This was after one driver was shot and killed and a second threatened at gunpoint to stop driving Putco buses

After a lenghty court hearing, the Industrial Court judgment was handed down this week and TGWU branch organiser Mike Gwamanda said it was "worth waiting for"

He said it was a victory for the workers, because the court had upheld the grievance and dismissal procedures, which management had ignored

The judgment said that the company had used unfair and unreasonable procedures in dismissing the workers

However, the workers came in for their share of criticism by the court Normally they would have been entitled to 90 days' back pay, but the court allowed them only 30 days, because of their breach of discipline in not collecting fares

C/Press 24/5/87

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THE EMERGENCY

This newspaper has been produced under emergency regulations which ...

Sentence was

By SOL MORATHI

SERGEANT Johannes Buti Ndimande may not have died in a brutal way ... always warned him not to trust all white people.

"I tried to warn him about the danger posed by ...

Legal clash seems unlikely on stayaways

HAMISH McINDOE

LEGAL experts have ruled out a possible clash between emergency regulations and an Industrial Court ruling that workers taking part in stayaways are not acting illegally as long as they do not make political or industrial demands

And Times Media attorney David Hoffe said emergency regulations aimed at curbing the reporting of stayaways, such as yesterday's 11th anniversary of the Soweto riots, were not applicable.

He said the media could report on commemorative stayaways without violating the curbs

Hoffe said "The emergency regulations prohibit news and comment on the extent of unlawful stayaways or strikes

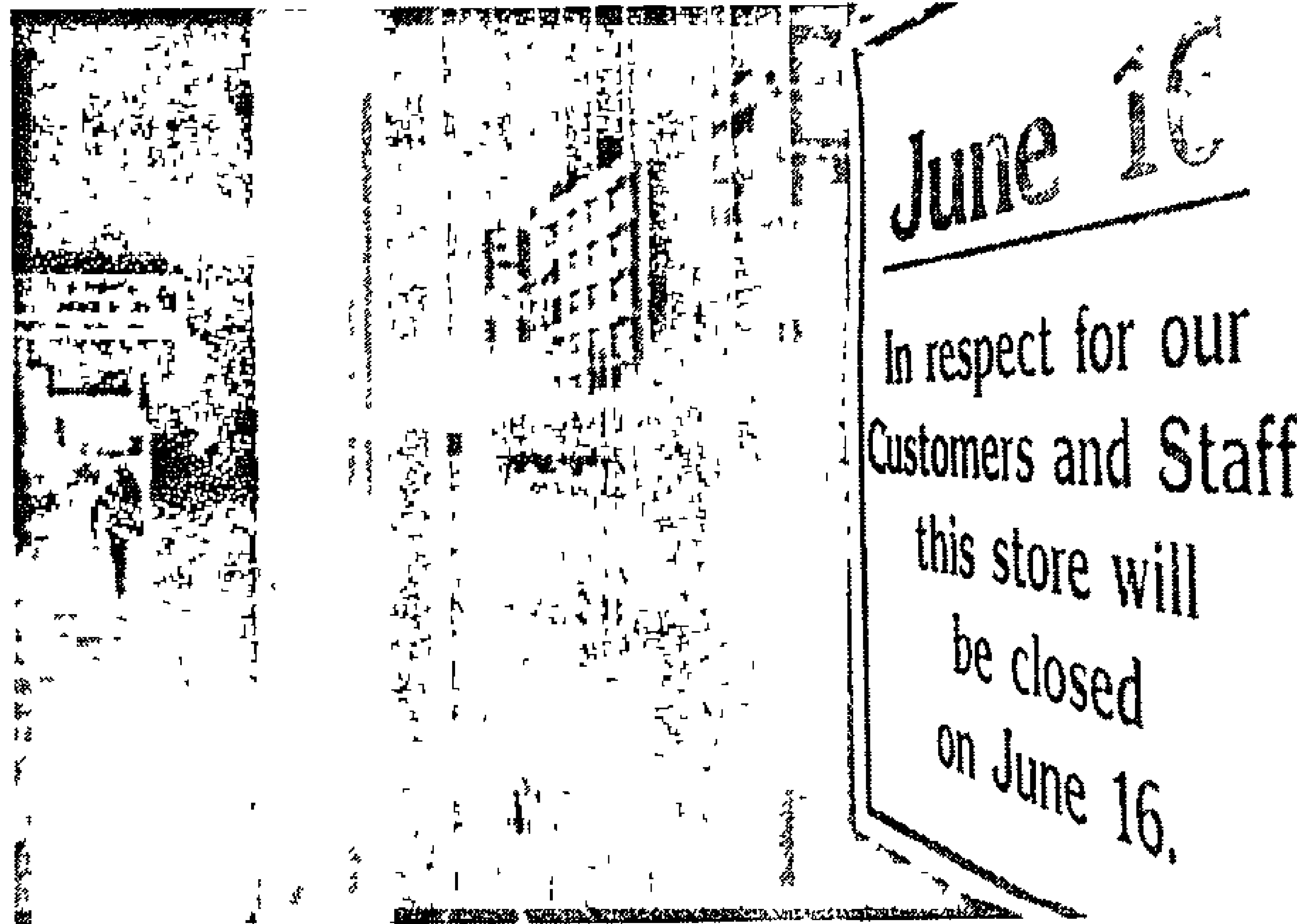
"But the Industrial Court ruled in a separate finding last week that stayaways not coupled with a political or industrial demand are not unlawful"

He said, however, that a UDF pamphlet calling for June 16 to be declared a public holiday was "possibly unlawful" in terms of emergency regulations

"Here, a direct political demand is being made"

The Industrial Court judgment followed Clover NCD's application last week for an interdict against the Food and Allied Workers' Union (Fawu) to prevent it calling on members working for the dairy to observe yesterday's stayaway

Clover NCD was not granted its interdict on grounds that Fawu was not making any political or industrial demand



Kerk Street, central Johannesburg, was virtually deserted yesterday as black workers stayed at home to honour the 11th anniversary of the June 16 Soweto uprising.

Picture Philip Littleton

Cape Times 18/6/87 (165)

No legal clash seen in stayaways ruling

Own Correspondent

JOHANNESBURG — Legal experts have ruled out a possible clash between emergency regulations and an Industrial Court ruling that workers taking part in stayaways are not acting illegally so long as they do not make political or industrial demands

And emergency regulations aimed at curbing the reporting of stayaways, such as Tuesday's 11th anniversary of the Soweto riots, are not applicable

This is the view of Times Media Limited attorney David Hoffe, who said the media could report on commemorative stayaways without violating the curbs

"The emergency regulations prohibit news and comment on the extent of unlawful stayaways or strikes

"But the Industrial Court ruled in a separate finding last week that stayaways not coupled with a political or industrial demand are not unlawful"

Mr Hoffe added, however, that a UDF pamphlet calling for June 16 to be declared a public holiday was "possibly unlawful" in terms of emergency regulations

"Here, a direct political demand is being made"

The Industrial Court judgment follows Clover NCD's application last week for an interdict against the Food and Allied Workers' Union (Fawu) from calling on its members working for the dairy to observe yesterday's stayaway.

Clover NCD was not granted its interdict on grounds that Fawu was not making any political or industrial demand

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Jobs again for 200 — but depot's shut

By SEFAKO NYAKA

PUTCO has been ordered to reinstate more than 200 workers in a depot that no longer exists.

The Durban Industrial Court ruling requires Putco to take workers back into its Durban South depot, which ceased operations in December The company has applied for a review of the court decision.

Putco closed the depot because it was losing too much money, according to Putco's acting public relations executive, RK Duff, and because of "tremendous labour problems" which were "totally unsympathetic to the loss situation".

But while awaiting the outcome of the review application, the company's lawyers are discussing settlement proposals

The court ruled that the workers be reinstated in terms of section 43 of the Labour Relations Act. This means Putco was required to reinstate the workers for the period April 13 to June 11 Both the company and union lawyers have agreed to extend the period to July 3

In the meantime the union has applied for permanent reinstatement under Section 46, and the court has found the dismissed workers have a reasonable prospect of success

According to a union representative the workers are adamant that they will demand full payment for the time they were dismissed, notice pay and other retrenchment benefits

Salaries alone could amount to thousands of rands

The dispute dates back to last October when a senior line manager at the depot, Mike Edwards, refused to attend a disciplinary enquiry involving workers' grievances.

The workers, all members of the Transport and General Workers' Union (TGWU), then called for Edwards' dismissal, but management said it was not prepared to take a snap decision on the issue.

It was not necessary for Edwards to have appeared physically at the investigation Statements could have been placed before the person conducting the investigation, the shop stewards were told

On October 24 drivers then decided they were not going to collect fares as a form of protest The action lasted for one day only and the workers returned to work and collected fares normally on the Saturday. They were then ordered to attend disciplinary enquiries.

In terms of the disciplinary procedure in the Putco/TGWU recognition agreement, no disciplinary action would be taken against workers who were involved in an industrial action which lasted for 24 hours

Some of the workers were dismissed on November 7

The industrial court found it was "procedurally unreasonable and unfair" to institute disciplinary action against the workers in view of the interpretation of the recognition agreement.

Industrial Court rules against NUM 17

ALAN FINE

THE Industrial Court has refused to reinstate 17 members of the National Union of Mineworkers (NUM) dismissed during a wage strike at Anglovaal's Hartebeesfontein gold mine in 1985.

The strike occurred at the same time as the one at Marievale, which led to the first order by the court that strikers be reinstated Counsel for the union argued that a similar order be made in this case

Advocate W S le Roux ruled, however, that circumstances differed He said that while the Marievale workers had conducted themselves in an orderly and "institutionalised" manner, those at Hartebeesfontein had not

Dispute over court president's 'bias'

W Mail 3–9/7/87

THE president of the industrial court hearing an application for the reinstatement of 1 000 sacked Sarmcol workers has refused an application that he withdraw from the case

Lawyers acting for the Metal and Allied Workers' Union and the dismissed workers cited Pierre Roux's participation in a labour relations seminar organised by Andrew Levy and Associates — the labour relations consultancy which advised Sarmcol

"This could indicate a bias to the reasonable lay observer," advocate Martin Brassey told the IC yesterday.

Brassey noted the seminar, held in Johannesburg on May 26, was also addressed by Sarmcol's legal team

In refusing the application, Roux said it was part of the work of the Bench to attend conferences of the kind organised by Levy.

Paul Benjamin, senior researcher at Wits University's Centre for Applied Legal Studies, said it was reasonable for members of the industrial court to talk from public platforms However, "the fact that a member of the court gave an address to a group of consultants deeply involved in the same major and ongoing case as the president appears to have been perceived by the union in a certain way."

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/E BEEN RESTRICTED IN TERMS OF THE EMERGENCY REGULATIONS

Legal Aid stops finances for labour matters

MMous 10/7/87 (165)

By DICK USHER
Labour Reporter

THOUSANDS of people will be denied relief promised under the Labour Relations Act because of a decision by the Legal Aid Board to stop all finance for labour-related matters.

Labour lawyers in Cape Town are aghast at the directive, issued this week from the board's Pretoria head office, and called for more funds to be made available by Parliament

They said it was a blow at the heart of the South African labour-relations system as it effectively denied access to the Industrial Court to those who needed it most

"The Labour Relations Act gives workers the tools to redress grievances, but they now are denied the means to exercise them," said one

Has several cases

Mr Paul Katzeff of C & A Friedlander said he was told of the directive yesterday in connection with several unfair-dismissal cases he planned to take to court for the South African Hairdressers Employees Industrial Union

"I was told that, in future, individuals would have to apply to the registrar of the Industrial Court for advice on the procedures and how to draft papers

"This is totally ridiculous

"The Industrial Court is under-staffed and all this does is effectively deny to thousands of aggrieved people the relief promised under the Labour Relations Act," he said

Without funding, it would now be almost impossible for people in private practice to take on unfair-dismissal cases and unfair labour practices, said lawyers

Mr Jonathan Sandler, of Bernadt, Vukic and Potash, said the move was "absolutely disastrous"

"Workers have looked to the Industrial Court for protection from unfair dismissal and unfair labour practices

"If they cannot resolve their grievances through legal institutions, they will have to go outside," he said

The Legal Resources Centre gave free legal assistance in deserving cases but could not cope with the many cases of unfair dismissal that occurred, said its Cape Town director, Mr Lee Bozalek

"Some legal expertise or training is necessary to challenge unfair dismissals, but most of the people who need assistance cannot afford it Neither do unions have the funds, especially for the number of cases that are presented

"The centre simply cannot cope and private practice has to take the load, but it is very difficult for them without funding

"The Legal Aid Board must think again and if they do not have the funds, Parliament must clearly come up with more money

Interim decision

"Otherwise the unfair-dismissal clause of the Labour Relations Act could become a dead letter for the people who most need its protection"

Mr E S Scholz, director of the board, said it was an interim decision that would be reviewed by the management committee in October

"The basic problem is money — and this is one of several restrictions the board has had to place on legal services recently," he said

CAPE TIMES 5/8/87

Curb of 'militant' labour unions expected

Political Staff

LEGISLATION is apparently being prepared to give expression to government's determination to crack down on "militant" labour unions that are seen to be fomenting industrial-relations strife for political purposes

The target will be those unions who participate in wildcat strikes and other summary actions which fall outside, or have by-passed, the industrial agreements and accepted negotiation processes entered into between employer and employee representatives

One legislative proposal being floated in the city is that unions which "wildcat" be forced to financially recompense the affected employer for the loss of business incurred

The idea has so far received a cool reception, the immediate view being that it would set a dangerous precedent and had the potential of heightening tensions within the industrial-relations environment.

Like the "Rent Bill" — the Promotion of Local Government Affairs Amendment Bill — now before the parliamentary standing committee on Constitutional Development, such legislation could further polarize relations between employers and employees

The Budget vote on Manpower and Public Works is set down for debate in the House of Assembly on Friday It is expected that some indications of government's intentions for the trade union movement will be spelt out by Minister of Manpower Mr Pietie du Plessis

Another contentious labour issue attracting attention in Parliament is the Mines and Works Amendment Bill

 ARGUS 4/8/87

Union accuses firm of 'sweethearting'

By DICK USHER
Labour Reporter

AN unusual unfair labour practice action has been opened in which one union accuses a company of "sweethearting" for a rival union.

Papers in the action by the National Union of Textile Workers (NUTW) have been served on Rotex Fabrics which, it is understood, is claimed to have given special privileges to the Garment Workers' Union (GWU).

NUTW wants the Industrial Court to grant a *status quo* order, restoring the previous labour practices at the factory where it was recognised as the collective bargaining representative.

The NUTW has had an agreement since last year with Rotex.

However, NUTW members and officials have complained that the factory management was trying to exert influence on workers to join the GWU.

Commission fears job reservation 'through back door'

Govt interference criticised by NMC

(165)

SMC 13/8/87

Mr Roger Hulley . job qualifications could disadvantage black miners.

Mr George Bartlett . . entrance requirements meant "not to discriminate".

Political Staff

CAPE TOWN — The Government-appointed National Manpower Commission (NMC) has criticised unwarranted Government interference in labour relations which is contained in the Mines and Works Amendment Bill passed this week

The Bill officially scraps the last vestiges of job reservation in mines but fears have been expressed that job reservation may be brought back in "by the back door" via government-appointed committees which will regulate the admission of people to the previously whites-only jobs

The NMC said in its annual report that in the new Bill express discrimination against certain population groups will be removed in respect of the "scheduled person" from the Mines and Works Act

"Instead provision has been made that the Minister of Mineral and Energy Affairs (now Economic Affairs and technology) may issue further regulations regarding the qualifications to be satisfied by candidates for certificates of competency and for committees to advise the Minister in this connection"

The NMC expressed "certain reservations" about this arrangement "Certain provisions of the bill are contrary to the principles of maximal self-governance and minimum government interference

"At the same time there was uncertainty on the composition and functions of the committees for which the bill provides The NMC's view was that the relevant job reservation clauses should be repealed and that measures for safeguarding job security should be negotiated by the parties themselves"

The NMC's view to some extent echoes that of the Progressive Federal Party

The PFP supported the bill when it went through Parliament this week -because it repealed job reservation - but also expressed doubts about possible indirect Discrimination against blacks in appointments to presently-reserved jobs such as mine blasting

Mr Roger Hulley, PFP MP for Constantia and spokesman on economic affairs and technology, said there were strong suspicions that the job qualifications introduced for the first time in the bill could disadvantage black miners The criteria included practical experience, command of language, physical health, security, age and educational qualifications

Hulley said that several of these criteria could be interpreted in such a way as to block advancement

If the language requirement was to be competency in both official languages, at least 40 percent of black miners would be disqualified because they came from foreign countries

The other criteria could also be interpreted to exclude blacks

"If the Government wants to discriminate against blacks, if they want to continue doing so in a disguised manner, this provision opens the door for doing just that

"One could apply a language barrier and educational barrier and other barriers from among this list and one wouLd have achieved an almost 100 percent exclusion of blacks from acquiring these certificates without having to define it in racial terms"

Mr George Bartlett, Deputy Minister of Economic Affairs and Technology assured Mr Hulley that the entrance requirements were meant not to discriminate but rather to promote the safety and health of miners in their workplace

Mr Hulley accepted the government's assurances but made it clear that they would be held to them

He would ensure they kept a promise that the draft regulations detailing the job qualifications would be published for comment and laid before the relevant parliamentary standing committee before being implemented

Mr Hulley also queried the need for the Government-appointed advisory committees to regulate the granting of certificates of competency

He said that in principle these committees could be filled with conservative whites who would use the entrance qualifications to block black advancement

"Why should the Minister of Economic Affairs and Technology be regulating and becoming involved in what is basically a labour matter?

"We want to know why such negotiations and agreements are not left to employers and employees - in other words to the ordinary processes of collective bargaining in the workplace?" Sources close to the National Manpower Commission said this week that the new entrance qualifications and the advisory commitee were meant as a sop to conservative white miners"

Only time would tell if these provisions are a 'paper threat" or if they will be used to put a brake on the advance of black miners

CAPE TIMES 3/9/87

Draft laws for farm workers

HOUSE OF DELEGATES. — Draft legislation to protect agricultural workers could be expected in the foreseeable future, the Minister of Manpower, Mr Pietie du Plessis, said yesterday.

Replying to the debate on the Manpower vote, he said discussions taking place within the agricultural industry were complex and had not been completed.

"I can't say when discussions will be finalized, but it is probable that draft legislation will be ready in the foreseeable future," he said

Mr Du Plessis was responding to points raised by Mr Mahmoud Rajab (PRP Springfield), who said the protection of the Labour Relations Act should be extended to agricultural workers.

Consensus

As matters stood, farm workers enjoyed protection neither under this Act nor under the Basic Conditions of Employment Act.

He said it had been reported that in Natal and the Transvaal, children were being forced to work on farms for up to six months a year in exchange for being allowed to live there.

Replying, Mr Du Plessis said he shared concern for farm workers.

He said employee-employer relationships on farms were different to those in the industrial sector. Many farm workers were unskilled.

Because of the nature of agriculture, the matter should be treated with trust and consensus rather than coercion, he said. — Sapa

Judge rebukes Putco for ignoring order

By CARMEL RICKARD, Durban

A NATAL supreme court judge upheld the authority of the industrial court this week when he took the giant Putco bus company to task over its non-compliance with an interim reinstatement order

Three months ago Putco was ordered by the industrial court to pay virtually 90 days' wages to more than 200 drivers, sacked after a dispute with the company.

But the workers were not paid and this week, through the Transport and General Workers' Union, they brought an application in the supreme court asking that Putco be forced to obey the industrial court order A second application was due to be heard on the same day, brought by Putco and asking that the industrial court judgement be reviewed and set aside.

Lawyers for Putco said they had not paid the workers as they believed the judgement was incorrect and would be set aside by another court.

Putco had also been involved in negotiations with the workers, until Monday when talks broke down

They said if Putco paid up, the company would be severely prejudiced as they had no work to offer the drivers because the Durban South depot, where the workers had been employed, was closed down.

Judge John Didcott strongly rebuked Putco for failing to carry out the orders of the industrial court. He said he found it "totally unacceptable" that the order should be ignored

"Industrial legislation cannot work if it is open to employers or employees to disobey (the orders of the industrial court) if they want to. I will not allow it. (Putco) is willfully and flagrantly in default

"This court must concern itself with the need to uphold the authority of the industrial court and I take a dim view of what has been done by Putco on this score "

Didcott said Putco may have been entitled to make an application for relief, asking for some suspension of the order pending review "But that is not what happened Your clients simply ignored the order "

On the question of the company's application for a review, Didcott said if it were granted, all he was entitled to do was to ensure that the presiding officer of the industrial court had "applied his mind properly" to all the facts before him, and if he had he, Didcott, could not overturn the decision on the grounds that he might have come to a different conclusion.

After an adjournment, Putco offered to settle the matter by paying the legal costs of the application and by paying the drivers the three months' wages due to them, estimated by a company official in court papers to be well over R500 000. Putco also asked for the review application to be adjourned indefinitely

The workers are to be paid out on Friday September 4

W Mail 28/8-3/9/87 (165)

SABC ordered to reinstate 36 staff

ARGUS 3/9/87 (165)

The Argus Correspondent

JOHANNESBURG. — The SABC has been ordered by the Industrial Court to reinstate 36 members of the Media Workers' Association of South Africa who were retrenched in December and January.

Mwasa's regional chairman, Mr Sam Mabe, said the reinstatement order, signed on August 21, was delivered to the union's lawyers only yesterday and the retrenched workers were given 14 days to report for duty.

Mr Mabe said: "This means that our members have today and tomorrow to report for duty, failing which they may not be considered for reinstatement. We have very strong feelings about the manner in which this matter was handled but we will cross the river when we reach it."

Most of the workers lost their jobs when the Commissioner Street branch of the SABC was closed last year and all operations of the corporation transferred to Auckland Park.

This is the second time Mwasa has won a court case against the SABC. The first was over the retrenchment of Mwasa members in December 1985, soon after Mwasa started organising SABC employees.

BTR

By S'BU MNGADI

Martin Brassey (centre top), the lawyer who represented the dismissed workers.

Verdict does not stop struggle against 'Blood, Tears and Repression'

THE future of the tiny KwaZulu township of Mpophomeni, outside Howick, is at stake

This follows last week's Industrial Court judgment in which presiding officer Pierre Roux dismissed the case for the reinstatement of 890 former BTR Sarmcol workers in their two and half-year old battle with the British multinational company

In a 61-page judgment handed down in Johannesburg, Roux – the deputy president of the Industrial Court – said the workers might have been misled by a union official into continuing the strike which cost them their jobs

The workers received Roux's judgment with shock and disbelief

At two meetings held since the judgement they have decided to proceed with an international publicity campaign based on the initials BTR which they said stood for "blood tears and repression' Part of the campaign will include the publication of a book about their strike

BTR Sarmcol has since merged with Dunlop – another British rubber company and is now called BTR Dunlop

The strike on April 30 1985 over the recognition of what was then the Metal and Allied Workers Union, was the culmination of 13 years of bitter struggle by the workers against the company

Since the sacking of the striking workers Mpophomeni had been plunged into a deep crisis because of lack of income for local residents – most of whom were employed by BTR

Natal University industrial psychologist E J Radford found in research conducted last year that the sackings had caused great psychological stress among workers

He told the court his research showed that the profile of ex-Sarmcol workers was that of an older group of married men who had spent a large part of their lives with the company Until May 1985 they had formed the nucleus of the Mpophomeni community

"Mpophemeni has no developed welfare system that can cope with job losses and the reported increase in criminal behaviour and violence are symptoms of a community in crisis said Radford

According to other researchers, the 350 ex-Sarmcol workers in Mpophomeni had forfeited more than R2,5 million in earnings in the two-and-half years

KwaZulu authorities have occasionally refused the community essential services because, when the workers were dismissed they joined scores of the others residents in rent boycott, which had been in force since 1984

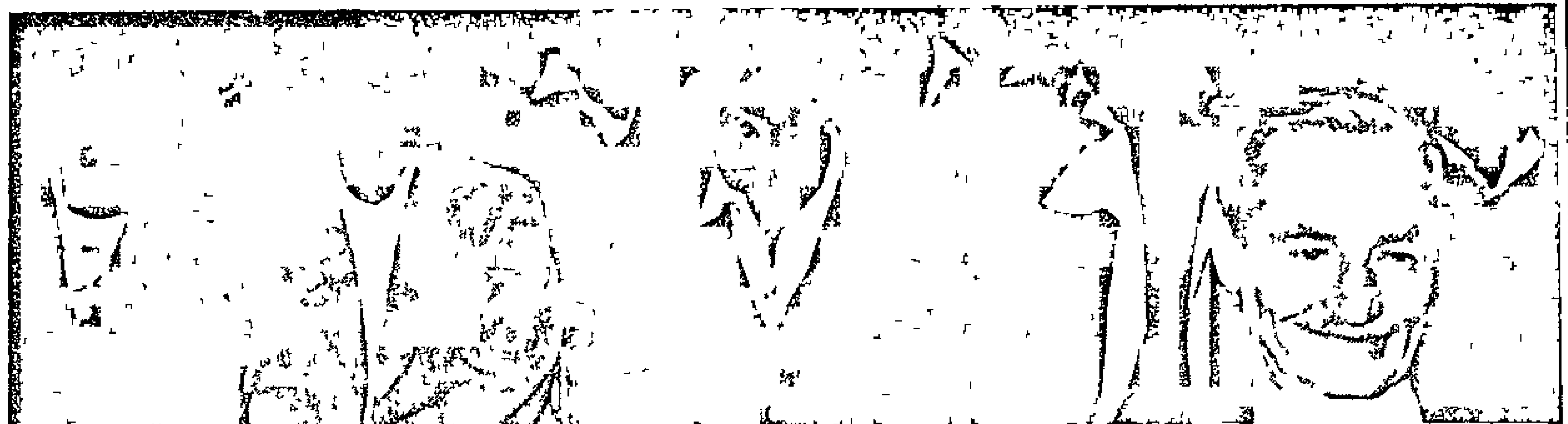
To keep the wolf from the door the workers assisted by Mawu (now theNational Union of Metalworkers of SA) started a large co-operative and service project – the Sarmcol workers' co-operative

Among other things, workers at the co-operative grow food on a a farm loaned by the Catholic Church, scree T shirts, and have workshopped a stage play on their struggle, which they have performed at various functions throughout the country

The play *The Long March* left for Britain last week where the dismissed workers will lobby for support nearer BTR Dunlop's headquarters

The nine-member cast will tour Britain for two-months

Back at home Dr Mark Colvin of the Natal University-based Industrial Health Group found in his recent survey that there was a great increase in malnutrition among kids – while a number of deaths since



BTR Sarmcol secretary and director John Sampson (front) flanked by part of the 890 dismissed workers

the strike were made the ... ers employed to replace

Martin Brassey (centre top), the lawyer who represented the dismissed workers.

Verdict does not stop struggle against 'Blood, Tears and Repression'

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The nine member cast will tour Britain for two months.

Back at home Dr Mark Colvin of the Natal University based Industrial Health Group found in his recent survey that there was a great increase in malnutrition among kids – while a number of deaths since the start of the dispute were attributed to Mpophomeni families' inability to pay health bills.

Of 663 children screened, about 30 percent suffered from malnutrition and 14 percent were severely malnourished, according to Calvin.

BTR Sarmcol secretary and director John Sampson (front) flanked by part of the 890 dismissed workers.

In his judgment, Roux said that the evidence of Geoff Schreiner, Natal Mawu secretary at the time of the strike and dismissals, had been influenced to a certain extent by his youthful idealism".

Although Schreiner was a candid witness, his evidence on the illegality of the dismissals, which were a result of an illegal strike, was unconvincing and evasive, said Roux.

It left the court with the impression that he perhaps realised belatedly that he might have made the mistake of not having properly advised the union members in this regard and that the strike might have taken a different course had he done so according to Roux.

The strike began on April 30, 1985, after 19 months of what Roux described as a protracted power play between the company and the union involving negotiations, industrial action and applications under the Industrial Relations Act over the signing of a recognition agreement.

After an exchange of telexes between Sarmcol and Schreiner in which conflicting claims regarding the legality of the strike were made, the workers were paid off, although they were offered re employment on an individual basis.

Because the hearing was primarily concerned with unfair labour practices as defined in the Industrial Relations Act Roux did not consider it necessary in his judgment to make a finding on whether the strike was legal or not.

He did, however, say that "it should be held that the strike was indeed illegal.

The unfair labour practices alleged by the union were:

- Failure by the company to negotiate in good faith
- The dismissal of the workforce
- Failure to reinstate strikers en masse

All these claims were rejected by Roux who said the court was bound to take into account "all relevant facts which would necessarily include such aspects as irresponsible and unfair acts and omissions prior as well as during and after the strike.

These facts were:

- The complete insensitivity of the union to the economic losses which were being sustained by Sarmcol due to the "sustained industrial action" prior to the main strike.
- The nonchalant manner in which the union treated the request by Sarmcol to discipline its members
- The union's lack of leadership during the early days of the strike
- Intimidation of workers employed to replace the striking workrs
- The lack of a union approach to temporarily call off the strike on the reciprocal undertaking by Sarmcol to continue negotiations
- The manner in which the strike was called
- The responsible manner in which BTR Sarmcol under intense provocation was prepared to keep the union members' jobs open to them for a period of three months stood in stark contrast to the union's sanctions and ommissions.

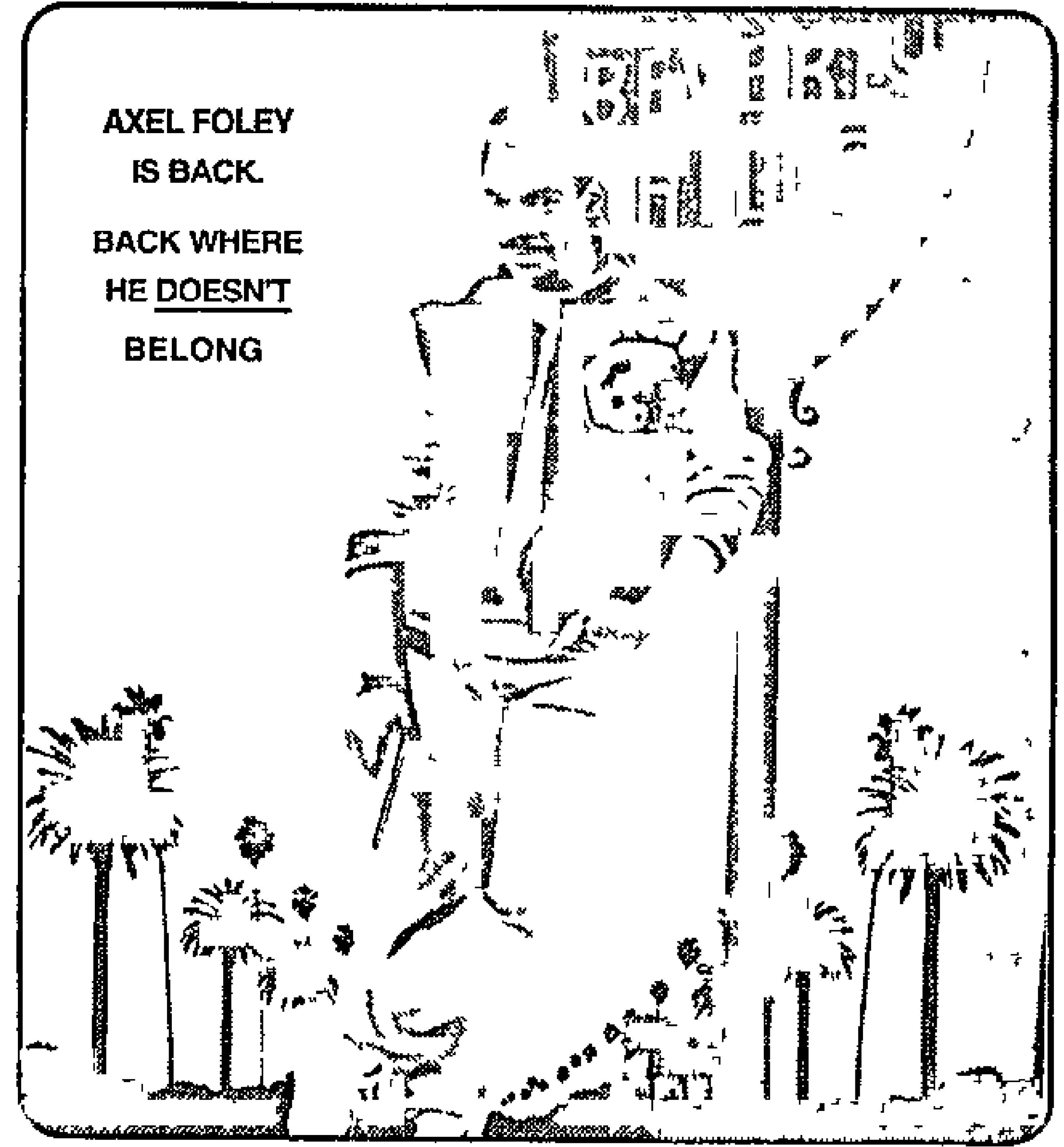
The dismissals in the circumstances were not unfair nor can the attitude or steps taken by management subsequent to the dismissals be categorised as being unfair said Roux.

He added that there was no case for the reinstatement of the workers or for granting them alternative relief.

The strikers have suffered enormous repression since their dismissals. Thirteen people associated with the strike including children – have been killed by vigilantes and a number of their homes have been destroyed.

One of the victims of the vigilantes was Simon Ntombela a shop steward and prime motivating force behind the establishment of the workers co-operative.

Despite the outcome of the judgment the strikers are carrying on with their weekly planning and co-ordinating meetings to sustain the strike and to get BTR Dunlop to the negotiating table.



EDDIE MURPHY
BEVERLY HILLS
Cop II
THE HEAT'S BACK ON!
EDDIE MURPHY BEVERLY HILLS COP II JUDGE REINHOLD BRIGITTE NIELSEN
PRODUCED BY DON SIMPSON AND JERRY BRUCKHEIMER DIRECTED BY TONY SCOTT
NOW AT A CINEMA AND
DRIVE-IN NEAR YOU

'We're down but not out'

"BTR blood, tears and repression" This is the title of a campaign launched this week by about 900 BTR Sarmcol workers, whose dismissal from the British-owned rubber plant in Howick, Natal, was last week stamped and sealed by the Industrial Court

The workers' union, the National Union of Metal Workers of South Africa, have also commissioned the writing of a book with the same title

The campaign aimed at keeping debate over the dismissal alive was launched in a meeting in Mpophomeni - where most of the fired workers live - on Monday

"The intention of the company and the court is that we should all wither away and die But we are not going to die. Our cause is not a short term one but a long-term struggle for freedom," one worker said

The workers vowed to continue their fight against injustice in the face of the Industrial Court judgment, which questioned whether the collective democracy practised by the union was tolerable in present day South Africa

The workers said they had been treated by the judge in the same way as the company had treated them

"Some of us are confused - but we are at war as we walk along this path for justice For being at war, we encounter a lot of problems - we are confronted with starvation and death but we must always know what we are doing If we don't we die" one worker said

"We should not just become weak because we have lost one battle We must remember we are paving our way to freedom, our children's freedom," he said

● See page 13

BTR–Sarmcol workers at Edendale at the start of the Industrial Court hearing of their case.

Facing a homeless, workless future

CP Correspondent

STILL smarting from their defeat in the Industrial Court, hundreds of former Sarmcol workers will be homeless from today when they have to get out of the factory's hostel.

The workers were fired over two years ago but have stayed on in Sarmcol accomodation while the dispute dragged on in the Industrial Court

Unemployed and with no income, they have not been paying anything for their accomodation for which they were normally billed R8 a month when they were still working for the company

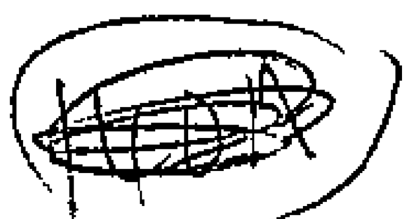
Soon after the Industrial Court judgement which threw out their application for reinstatement, BTR told the group to get out at once.

However a few days's grace was agreed to and they will all be pulling out today.

They do not et know where they will go nor do they know what they will do if management presents them with a bill for their accomodation during the last two years.

They have no income and say that even when they are paid out their severance pay the hostel deductions will be more than they can afford.

165 whole centrespread



The longest labour dispute is over. But

For a year, a thousand sacked metal workers trooped into each hearing of an industrial court dispute over their re-instatement. The judgement came last week — the strikers lost. CARMEL RICKARD reports on the controversy that has followed the decision

COLLECTIVE democracy of the kind practised by unions should not be tolerated in South Africa, suggested the judgement in the BTR Sarmcol case last week

It has also sparked fears that it could signal mass disaffection by workers who will tend to avoid using the industrial court in the future

Over 800 workers at the BTR plant were dismissed in May 1985 after a strike over union recognition, but the court has found there were no grounds for reinstatement.

Not only is the judgement a blow for the strikers themselves but it is also a serious setback for the community of Mpophomeni, the small township outside Howick where most of the workers lived and which has been increasingly impoverished since the sackings

In addition, labour experts have seen it as a severe blow to the industrial court system not only because of the outcome, but because of remarks contained in the judgement, for example, a reference to "collective democracy practised by (the) union" which, it is suggested, should not be "tolerated" in South Africa The experts fear the tenor of the judgement, as well as suspicion that the court was biased against the union from the start, could undermine confidence in the system by workers who will increasingly tend to prefer arbitration — or even strikes — to going to court.

The case ran to 39 days of hearings spread over a year — the second longest in the history of the industrial court It was attended by about 1 000 people every day, most of them sacked workers, members of the Metal and Allied Workers' Union (now the National Union of Metalworkers of South Africa), who had an average of 18 to 25 years service with the company

When the judgement was handed down, it was met with shock by Numsa unionists, not so much at the decision itself, but by some of the content which, they claimed, indicated the "blatant bias" of the court.

The question of the impartiality of the court was an issue which dogged the case from the time the composition was announced deputy president of the industrial court Pierre Roux, professor of commercial law at Rand Afrikaans University Thys Oosthuizen, and labour relations consultant Charl de Witt

Soon after the names of the three members were released, the union took advice on whether it would be ethical to object to the composition, and propose alternative names In particular they raised objections with the court to the appointment of De Witt, saying they believed he was on an academic bursary from Anglo American Corporation, that he was a part-time fee-earning management consultant and that he had expressed himself in academic articles as favouring a return to common law for the regulation of disputes between employer and employee

The court denied the first and third claims and on the other, said De Witt was prepared to consult for "both sides".

Soon afterwards, the union sent the company a telex stressing an issue raised by their lawyers in pre-trial consultations with management — union disquiet about the composition of the court — and suggesting that the matter be sent to arbitration They added, "The benefit of arbitration is of course that an arbitrator can be chosen who is mutually acceptable to the parties

"As we told you our clients do not think the bench appointed is appropriate for the determination of the dispute "

The union then put forward the

the dust it kicked up won't blow away

names of two arbitrators, the director of the Independent Mediation Service of South Africa, Jumian Rickert, and the professor of law at the University of the Orange Free State, Jimmy Claasen

They suggested that a third arbitrator — either Ismael Mahomed SC or Durban advocate Pius Langa — be invited This would "ensure (the representation of) a cross section of South African society"

' Such a cross section is important we believe in matters in which equity plays so important a part "

The union added, "The ultimate decision must meet with the acceptance of both sides and this is possible only if the bench enjoys mutual acceptance " Management turned down this suggestion

During the hearing there was more friction over the impartiality of the bench with the union asking that the deputy president of the court, Pierre Roux, recuse himself

The call came during the case after it had been conceded by Sarmcol that at the time of their dismissal of the workers the company had consulted with leading industrial relations adviser, Andrew Levy They said he outlined certain procedures as a result of which they would be able to exclude shop stewards (' union lads") from the pay roll and they conceded that they considered and were willing to implement his suggestion

As a result of these concessions made under cross examination, it became clear that Levy might well be called as a witness

Then it came to the attention of the union that Levy, industrial relations consultant to BTR, had organised a labour relations seminar geared to management It was held mid-trial and was to be addressed by all the lawyers in the BTR team and formally opened by Roux the presiding officer of the court hearing the union-Sarmcol case

They objected to Roux's role even before the seminar but he refused to withdraw from the conference After the event they asked for his recusal which was turned down

At the time, workers warned that their problem about the perceived bias of the court was being compounded by the behaviour of the judge on the Levy question

This was raised by workers again after the judgement They claimed the bias they had feared during the hearing was demonstrated by the attitudes expressed in the judgement

They also complained that large sections of significant evidence given in court including key concessions by management, were ignored in the judgement Another issue rankling with the workers is that the court, in their opinion, ' reneged on an undertaking to give the judgement in court before the workers It was instead released from Pretoria, the standard practice, after a directive by the president of the court

BTR Sarmcol management has expressed relief at the industrial court judgement, combined with sadness for the suffering of the misguided workers ' who lost their jobs

Glen Sutton group personnel manager of BTR Dunlop (formerly BTR Sarmcol), said the judgement underlined the company's long held belief that its actions were not unfair

He said it was the union decision to refer the issue to the court ' We took our chances and took a risk as much as the union did Neither party has any say in the composition of the court He said the union attitude seemed to be that when the court ruled in favour of the workers it was a good institution and when it went against them they would criticise it

' We believe the court went out of its way to hear the union side of the story, devoting 24 of the 39 court days to the union version "

Commenting on the threat by the union to continue national and international action against the company, he said If they were to do so it would be flying in the face of the order of the industrial court and it would underscore the court's view that they (the union) acted in an undisciplined manner '

July 1985 Banner-waving metal union members come out on strike It will take two grinding years before the matter ends In a victory for management and a rival union

Pictures BILLY PADDOCK

Get-out day for sacked strikers

FORMER Sarmcol workers, sacked two years ago will be homeless from today, the deadline set for them to quit the factory's hostel

Well over 200 of the fired workers continued to live in the hostels during the protracted legal battle over the legality of the strike, but soon after the industrial court's judgement was handed down they were warned to leave

The National Union of Metalworkers of South Africa s Southern Natal branch secretary Ian Weir, said that when the company officials ordered the workers out, a few days' grace was negotiated for them to sort out their belongings

The 200 workers still face the issue of rent for the period they have been staying in the hostel

At the time of the strike the company had been deducting R8 a month from wages for hostel fees, but the strikers have not been paying for their accommodation since their dismissal

The final pay package for the sacked workers still has to be sorted out, as the workers refused to accept their pay-off wages at the time they were dismissed

It is expected that they will be paid a week's wages, as well as various benefits such as leave pay and pension contributions

Workers believe that management might plan to deduct hostel fees

This would be a further blow to the strikers who have not earned any money since they were sacked

THE STRIKE THROUGH THE EYES OF THE TRIBUNAL

AT the start of the judgement, the three members of the industrial court outlined the background to the strike at BTR Sarmcol which led to the sackings of over 800 workers

They dealt with union-management attitudes to each other and said, "BTR is a multi-national company controlled by BTR Industries in the United Kingdom From the evidence it can be adduced that the union may have regarded BTR as a soft target, in that due to its international shareholding and possible pressure from abroad a more advantageous recognition agreement could possibly be negotiated.

"The management of BTR, in response to the possibility of such perception, and also being a member of the Chamber of Industries in Natal where other members might monitor concessions made in recognition, which may in turn be brought to bear upon them, adopted perhaps a more conservative approach in negotiations than it may otherwise have done

"The protracted negotiations towards a final agreement may perhaps partially be attributed to these perceptions "

They found that during the 19 months before the strike "the union and BTR were involved in a protracted power play"

"Obviously BTR were concerned in maintaining optimum production and managerial prerogative to attain this The union, on the other hand, was intent on securing the most advantageous recognition agreement with terms which would appear to, or would in fact make inroads into managerial prerogative "

One aspect of this power play was industrial action which, according to the company resulted in a loss of about R1-million in the first four months of 1985

Deputy president of the court Pierre Roux described the strike as "most unfortunate", saying he chose this phrase "because of (the strike's) economic and social results, (and) because we believe that negotiations had proceeded to a point where the parties were fairly close to resolving their differences and the signing of a final recognition agreement was imminent"

Referring to one result of the strike which has caused great bitterness among the sacked workers — the employment of new staff who were unionised by the Inkatha-backed United Workers' Union of South Africa and the subsequent signing of a recognition agreement with Uwusa — Roux said, "The effect of the dismissal of the 890 employees — all members of the Metal and Allied Workers Union — was that Mawu s influence at BTR waned and for all practical purposes Mawu disappeared from the work place at BTR — consequently Uwusa, a rival union, was allowed to start organising at BTR, and canvassed the majority of the replacement staff "

Roux further justified the court's refusal to reinstate the sacked workers — who had an average of 18 to 25 years service with the company — out of his consideration for the "new workers"

He said he was bound to "have regard to the present work force who stepped into the breach to save the company from bankruptcy, some of them, according to the evidence, suffering great personal loss in the process

' Without even giving consideration to union rivalry, how could any order which may have the effect of ousting these persons who are innocent to the present dispute, ever be countenanced as being fair and equitable "

In his judgement, Roux detailed the impressions made on him and the two other members of the court by the witnesses

At this point and elsewhere in his judgement he was critical of Mawu official Geoff Schreiner, saying his evidence was ' influenced to a certain extent by his youthful idealism He was obviously intent on furthering unionism and in evidence he was inclined to justify the actions of union members "

Roux also implied that Schreiner might have misled workers into thinking the strike was legal and could therefore continue

Roux says Schreiner's evidence on why he believed the strike was legal, "left the court with the impression that he perhaps realised belatedly that he might have made the mistake of not having properly advised the union members in this regard and that the strike might have taken a different course had he done so "

By comparison, management witness RJ Sampson, at the time administrative manager of BTR, made no such impression Roux says Sampson "perhaps true to his profession as an accountant, adopted a conservative approach

"This conservative approach would probably have been expected of him, both by management at BTR as well as by management in other industries in the Pietermaritzburg area where unionism had probably been, and is still viewed as presenting a threat to managerial prerogative '

Although it was conceded by management in cross-examination that one of the purposes in dismissing the workers was to "smash" the union as an influence among the workers, the judgement specifically rules that there was no such intention

The union is severely criticised by the court for their "complete insensitivity to the economic losses being occasioned to BTR by the sustained industrial action prior to the principal strike" and the judgement also commented on the "nonchalant manner in which the union treated the request by BTR to discipline and restrain their members

Roux adds, "In contrast to the actions and omissions by the union, the responsible manner in which BTR, under intense provocation, was prepared to keep the union members' jobs open to them for a period of three months stands in stark contrast."

On the issue of the way in which union decisions were made, Roux said, "A disturbing feature which was disclosed by the evidence in this case was the form of collective democracy practised by this union If properly understood, union activity depends solely on the collective will of the members This has the convenient effect that no individual member can be held responsible or be called to account for his action or inaction

"As effective as such a philosophy might be in also promoting solidarity among union members, it would appear to deprive the union of the responsible and strong as well as sustained leadership required in a pending or actual strike situation

"The members of this court, given the circumstances of the present case, have some reservations whether this philosophy, if correctly understood, can properly be entertained or even tolerated by present day society in this country "

July 1985 Police surround the small Natal township where all the strikers live

ARGUS 24/9/87 (165)

LABOUR

Court rule to restore textile union's rights

Labour Reporter

THE Industrial Court has found there was a strong possibility of collusion between an Atlantis textile company and the Garment Workers' Union which led to the company withdrawing recognition of a rival union.

The court ordered Rotex to restore to the National Union of Textile Workers (NUTW) recognition withdrawn in favour of the Garment Workers' Union, pending a final settlement of the dispute

The NUTW brought the case against Rotex and the GWU after the company withdrew its recognition, claiming that the GWU had gained majority membership at the factory.

The NUTW claimed this was the result of "sweethearting" and pressure by Rotex on NUTW members to join the GWU

"Grossly irregular"

In his judgment Mr Pierre Roux, vice-president of the court, said "the facts presented by the applicants, which included facts indicative of the company's unfair labour practice of favouring GWU in canvassing members of this union, are either admitted or not seriously refuted"

Mr Roux said the GWU's counsel, Mr J Short-Smith, had found himself unable to contest that the company acted improperly and conceded that the papers made out a case of company officials conducting themselves on occasion "in grossly irregular and unfair fashion".

"... The court consequently has little sympathy with the GWU should its order have the effect of negating such collective bargaining rights as it may have thought to have obtained by unfair collusive means," said Mr Roux

W/ARGUS 26/9/87

Court decides on union rivalry

LABOUR AFFAIRS

DICK USHER

THE Industrial Court was recently called upon to adjudicate on claims by the National Union of Textile Workers that a company with which it signed a recognition agreement had "sweethearted" for a rival union

Inter-union rivalry causes great pressure, not only on workers but also on employers who have to invest much time and energy in shopfloor problems which arise as a result

So much so that I understand a leading executive of one Cape company went in search of more peaceful pastures after about two years of this sort of pressure

The application, which fell under Section 43, was for the restoration of the labour practice that existed at the company before the unfair practice The Garment Workers' Union been granted recognition under the unfair labour practice, it was alleged

Giving judgment in the case, Mr Pierre Roux found the unilateral termination of NUTW's recognition and the manner in which it was implemented unacceptable

And, interestingly enough, he drew on precendents in the United States as part of the basis for his ruling The case he quoted "can usefully also be applied to the labour situation in South Africa, inasmuch it is consonant with good sense, although in the US it has a statutory basis"

"In the political and business spheres, the choice of the voters in an election binds them for s fixed time," he said "This promotes a sense of responsibility in the electorate and needed coherence in the administration These considerations are equally relevant to healthy labour relations

"Since an election is a solemn and costly occasion conducted under safeguards to voluntary choice, revocation of authority should occur by a procedure no less solemn than that of the initial designation

"A petition or a public meeting — in which those voting for and against unionism are disclosed to management, and in which the influences of mass psychology are present — is not comparable to the privacy and independence of the voting booth

"A union should be given ample time for carrying out its mandate on behalf of its members,

"It is scarcely conducive for bargaining in good faith for an employer to know that, if he dilly-dallies or subtly undermines, union strength may erode and thereby relieve him of his statutory duties at any time while, if he works conscientiously toward agreement, the rank and file may at the last moment repudiate their agent

"In situations, not wholly rare, where unions are competing, raiding and strife will be minimised if elections are not at the hazard of informal and short-term recall"

Govt moves on labour disputes

CAPE TIMES 26/9/87

165

Political Staff

THE government has moved to crack down on the undisciplined or "unprincipled" efforts of employers and employees to break any deadlock which may occur in labour disputes

The target appears to be lock-outs, wild-cat strikes and other industrial action which have been occurring with increasing frequency

The government's new disciplinary procedures — long speculated on — form the basis of major changes to existing labour legislation contained in the the Labour Relations Amendment Bill finally tabled in Parliament yesterday

The nature of the projected changes has already been widely opposed by organized commerce and industry.

The crucial clauses contained in the 63-page draft bill set out new increased powers for a special labour or industrial court, and spell out a more detailed definition of what it has decided is definitely not an "unfair labour practice".

Of particular significance, the legislation provides for this special labour court to order punitive financial action to be taken against a labour organization whose members, through their actions, are found to have caused financial damage to the companies concerned

The government's definition of what is not an unfair labour practice is contained in 64 clauses

One is the dismissal of an employee or employees who at the time of dismissal, have not been employed by the same employer for a continuous period of at least 12 months

Some of the other reasons for an unfair labour practice are

- The dismissal of an employee where an employer fails to hold a hearing or a disciplinary inquiry and the industrial court thereafter decides that it could not reasonably have been expected of an employer to hold such a hearing
- Any dismissals takes place after substantial compliance with the terms and conditions of an agreement relevant to the dismissal
- The selective re-employment of employees dismissed for disciplinary reasons.
- The termination of the employment of an employee on grounds other than disciplinary action unless reasonable prior notice of such termination of service, and the reasons thereof, have been given to the employee; or where prior consultation has taken place with the employee.
- The unfair unilateral suspension of an employee
- The use of misleading or unfair methods of recruiting members by any trade union, employers' organization or official of any trade union
- The refusal or failure by any trade union or employer's organization to comply with this act
- Any act whereby an employee or employer is intimidated to agree or not agree to any action which affects the relationship between employer and employee

Judges will be able to ajudicate

Industrial Court gets upgrading

B/day 28/9/87

CHRIS CAIRNCROSS

CAPE TOWN — The stature of the Industrial Court as a forum for settling labour disputes has been considerably upgraded, with Supreme Court judges to be appointed as presiding officers, in terms of new labour legislation tabled in Parliament last week

The long-awaited Labour Relations Amendment Bill also gives official clarity on what does NOT constitute an "unfair labour practice", giving effect to the decisions taken in settling the numerous industrial disputes that have occurred in recent years.

In an attached memorandum motivating the 62-page Bill tabled by Manpower Minister Pietie du Plessis, it is declared the legislative changes have been made necessary by the increasing extent to which existing conciliation machinery has been used to settle disputes.

Applications for the establishment of conciliation boards have increased from 23 in 1980 to 1 294 last year

The main features of the Bill

- Provide for establishment of a special labour court, its powers considerably upgraded to permit Supreme Court judges to adjudicate in labour matters and to make decisions as to costs,
- Offer more precise definitions on what does not constitute an unfair labour practice The object is to create more certainty and to provide a quicker mechanism to facilitate amplification of official norms in labour practice,
- Provide, in a schedule attached to the Bill, an extensive list detailing what government considers cannot be regarded as an unfair labour practice

It is an area which may create some controversy among employer and employee organisations, which have already registered their disagreement over aspects of the draft legislation, circulated for comment at the end of last year

With Parliament rapidly approaching the end of this session, it is unlikely the Bill — or aspects of it — will be passed into law this year.

● See Page 4

Cape Times 29/9/87 (165)

Labour reform 'a model' for other fields

By CHRIS CAIRNCROSS

THE reformation taking place in labour relations in South Africa provides the guidelines for resolving the racial problems which exist elsewhere within the country, according to Manpower director general Mr Pietie van der Merwe

In a briefing to political correspondents in Cape Town, Mr Van der Merwe maintained that the "far-reaching changes now occurring to labour legislation and policy" are rapidly outstripping what is happening in practice

There is no differentiation in legislation on the basis of either race or sex in the workplace — and many employers have yet to catch up with this fact, Mr Van der Merwe said

Mr Van der Merwe suggested that what was happening legislatively in the labour field could be used as a model to provide for equally non-discriminatory legislation by other state departments

He said that several major developments have occurred in the labour field which have gone unnoticed

In Mr Van der Merwe's view the most important of these included

- The creation of structures permitting the freedom of association, which has led to the credible creation of more than 300 new registered unions in South Africa representing a combined membership of more than two million workers
- A rearrangement of trade union structures reducing the number that are racially exclusive
- The emergence of a new leadership cadre within the unions
- An explosion in the extent and quality of communication between labour and management which provides for a more healthy and positive relationship
- The creation of workable mechanisms, such as industrial courts, for resolving conflict situations between labour and management

The workings of the industrial councils provide an excellent example of limited state intervention and practical self-governance, according to Mr Van der Merwe

This has been demonstrated by the remarkable increase in applications for conciliation board hearings, which are expected to approach more than 2 000 this year

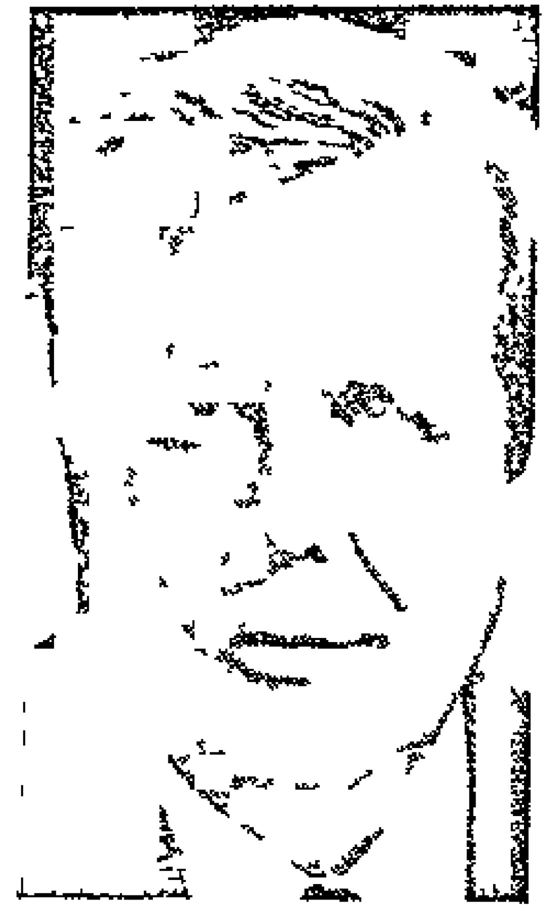
Mr Van der Merwe maintained that an important principle now embodied in labour legislation, and destined to be reinforced in time, is that of equity and fairness.

This principle is now accommodated in the form of several definitions of an "unfair labour practice" listed in the schedule attached to the Labour Relations Amendment Bill tabled in Parliament last week.

This Bill is now before the parliamentary standing committee on manpower and is unlikely to be dealt with during the current session of Parliament, according to Mr Van der Merwe

The schedule declares in part that the "dismissal, by reason of any disciplinary action against one or more employees, without a valid and fair reason" shall not be regarded as an unfair labour practice, under the following conditions, among others.

- If such employees have not been employed for a continuous period of at least 12 months, providing such dismissal does not take place contrary to any agreement, notice, award, or in any unfair manner
- If an employer fails to hold a disciplinary inquiry and the industrial court thereafter decides that it could not reasonably have expected an employer to hold such an inquiry
- If any dismissal takes place after substantial compliance with the terms and conditions of an agreement relevant to the dismissal
- If the selective re-employment of employees dismissed for disciplinary reasons takes place in accordance with fair criteria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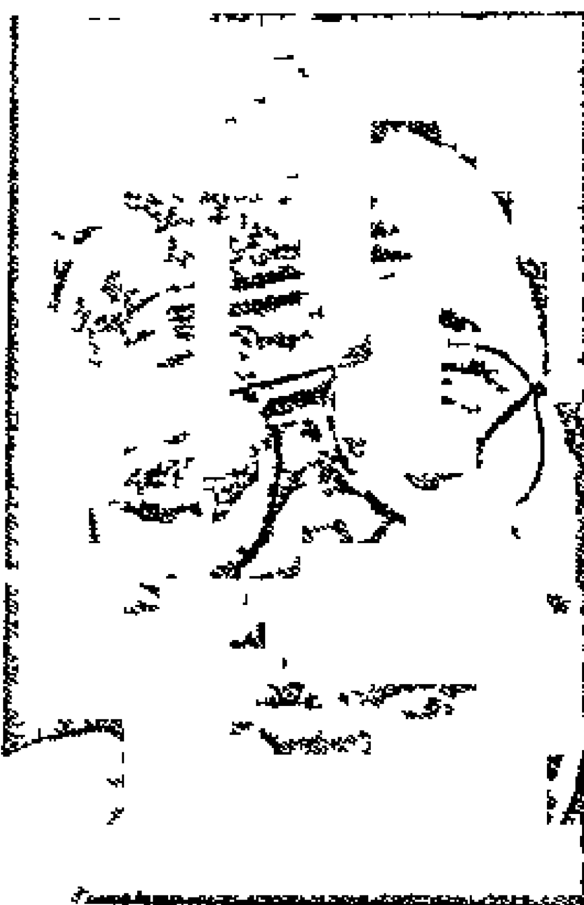
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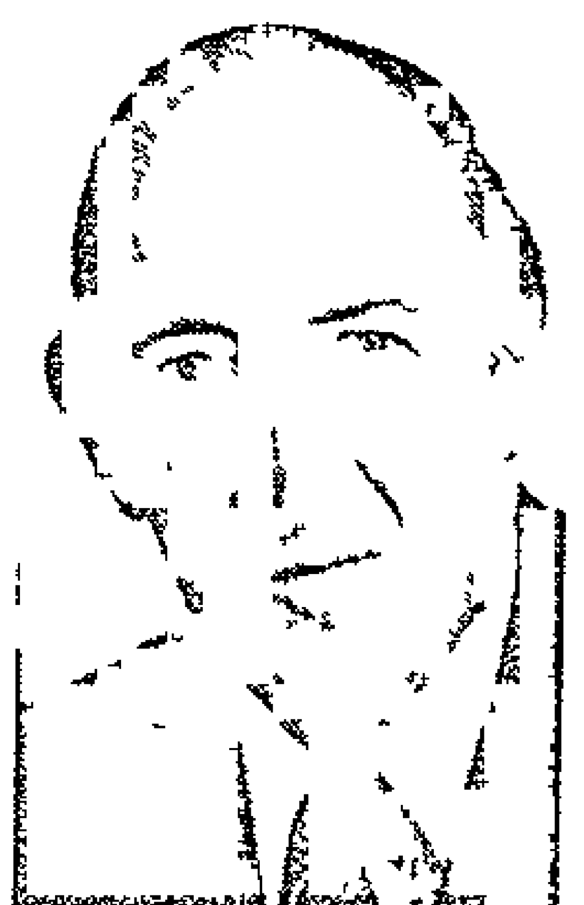

Ray Swart

Changes in the rules of Parliament

Political Staff

JOINT debates of all three Houses will be held from next year

All three Houses passed the report of the Joint Meeting of Committees on Standing Rules and Orders yesterday — the House of Assembly after a debate lasting more than 7½ hours

The rules and orders effectively control the ordering of Parliament

The main changes to the system are

- Joint debates of all three Houses — voting will still remain separate
- An end to the no-confidence debate with a joint debate on the State President's address taking its place
- Extensive powers for the chief whip of Parliament who will decide on whether a debate will be conducted jointly or by each House individually or in an extended public committee and how much time will be allocated to each debate

The report was accepted after a division by 81 votes to 33 with both the Conservative Party and PFP voting against

The House of Assembly rose at 11 20 last night and all three Houses will not sit again till Monday.

Cape Times 29/9/87 (80)

Chief's call on council

ULUNDI — Immense pressure needed to be put on the South African government to establish the National Council as an instrument of real transition, Chief Mangosuthu Buthelezi told West Germany's new ambassador to Pretoria here yesterday

Labour Relations Amendment Bill a sure recipe for conflict

By CLIVE THOMPSON

IF THE primary function of labour legislation is to mediate the manner in which organized labour and capital exercise power, then the draft Labour Relations Amendment Bill, which is before Parliament, must belong to a contrary tradition

While certain of the early comments on the bill have been cautiously favourable, a close reading of its terms reveals some utterly perverse features Some may see it as anti-union but it would be more accurate to describe it as subversive of a coherent and effective system of collective bargaining It appears to be the product of myopic bureaucrats rather than of ideologues

To begin with, the bill undermines the critical rule-making function of the industrial court The Wiehahn Commission envisaged a body that would be able to develop a set of standards for the guidance of all In this connection, it is noteworthy that more than two thirds of the cases that come before the court involve applications to reverse precipitate and unilateral action by one or other party — so-called status quo applications

Currently the court can use the relevant provision to strike down rogue behaviour from whatever quarter In future the unrepentant rogue will be able to carry on regardless as the bill proposes that a status quo order should only be issued if it will "assist the parties in reaching a settlement" A cunning respondent will always be able to avoid a court rebuff by pleading hostility to settlement prospects

Secrecy provisions

More significantly still, with the proposed repeal of its special "court of law" functions, the industrial court will be deprived of all powers to hear matters on an urgent basis An employer seeking to interdict an illegitimate work stoppage or an employee facing imminent victimization for lawful trade union activities will be unable to receive quick relief from the labour court, at best their cases will be ripe — or rotten — for hearings some months later The draftsman seems to be unaware that industrial disputes nearly always require prompt attention

The decisions that the industrial court or the special labour court do eventually deliver will remain unknown for a lengthy period or perhaps even forever, given the secrecy provisions that have been mooted It goes without saying that it is difficult to develop a body of law under such circumstances

The bill also offers lawyers a most lucrative future, not only in the industrial court but in the new special labour court as well This comes courtesy of the bill's contorted and often unintelligible language which threatens the now well-established jurisprudence on unfair dismissal

The existing case law is clear No employer may dismiss an employee without a good reason and, unless circumstances render this impractical, without a fair hearing The proposed definition on unfair dismissal is loaded with ambiguity A dismissal without good reason, for instance, will be unfair unless the employee concerned has been employed for less than 12 months, but even here the dismissal will again become unfair if it is effected "in any unfair manner"

When this and other vexed provisions wend their way to the special labour court, as they inevitably will do, the parties will find (if they are corporate entities such as trade unions or companies) that they cannot represent themselves in that forum Nor can they make do with the services of an attorney Only an advocate will be entitled to appear there, duly instructed of course by an attorney

A troubled issue in labour law today concerns the position of those unions which enjoy minority support, whether at plant, enterprise or industry level These unions are typically the established and more conservative ones, although this is not always so There is a case for minority unions under the banner of freedom of association, but the bill does not make it

Instead it introduces an insidious contradiction While bolstering the already entrenched position of minority unions on industrial councils — where they can exploit existing closed-shops and engineer decisions that bind the majority unions and their members — the bill declares that outside of these councils it will be an unfair labour practice for a majority union to press for exclusive bargaining rights

The conflict that this promises to generate between industrial council and plant bargaining will be nothing short of spectacular What is more, the iniquity of the scheme will not be lost on the leadership or members of the emerging unions, either now or in the future

While the emergency regulations reflect the failure of the state to accommodate the political aspirations of South African citizens, the bill's provisions on strike action bear testimony to the inability of the political economy to meet worker demands There the points of similarity end for, unlike the disenfranchised and unenfranchised majority, the unionized work force disposes of very real power

The Wiehahn Commission acknowledged this and advocated a system that would institutionalize conflict The bill negates this principle Contrary to the recommendations of a recently-released National Manpower Commission report, it perseveres with the crass expedient of criminalizing strike action

By introducing still more protracted and even indeterminate preconditions to lawful strike action, it naively believes that the phenomenon can be curtailed or eliminated It is quite probable, however, that workers will perceive that lawful strikes have receded beyond their reach and will therefore resort to wild-cat strikes, the most uncontrollable species of industrial action

Uncontrolled is no doubt how the action will remain, for a new deeming provision imposes a presumption of complicity upon union officials that are seen to be involved in the conflict Unions must henceforth wash their hands of illegal strike action in order to avoid incurring financial penalties

Striking inadequacies

The bill is not without some redeeming qualities In principle the formation of a special labour court to reconcile conflicting industrial court decisions at regional level and to lend status to the adjudicative process generally is to be welcomed

Again, the proposals regarding the streamlining of conciliation board applications through the removal of a ministerial discretion represents a salutary development None the less, the overall impact of the provisions is retrogressive and ultimately self-defeating, and only the most striking inadequacies have been highlighted here

The existing act is marked by a surprising sophistication and subtlety in the area of conflict regulation It has been found wanting not so much because of its own shortcomings, but because of the pressures emanating from a deteriorating political environment

The legislature, however, does not have the will to address the latter, fundamental predicament Instead it has allowed lesser functionaries with little grasp of the issue at stake to tamper with a complex scheme of labour legislation The Department of Manpower could do worse than to rethink the future of the bill in the context of the original recommendations of the Wiehahn Commission

(Clive Thompson is Director, Labour Law Unit, UCT, and Co-editor, Industrial Law Journal)

Call to restore legal aid labour cases

ARGUS 15/10/87

By DICK USHER, Labour Reporter

URGENT representations by the Association of Law Societies for legal aid in labour cases to be restored have been requested by a group of Cape Town lawyers.

The lawyers, from private firms and the Legal Resources Centre, warn that the withdrawal of assistance for labour matters by the Legal Aid Board earlier this year could have serious consequences for industrial peace, restrict access to the courts, diminish the Industrial Court's credibility and result in fewer employers being "brought to book" for unfair labour practices.

This week the president of the Law Society of the Cape of Good Hope, Mr Mervyn Smith, said South Africa's legal aid budget was "hopelessly inadequate" to meet the needs of the majority of the population.

Addressing the society's annual meeting, Mr Smith drew attention to the exclusion of labour cases.

Undermining justice

"If legal aid is not increased drastically we may find the very system of justice itself being undermined simply because there is no money available to help the needy to gain their rightful access to the legal system," he said.

The lawyers said the withdrawal had severely restricted access to the Industrial Court because "faced with the complex task before them, a large sector of aggrieved employees with deserving cases will not be able to utilise the court without legal representation".

"Inevitably, aggrieved employees would increasingly resort to strike action or industrial unrest to resolve their grievances with management.

"In view of the fact that the standards and codes of conduct laid down by the court are relatively new, added to which there has been considerable resistance on the part of many employers to changing attitudes to labour relations, it is absolutely essential that contraventions and breaches of Industrial Court guidelines and codes are properly enforced."

They urged that society should not allow a situation where, in a climate of large-scale unemployment, a person who might be the sole breadwinner would have no access to machinery created to protect rights to reinstatement or any other rights as an employee.

W/C ARGUS 17/10/87 (165) (282)

LABOUR AFFAIRS

DICK USHER

Legal Aid Board move strikes at basis of Industrial Court system

ONE of the main underpinnings of the South African labour relations system is, in the end, the Industrial Court

Here disputes between two parties can be argued in an atmosphere far removed from the hurly-burly of shopfloor conflict and decisions reached where an impartial third party can take into consideration the special concepts of justice and equity enshrined in labour legislation

When the new dispensation founded on the Wiehahn Commission came into being it was recognised that the existing rights of workers required reform as did the institutions available to workers to enforce these rights

The commission concluded that "the time had come for those rights derived from labour law to be adjudicated more properly — in a labour court

"The aim was to encourage judicial rather than strike action

"It is a fact that countries with labour courts have experienced fewer strikes and have developed their labour law to a greater extent," the commission found

The decision by the Legal Aid Board earlier this year to halt aid for labour cases has struck at the whole basis of this legal system in which the court spends most of its time dealing with unfair dismissals and unfair labour practices

In a memorandum to the Association of Law Societies, calling for restoration of legal aid in labour cases, a group of concerned Cape Town labour lawyers said that the success of the Industrial Court was evidenced by the extent to which it had been used by both management and trade unions to resolve industrial conflict

From 30 cases in 1981, the court's case load had grown to 2 042 in 1986 In Cape Town a proportionate growth had been shown, with 97 applications launched in June alone

While it was possible for individuals to represent themselves in hearings, the lawyers argued that the complexity of labour law put an individual without representation at a tremendous disadvantage

"It is a fact of life that employers are generally able to afford legal advice and/or representation and make good use of this facility in labour related matters

"On the other hand, the vast majority of dismissed employees are from the lower income group and have neither the savings nor the income to engage the services of an attorney

"Moreover, their position is usually exacerbated by the fact of their dismissal," said the memorandum

It also pointed out that many legal aid applicants were either illiterate or barely literate and had only rudimentary education

"Such a person's position becomes more precarious when, in the unlikely event of him attempting to bring his own case to court, he now has to face the company's attorney and counsel

"It is therefore our view that the Legal Aid Board's decision has severely restricted access to the Industrial Court because, faced with the complex task before them, a large sector of aggrieved employees with deserving cases will not be able to utilise the court without legal representation," the lawyers said

They warned that the "confidence which the court presently enjoys would be greatly diminished

"Inevitably, aggrieved employees would increasingly resort to strike action or industrial unrest to resolve their grievances with management"

ARGUS 9/12/87

Closed-door bid rejected

165

Labour Reporter

AN unusual request for a witness in an Industrial Court case to be heard in camera has been refused by the presiding officer

The application was made before Mr H Fabricius yesterday during an action in which Mr Isaac October, dismissed by his employers for allegedly stealing copper, is seeking reinstatement

The employers' legal representative, Mr C I Fischer, asked that the unnamed witness to be heard in camera and for cross-examination to be conducted by someone other than the person appearing for Mr October

He said there were grave fears for the safety of the witness if she gave evidence in open court

Mr Fabricius reserved judgment and said he would give reasons for rejecting the application later.

Cosatu rejects Du Plessis message

CHC Times 18/12/87

Own Correspondent

JOHANNESBURG — Cosatu, it appears, is not amused by the attempt of the Minister of Manpower and Public Works, Mr Pietie du Plessis, to inject the spirit of the festive season through the postboxes of a number of the federation's affiliates

In a statement yesterday Cosatu described the traditional ministerial Christmas and New Year message to trade unions as "a masterpiece of understatement and euphemism"

In conveying his "heartfelt wishes for a merry Christmas and a prosperous New Year", Mr Du Plessis said while a measure of turbulence in the labour relations field was experienced, he was convinced that as a whole, positive developments in labour relations ultimately prevailed

Noted Cosatu "What the minister fails to mention in his assessment of the year are the bomb attacks on union offices, employer resistance to the living wage campaign and the mass dismissal of thousands of workers"

LABOUR DEPT. — 1988

JANUARY — ~~NOV.~~ DEC.

More strikes, fewer strikers

CAH 71/1/3 29/4/88 165

PARLIAMENT. — The number of strikes and work stoppages increased from 793 in 1986 to 1 148 in 1987, but fewer workers were involved in each strike than in 1986, the Director General of Manpower, Dr P J van der Merwe, said in his annual report tabled yesterday

Wages, unemployment and related issues were still the most important causes of strikes

While registered unemployment among whites, coloured people and Indians had shown a 14,7% drop from January to October, figures for blacks showed a 28,5% increase from 49 945 to 64 162 over the same period

About 57% of strikes lasted one day or less and about 6% more than two weeks. The average strike was 9,9 working days, compared to 3,1 during 1986

The number of disputes referred to industrial councils increased by 55,5%, compared with 1986 Just over half were settled by the councils or resolved by agreement between the parties through the councils.

Only 2% of the disputes referred to industrial councils ended in deadlock, emphasizing the role played by councils in maintaining sound labour relations

The number of cases referred to the industrial court increased to 3 533, compared with 2 042 in 1986.

A total of 2 312 conciliation board applications were received, compared with 1 294 in 1986 — Sapa

ADE ordered to reinstate workers

Cape Times 22/3/88

By RONNIE MORRIS

ATLANTIS Diesel Engines (ADE) has agreed in the Industrial Court to reinstate 16 dismissed workers

In papers before the court, the workers — all members of the National Automobile and Allied Workers' Union (NAAWU) — said that from October 1986, their hours had been four 12-hour shifts

ADE management had unilaterally changed the system without consultation or adequate notice, the workers said

The union then appealed to the Industrial Court

While the court case was pending, workers arrived at the factory in terms of the old shift system and were told they had to work according to the new shift system

They refused and 16 workers were subsequently dismissed

The union then launched a second Industrial Court action, asking that ADE's conduct in excluding workers from the premises constituted an illegal lock-out

They asked further that the dismissal of the workers be declared illegal, that they be reinstated and that ADE's threat to dismiss workers who refused to work the new shift be declared illegal

In the settlement, which was made an order of court, ADE agreed unconditionally to reinstate the dismissed workers retroactive to March 13, revert to the four 12-hour shift system and refrain from victimizing the workers involved in the dispute

Mr P E le Roux SC and Ms A M de Swart were the presiding officers Mr Norman Arendse of Essa Moosa and Asssociates, appeared for NAAWU Mr F P S Erasmus, senior human resources manager for ADE, appeared for the company

ARGUS, 15/3/88

5,8-m working days lost to strikes

PRETORIA — The number of working days lost because of strikes rose to 5,8-million last year from 1,3-million in 1986, said the Director-General of Manpower, Dr P J van der Merwe

The increase was attributable to the large mining strike, he told a labour relations training programme organised by the research unit for labour relations of the University of Stellenbosch's management school

Total trade union membership last year exceeded 2,1-million, or 24 percent of the labour force, Dr van der Merwe said

Unions achieved relatively high wage settlements in the second half of last year, averaging just under 20 percent — well above the inflation rate

Nominal

This was made possible by a conscious union push for higher wages and increased corporate profits

But most strikes ended with unions winning at best nominal improvements over pre-strike employers' offers.

A higher level of confrontation, violence and intimidation was discernible last year Employers were more prepared to lock out and dismiss workers

Managements "seem to have acknowledged the strength of particularly organised black labour and appear to have been prepared to pay a premium on wages as a cost of labour peace," he said

But employers indicated there was a limit to the amount they were able or prepared to pay in this way

Productivity

He reiterated National Productivity Institute findings that South Africa's gross national product per capita decreased by 2,05 percent between 1981 and 1985, while that of its trading partners was increasing

Labour productivity in the manufacturing sector decreased by 0,2 percent during the period 1982 to 1985 — Sapa

80 lose jobs: Court reserves judgment

Labour Reporter

JUDGMENT has been reserved by the Industrial Court in an application for reinstatement by 80 workers dismissed from Cape Lime at Robertson last year

The workers, members of the South African Chemical Workers Union (Sacwu), were dismissed in three groups in November

A stoppage on November 4 over police action against Sacwu strikers at Sasol was followed by further industrial action over proposed disciplinary action by the company.

At sittings of a disciplinary committee on November 6, 9 and 11 the company implemented final disciplinary warnings issued against certain of the workers earlier in the year when they had stopped work in protest against the detention of Sacwu's national oganiser, Mr J Samela

Mr Joel Krige, appearing for the workers and Sacwu, said the dismissal procedures had been procedurally unfair and the company had failed to take into account the workers' service

This totalled 947 years and the longest serving employee had 40 years' service

Mr P Roux presided Mr Krige was instructed by Mr John Hendry of K G Druker Mr A Blignault, instructed by Mr Merwe Scholtz of Jan S de Villiers appeared for Cape Lime

Sentrachem unhappy with judgment

Star 1/3/88 (165)

By Mike Siluma, Labour Reporter

Sentrachem may ask the Supreme Court to review an Industrial Court decision directing it to eliminate racial pay disparities and to re-employ strikers dismissed during a pay dispute two years ago, the company said

In his first reaction to the Industrial Court judgment delivered on Thursday, Sentrachem managing director Mr Dave Marlow said the company "unreservedly rejects, and will continue to reject, racial discrimination in any aspect of its operations"

"The finding of the Industrial Court that (Sentrachem) has implemented that practice, as well as the court's determination on criteria for legal strike action and fair dismissal of striking employees, are cause for serious concern to the company," Mr Marlow said yesterday

The company, in cosultation with its lawyers, was considering the possibility of review proceedings and would make a decision soon, said Mr Marlow.

The case was a sequel to a strike by more than 3 000 workers in seven Sentrachem divisions in the Transvaal, the Free State and Natal in May 1986 to back demands including a R250 across-the-board monthly increase and the elimination of racial inequalities in pay

In his judgment, Dr D G John ordered that Sentrachem redress any racial disparities in wages by August 31

He also found the dismissal of workers subsequent to the strike unfair and ordered the company to re-employ them.

4-10/3/88 W/Mail

NUM to industrial court over mass firings during '87 strike

By EDDIE KOCH

THE National Union of Mineworkers (Num) will begin its first major challenge to the mass sacking of some 40 000 workers during the miners' strike last year, in the industrial court next week.

The NUM has appealed to the court for the reinstatement of about 38 000 workers sacked by the Anglo American Corporation from its Vaal Reefs, Western Deep Levels and Free State Consolidated groups of gold mines at the height of the 13-week strike.

The three groups include all Anglo American's gold mines which, before the strike, constituted the heart of union's strength. The hearing thus has a crucial bearing on the NUM's ability to recover from the effects of the mass dismissals.

The NUM's lawyer, Paul Benjamin, said that some 25 000 workers had been re-employed after being sacked while another 13 000 were still out of work.

The union's application seeks full reinstatement of the 13 000 and restoration of all benefits and wages lost by re-employed workers.

A recent industrial court judgement, which ordered giant chemical company Sentrachem to reinstate some 500 workers fired in 1986, could bolster the NUM's case.

Last week the court, presided over by Dr DG John, ruled that the dismissal of workers during a "legitimate" strike was unfair and ordered the company to remove racial discrimination in its wage rates — the issue that sparked the Sentrachem strike.

In his judgement, John said that if a strike was legitimate, "this would go a long way towards finding that the dismissal of the workers was unfair and likewise then, failure to re-employ all of them".

He noted also that "the employer should be prevented from applying selective dismissal, or selective re-employment, in the context of the strike."

The SA Chemical Workers' Union (Sacwu), an affiliate of the National Council of Trade Unions (Nactu), has hailed the judgement as a "victory not only for Sacwu, but for the whole labour movement".

Industrial court decisions usually have an influence over subsequent hearings. Advocate William Schreiner, the adjudicator in the NUM case, is likely to bear the Sentrachem judgement in mind when he weighs up the miners' argument that their strike was legal and their dismissals conseqently unfair

The NUM is backing up its industrial court action with a challenge in the Supreme Court to the legality of the dismissals.

The union has begun these proceedings on the grounds that the Mining Rights Act requires any mine with more than 500 workers to notify the Minister of Energy Affairs beforehand if it plans to dismiss more than 20 percent of its labour force.

While the union gears up for these court cases, it is busy negotiating with Gencor to ameliorate the effects of wide-ranging retrenchments on the group's gold mines.

NUM's assistant general secretary Marcel Golding said about half of the Stilfontein mine's 10 000-strong workforce and about 1 000 workers at each of the Buffelsfontein and West Rand Consolidated mines were facing retrenchment.

"Management's justification for this action varies from a decrease in the gold price to the repletion of ore reserves," said Golding

Second-last hurdle for Ccawusa

By MONO BADELA

THE divided Commercial, Catering and Allied Workers' Union of South Africa will attempt to leap the second-last hurdle in the union's path to unity on Sunday. W/Mail

If Ccawusa's Johannesburg branch annual general meeting goes ahead and both sides come to an agreement the chances of unity in the next six weeks are fair.

The issue which has come to symbolise the complex details of the split is the union's adoption of the Freedom Charter.

The group lead by the general secretary, Vivian Mtwa, is opposed to adoption of the Charter. The other faction, represented by Pappi Kganare, is pro-Charterist. 4/10/3/88

Sunday's meeting at the Standard Bank Arena is one of eight branch AGMs agreed to by an out-of-court settlement reached by the two factions at the end of January.

Four other Ccawusa regions — Pretoria, Northern Transvaal, Eastern Cape and Orange Vaal — have already met and have gone Kganare's way.

FM 4/3/88

WAGE DISCRIMINATION

Plugging the gap

Great attention was focused on trying to define the meaning of wage discrimination or wage gap in the key industrial court case recently concluded between Sentrachem and the SA Chemical Workers Union

For the company, which was given six months to eliminate racial wage disparities, the gap appeared to mean the difference in average between the wages of whites and of blacks, the court observes

The union saw the wage gap as sometimes the same as wage discrimination and sometimes not In evidence, the union's national organiser, Manene Samela, gave wage gap this meaning the difference between the grades, that is, the difference between the minimum rate paid for grade 19, compared, for instance, with the minimum rate for grade 11.

Discrimination, he said, "is where you find that the workers are doing the same job, but they are not paid the same wage." Samela compared the position of black process operators at Newcastle, who were running the panel, with the senior process controllers, who were supervising but not operating, and the difference in wages between the two was between R400 and R600, which the union regarded as discrimination.

The company made much of the need for a definition of wage discrimination before the issue could be properly tackled

The union did not see the necessity for such a definition. Nor, said the court, did there appear to be a need for one if the company agreed (as it did) that there was wage discrimination and in the course of negotiations proposed to use R1,5m towards removing it During the hearings, the total cost of doing so was estimated at about R4m

"If the company accepted that this was the cost of removing discrimination, it presumably recognised its existence without a formal definition of it," said the court

The court says the company's approach appeared to be that the parties should investigate the matter at plant level and isolate cases of discrimination The union, however, held that since wages were negotiated centrally, it was up to the company to instruct its plants to remove discrimination. "This is not an unreasonable approach," according to the court It says, therefore, that the union was justified in regarding as a stalling tactic the company's insistence on a definition of wage discrimination

The court reiterated "There is no doubt that wage discrimination based on race, or any other differences between workers concerned other than their skills and experience, is an unfair labour practice"

The applicant's reference to the International Labour Organisation (ILO) Convention on this subject — on which the Wiehahn Commission based its guidelines that were accepted by government — was noted "There are, however, limits," said the court and interestingly quoted Article 1 of the ILO Convention, which states. "Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination"

The company contended that no order should be made on this aspect of the case, because no proof of discrimination had been submitted And, indeed, it committed itself to removing discrimination in time

The union, however, pressed for an order requiring the immediate elimination of discrimination and said it was prepared to take to arbitration any alleged breaches of that order. The union pointed out that it had been seeking an end to discrimination since negotiations began in 1984

In finding for the union, the court felt "there should certainly have been greater efforts by the respondent to remove the discrimination which itself acknowledges to exist and which it would not be beyond the capabilities of its management to ascertain" ■

INDUSTRIAL COURT

Finding stings

Sentrachem, seriously concerned by the Industrial Court's finding that it was guilty of two unfair labour practices, looked like taking it on review to the Supreme Court

The grounds had not been announced as the *FM* went to press, but the company seems stung by the finding — which it rejects — that it practised wage discrimination against blacks (see **P59**) It also rejects the court's criteria for legal strike action and fair dismissal of striking employees

The SA Chemical Workers Union (Sacwu) alleged two main unfair practices· wage discrimination and failure to re-employ strikers in a strike the court found to be

"legitimate" This is the first time wage discrimination has unequivocally come before the court Dr David John, presiding, "required" the company to redress (before the end of August) the lower wages it pays black employees doing the same jobs as other workers — unless length of service is a factor.

Sacwu, an affiliate of the National Council of Trade Unions, described the order against Sentrachem as "a major victory against racism" Such discrimination on the shop floor, says secretary Humphrey Ndaba, means it is ridiculous to expect unions to remain aloof from politics

The second order requires the company to reinstate workers who were sacked during a wage strike in 1986

The court's rulings are not binding and, while there is no appeal, they may be taken on review to the Supreme Court According to a labour lawyer, the Supreme Court doesn't like overturning industrial court findings

The Sentrachem case stemmed from a nine-week wage strike that began on May 12 1986. The company issued dismissal notices on July 8 (terminating the employment *contracts*) and offered to re-employ any applicants by the deadline on July 15 (which marks the end of the employment *relationship*).

The re-instatement order reaffirms the principle of industrial court protection of workers who take legal strike action — however much the strike may strain the employer's patience The suggestion is that the employer may not terminate the employment *relationship* (as opposed to the contract) in such an event, unless the correct procedures have been followed

In this case, there was selective re-employment (an unfair practice) when the union rejected the company's terms of re-employment on July 15 1986. Since that date, selective re-employment changed in "a chameleon way" to redundancy consequent on company reorganisation The union is not happy about this

The court decided that any retrenchment affecting the ex-employees or other black workers shall be conducted mainly in terms of procedures agreed on between the company and Sacwu last May The union, which says it does not have confidence in the court, is also unhappy with the condition that ex-employees re-apply by March 31 because members are scattered and it will be difficult to contact them in time

In explaining the re-instatement order, the court said that the question is *why* the employer terminated the employment relationship, not whether — objectively speaking — there were reasons for doing so This distinguishes the position in labour law, from what it would be under the law of contract under common law So the case had less to do with the legality of the strike (which was stoutly argued) and turned on the correctness of procedures of retrenchment and dismissal

In terms of the court's ruling, those reinstated are entitled to eight weeks' back pay It also means that although workers may since have become redundant, retrenchments must adhere to procedures agreed to by the parties last May

If retrenched, the service of the employees shall be counted from the day they first started in that service Their severance benefits "shall be in accordance with the last offer by the company to the union on this subject" Thus, retrenched employees will.

- ☐ Be given formal notice in terms of the applicable statutory notice period, plus one month They will be granted pay for that time,
- ☐ Be paid one week's wages for each completed year of service,
- ☐ Be paid their contributions to the pension fund, plus 6% compound interest, increased by 100%, and
- ☐ Their annual bonus on a pro rata basis

The re-employment of the 17 applicants not re-hired for disciplinary reasons will be subject to hearings

Meanwhile, Cosatu's lawyers are working flat out preparing a legal challenge to the restrictions government recently placed on the union federation Papers could be in court before the weekend ■

Key judgment on discrimination

Own Correspondent

JOHANNESBURG. — In a key judgment the Industrial Court has ruled that racial wage discrimination is an unfair labour practice and has given the offending company six months to eliminate it.

And, in ordering the reinstatement of several hundred workers, the court also appears to have significantly strengthened the right to protection from dismissal for workers involved in a "legitimate" strike.

The case of the SA Chemical Workers' Union (Sacwu) v Sentrachem, presided over by Dr D G John, arose out of a nine-week wage strike by 3 000 workers between May and July 1986 at seven of the chemical giant's plants. Management had issued dismissal notices on July 7, with an offer of re-employment to those who returned by July 15.

About 400 to 500 were not taken back — most because management said a restructuring of operations meant they were redundant. Seventeen were not rehired because of alleged disciplinary offences during the strike.

Six months of negotiations, and the implementation of conciliation procedures, failed to resolve the wage dispute in which — at the time of the strike — the union was demanding a R250 increase on the minimum R400 monthly wage while management was offering a R470 a month minimum.

Sacwu also demanded the elimination of racial wage discrimination, which it said was prevalent in the company.

In the judgment delivered last Thursday, the court ordered that Sentrachem eliminate discrimination by August 31.

The court defined discrimination as a situation where wages paid to black employees are lower than wages paid to other workers doing the same work — unless the difference is due solely to length of service in the job.

R1,5m first step

While there was some disagreement between Sacwu and Sentrachem on their definitions of the concept, evidence led by the company during the hearing was that it would cost R4 million to eliminate discrimination fully.

During negotiations Sentrachem had agreed to set aside an immediate R1,5 million for that purpose as a first step towards eliminating wage discrimination over a period of time.

The court noted that Sentrachem representatives had acknowledged discrimination existed and was morally indefensible.

It said there should have been greater efforts by the company to remove it.

The court also ordered the reinstatement of 400 to 500 workers and payment to them of eight weeks' backpay.

The most important and far-reaching reason given was that since the law grants unions and lawful strikers immunity from penal and civil sanctions "it would be anomalous if workers were nevertheless penalized by dismissal for striking".

Lawyers sceptical of proposed special labour court of appeal

165 B/Day, 26/2/88

HELEN CHAPPEL

A SPECIAL labour court of appeal — chaired by Supreme Court judges — would be a retrogressive step, going against a fundamental rationale behind the reforms initiated by the Wiehahn Commission

This is the view of lawyers approached for comment on a recommendation for the special labour court in the Labour Relations Amendment Bill.

Those spoken to felt the step would restore the resolution of labour disputes at appeal level to the more conservative lawyers and take it away from specialised labour experts.

The existing industrial court system effectively recognised an international trend to deal with labour disputes in a specialised way.

A labour attorney said "Common law courts are generally 'hostile' to the developments in labour law jurisprudence

"For this reason, in the rest of the world, these cases have been removed from the ordinary courts and placed in the hands of specialists accustomed to notions peculiar to labour law, such as 'equity' and 'collectiveness'.

"The labour law jurisprudence — or legal philosophy — which has developed over the last five or six years in SA would be eroded by the appointment of Supreme Court judges to the special labour court."

Sympathetic

The expert added that there was a possibility of the judges being sympathetic to "conventional" labour law and allowing it to develop But the expectation was that this would not happen and judges would be randomly allocated by the Judge President

Another attorney said that it would be unwise to restrict representation before the special court to advocates because this would increase litigation costs On a more optimistic note, the special court would offer the opportunity for appeal from industrial court decisions which were formerly final.

The advantage of having judges preside in a special labour court was that they would lend it a status not enjoyed by the industrial court — though it would be best to select the presiding officers for both levels of court from a single "bench"

Assocom manpower secretary Vincent Brett commented "Assocom has been calling for a long time for the industrial court to be given Supreme Court status. The concept of bringing Supreme Court judges into the special labour court is something we welcome — albeit only for appeals.

Expertise

"It can be assumed there won't be different judges at every sitting of the special labour court, and the selected judges may be given time to develop an expertise in the labour field"

A criticism of the planned introduction of a special labour court to hear appeals from the industrial court is that the two courts fall under different government departments.

Institute for Industrial Relations executive director Mike Miles said "Although the industrial court still falls under the control of the Department of Manpower, its decisions will be enforceable through procedures executed under the Department of Justice".

The registrar of the industrial court — employed by Manpower — would also be registrar of the special labour court, under Justice

Miles said the Bill improved on earlier drafts because, "under the earlier draft, an unresolved dispute could be referred to either the industrial or special labour court, which would also hear appeals

"The new Bill restricts the function of the special labour court to appeals only, so there will be less 'grasshopping' between the labour courts"

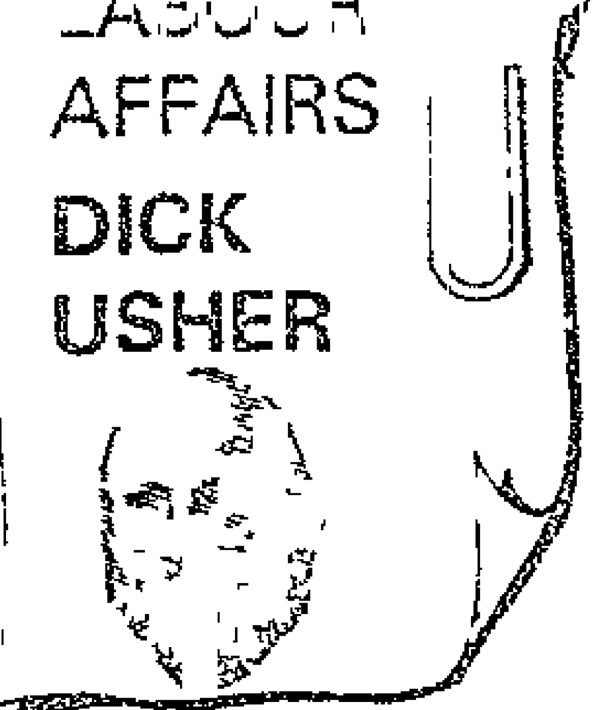
The backlog of cases before the industrial court would not be eased by the special labour court The delay in getting a case before the industrial court four to six months

Bryan Milner, sales and marketing manager of Rebsons.

Mike Tagg, general manager, precious metal operations of Gold Fields South Africa.

LABOUR AFFAIRS

DICK USHER



— the times they are a-changing

MANY employers have in the past few years found themselves facing actions for unfair dismissals

In many cases they come across all injured innocence and blame "the union" for "stirring things up"

"We know we'd win if it went to Industrial Court, but that's going to cost too much It s a form of blackmail The union knows it will be cheaper for us to settle than fight the action so they take a chance and go for unfair dismissal," is a very common reaction

But in many cases employers could save themselves a lot of trouble if they took more care with their hiring practices in the first place A case in point was the employer who fired a worker because he'd given a policeman uphill and the employer decided he didn't need that kind of problem

SOMETHING OF A NUISANCE

The dismissal was, on the face of it, both substantively and procedurally unfair. It didn't reach court because a settlement was made, but further information was that the employee was something of a nuisance all round and even his fellow workers were relieved when he went

However, it could all have been avoided if the employer had taken the trouble to do some basic checking on the person's record before hiring him

Times have changed In the old days (some would say good old days) job protection applied mainly to white skilled workers, represented through craft unions The workers' powerbase was their skills and one of the main ways in which unions protected jobs was through limiting the number of available artisans with these skills

This had the incidental effect of ensuring relatively high wages and job security for skilled workers

The employer still had the power of arbitrary dismissal, but faced with a skills shortage tended to be rather cautious in exercising that power

In a sense, the protections against dismissal were there even before you had a job The protections were in the barriers against easy entrance to a job

For unskilled workers no such restraints applied and those who didn't perform adequately, or stepped out of line, or had unfortunate faces, found management s prerogatives swiftly exercised and themselves looking for a job

RESURGENCE OF UNIONS

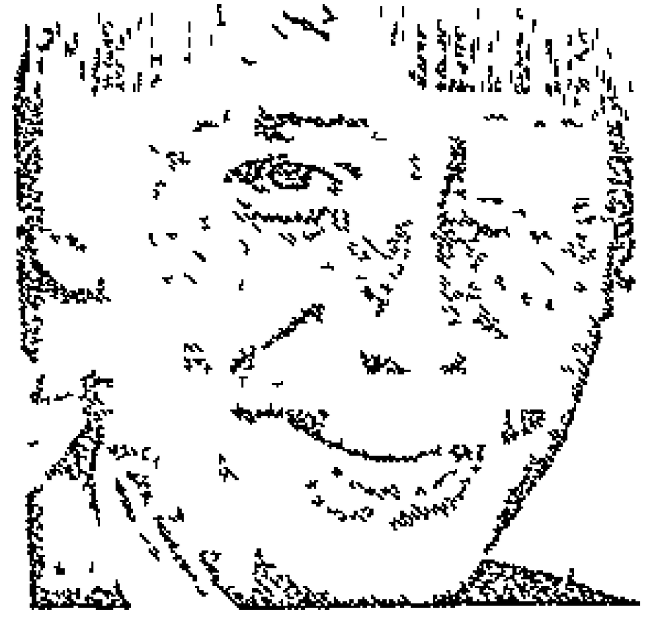
But with the resurgence of the union movement, followed by the new labour dispensation, a profound change has come about Membership of the "new" unions is mainly unskilled and semi-skilled workers and their powerbase is in numbers rather than skills This is speaking generally, because there are many exceptions, workers with skills whom employers would find difficult to replace at short notice

Backed by the unair dismissal and unfair labour practice concepts in the Industrial Relations Act, they have whittled away at what management traditionally regarded as its prerogative to hire and fire Especially fire

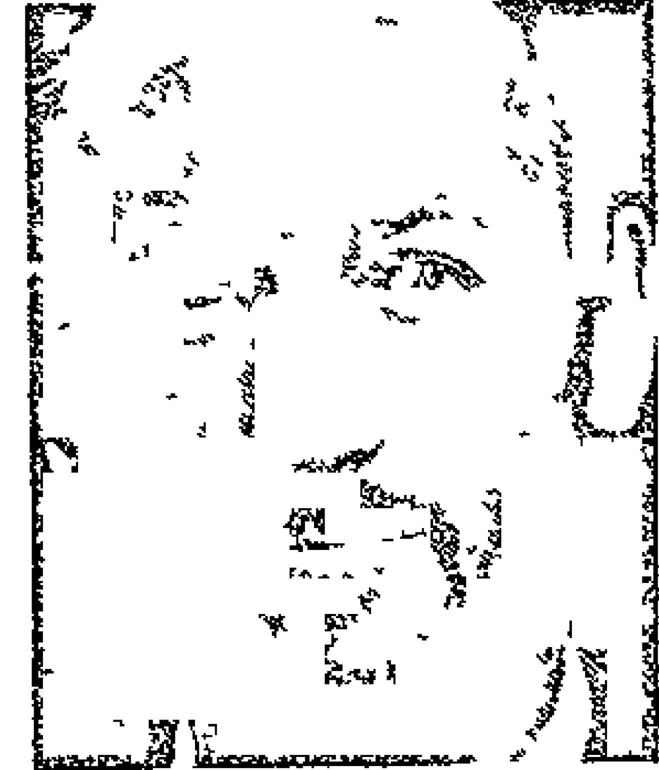
They have used their powerbase and the law to persuade often unenthusiastic managements into agreements that include dismissal procedures and disciplinary, grievance and retrenchment procedures

They've also acted against selective rehiring after mass dismissals for industrial action and sought protective procedures for rehiring retrenched workers.

The barriers are now much stronger at the other end of the process — the exit.



Peter McBride, branch manager of M-Net's PWV branch office.



Richard Robinson, manager commercial division of Gold Fields South Africa

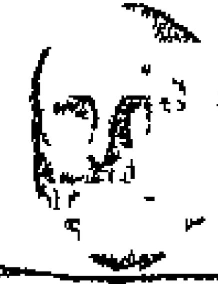
6/2/86

165

W/E Argus 23/1/88

Busy year for unions, employers

LABOUR AFFAIRS
DICK USHER



ALL the signs are that it is likely to be a busy year on the labour relations front

Not only will unions be maintaining the pressure on economic issues and defending those gains they've already made, but the question of freedom of association in the public sector is still outstanding, there are major changes to the Labour Relations Act in the offing and the pressures for holidays on Sharpeville Day, May Day and Soweto Day will probably intensify

All of these, and others, are issues on their own But in the nature of things in South Africa today they are also bound together

Their economic gains are seen by the unions as a result of working class organisations which have been created

But the Labour Relations Amendment Bill and other legislation such as the Temporary Removal of Restrictions on Economic Activity Act are viewed as direct attacks, a State backlash, against the gains and the institutions

The Bill is seen as a major attack on the right to strike and on working class unity in that, in its present form, it will outlaw sympathy strikes and other support actions by unions

Other areas where unions feel these are under attack are the Government's proposals for privatisation of State-owned and parastatal industries and moves to end subsidies on basic food items such as bread

Given that wages are continually being eroded by inflation, it is highly possible that legislated moves to limit organisation — and therefore further economic gains — will be strongly resisted

At the same time, if last year's pattern continues, many employers are going to show tougher responses to potential or actual strike action

Major areas of confrontation will probably be the public sector and the mines

The opening salvoes in what promises to be a long and hard battle for the right to organise public sector employees were fired last year with the South African Transport Services (Sats) and Post Office strikes

A commission under Professor Nic Wiehahn has made recommendations about employee organisation in Sats, but these have yet to see the light of day

The public sector occupies a central position in the overall economy and employs many thousands of workers The issue of their organisation is not going to remain dormant

So another major strike is possible

Although the outcome of the miners' strike last year was hailed by some as a victory for South Africa's industrial relations system, not only is this system likely to change if the proposed Bill passes Parliament, but there are several issues outstanding which the National Union of Mineworkers will certainly take up again this year

New Bill threat to Wiehahn reforms

ARGUS 21/1/88 (132/165)

By DICK USHER, Labour Reporter

MAJOR labour legislation due to go before Parliament this year will in effect kill many of the advances made by the Wiehahn labour reforms of 1979.

If the Labour Relations Amendment Bill is enacted it will:

- Severely limit the right to strike,
- Make a wide range of strikes illegal,
- Introduce the possibility of unions being sued for damages resulting from industrial action,
- Undermine the principle of the majority union at a workplace having the right to negotiate for the whole workforce,
- Restrict the powers of the Industrial Court to make law, and
- Legalise unfair dismissals and retrenchment in some cases

The Bill has been criticised as a recipe for chaos by the labour movement, management and union labour law specialists and industrial relations experts

INTRODUCED IN 1986

It was first introduced in 1986 and republished in slightly amended form in September last year in what some observers see as a Government response to conservative demands for curbs on unions, especially after last year's public sector strikes in the Post Office and SA Transport Services.

Spokesmen for both major union federations, Cosatu (Congress of South African Trade Unions) and Nactu (National Council of Trade Unions) this week criticised the Bill as reversing the achievements of the Wiehahn reforms

Nactu said it aimed to curtail union activity, support employers and control union use of legal provisions which they had used to advantage

Cosatu said there did not appear to be many benefits for those who followed the provisions of the Bill and stayed within the system

A Cosatu spokesman said: "This will make it even more difficult for unions to channel worker militancy within the framework of the requirements of the Act than it is at present," he said

RIGHT TO STRIKE LIMITED

Provisions which are considered most harmful are limitations on the right to strike, the dilution of the limited protection against dismissal for legal strikers that Industrial Court judgments have established and the removal of unions' indemnity against damages claims

An amendment to Section 65 of the Act bans strikes or lock-outs "if the employer or employee is not directly involved" in a dispute, outlawing sympathy strikes

If a dispute is "virtually the same" as one which has led to industrial action in the past 12 months a strike would be illegal.

A new section 79 provides for union liability for damages caused by forms of industrial action and requires the union to prove it was not involved.

A Cosatu memorandum on the Bill calls this "the most threatening provision"

(Turn to page 3, col 6)

Law seen as 'recipe for chaos'

ARGUS 21/1/88 (132/165)

(Continued from page 1)

A new Schedule I extends the definition of an unfair labour practice It withdraws protection from employees with less than 12 months' service and undermines the principles for a fair dismissal developed by the Industrial Court

LENGTHY DELAYS

A special labour court, proposed in clauses added to section 17, would remove the Industrial Court's right to sit as a court of law and sets up appeal processes which lawyers say will substantially increase litigation and therefore costs

They could also lead to delays in obtaining relief

Critics fault the Bill for several provisions which bolster the position of minority unions and for permitting racial unions to register without non-racial unions being allowed to object

The Bill, now with the Standing Committee on Manpower, is seen by unions as attacking them

But a leading labour lawyer said: "It would be more accurate to describe it as subversive of a coherent and effective collective bargaining system"

15/1/88 (165) FM

ADAMANT OCHSE TAKES ON *RAPPORT*

Serious behind-the-scenes efforts are being made by the powerful Nasionale Pers bosses to keep clear of an Industrial Court (IC) tangle with a dismissed employee of the Afrikaans Sunday paper *Rapport* (*Current Affairs* November 13 1987).

But former Sportswriter of the Year Charles Ochse, fired last year by *Rapport* editor Bob van Walsem for alleged "gross insubordination," is determined to seek redress from the IC and a court date has been set for February 3

A delicate legal issue surrounds what promises to be not only a landmark case in the Afrikaans journalistic world, but could also turn out to be a mud-slinging contest highly embarrassing to *Rapport* and its mother companies, Naspers and Perskor

Ochse claims 15 years' worth of employer contributions to his pension fund, accumulated leave and unemployment insurance This represents a delicate problem because Perskor — of whose pension fund Ochse had been a member — says Ochse's dismissal is solely *Rapport*'s baby

Mother companies

However, *Rapport*'s profits are shared by the two mother companies, so the question is who will foot the bill for Ochse's injured ego?

In the latest papers handed in to the Registrar of the IC, Ochse says "My dismissal virtually means an end to my career in journalism "

Ochse may become to Afrikaans journalists what Mona Tuck became to SABC employees

It is understood that instructions had already been issued to senior staff by Naspers's Johannesburg daily, *Beeld*, to act correctly in dealing with industrial matters And at *Rapport* all staff members overstepping the line are now being warned by letter

Whatever the outcome, in the end it may not help Ochse much For his crusading may have the effect of merely antagonising Naspers and Perskor, the two main employers of Afrikaans journalists

points raised ...

As indicated earlier a comprehensive comment on the Draft Labour Relations Amendment Bill will be made available to you in March, 1987.

Yours faithfully,

A.J. VAN DER WATT.
CHAIRMAN.

Reinstatement for Robertson workers after written judgement

W/C ARGUS 30/4/88 (165)

WRITTEN judgment was recently handed down in the case in which the Industrial Court ordered the reinstatement of 80 workers dismissed from Cape Lime, Robertson, after they took part in a strike.

The dismissals followed a series of industrial actions at the plant in 1987.

These actions involved, among other issues, demands for management intervention over the detention of a national organiser of the Chemical Workers' Union and a strike in sympathy with union members on strike at Sasol

"Fairness"

On one occasion a form of disciplinary inquiry had been held after which workers were given "final written warnings" and the dismissals followed another strike in November.

In his judgment the presiding officer, Mr P Roux, said he took into account the "reluctance ... of the Industrial Court as a matter of policy to come to the relief of persons engaged in unlawful strike action".

Unlawful

"But even if the actions ... may have been unlawful, regard still has to be had to both the fairness of ensuing procedural steps and the fairness of the sanction."

He considered in particular "the failure or refusal of the respondent (Cape Lime) to respond or timeously to respond to a request by shop stewards in respect of alleged assaults by the police of fellow union members at Sasol".

Failure

Also "the failure (notwithstanding an avowed intention to negotiate collectively with the union) to negotiate concerning the nature of the procedural steps to be taken against the members of the union ... and particularly whether such persons

should be dealt with individually or collectively and whether they should be individually or collectively sanctioned for their behaviour".

"40 years"

Mr Roux said that the decision, unilaterally taken, to implement for collective industrial action a disciplinary code which had probably been designed to deal with individual transgressions smacked of "paternalism in the unfavourable sense of the word"

Stoppage

It was also important that the company was not faced with a continuing work stoppage which could not be abated, nor was it accompanied by an unreasonable demand, that the stoppage had apparently been peacefully conducted without any "criminal or delictual conduct; and that the applicants had periods of long service with the company, in some instances between 23 and 34 years' service with one worker having "devoted a working life time of 40 years" to the company.

"Although regard had been given to previous transgressions in the disciplinary inquiry, apparently no regard was given to individual periods of service," said Mr Roux

Disrupt

Also, the cause for the work stoppage was not "in the nature of a planned or concerted effort to generally disrupt industry"

Mr Roux also said that if the union official involved had been "timeously consulted and had negotiations with the union ensued, the nature of the disciplinary inquiry would have been different and ensuing sanctions would possibly, if not probably, *not* have resulted in dismissal."

Industrial court cases: 3 900pc increase

D10 7/5/88 (165)

EAST LONDON — The number of cases set to appear before the South African industrial courts has risen by almost 3 900 per cent since 1983, to 9 000 cases this year, an industrial relations consultant, Professor Andrew Levy, said.

Prof Levy, who will be presenting a practical seminar in industrial relations for legal professionals in July and September, said litigation was set to play a "crucial role in the local industrial relations scene"

"We aim to promote an understanding of the economics of wage bargaining and the way in which unions use power in negotiations, as well as to examine the role of legal stratagems in power plays," he said — DDR

15 Mwasa members are reinstated

Sowetan 17/5/88

FIFTEEN Media Workers' Association of SA members retrenched by Sherman Sales management last year, have been reinstated by the Industrial Court.

Mwasa's general secretary, Mr Sthembele Khala, said the Industrial Court has ruled that these members' retrenchment "constituted an unfair labour practice given the circumstances under which they were effected "

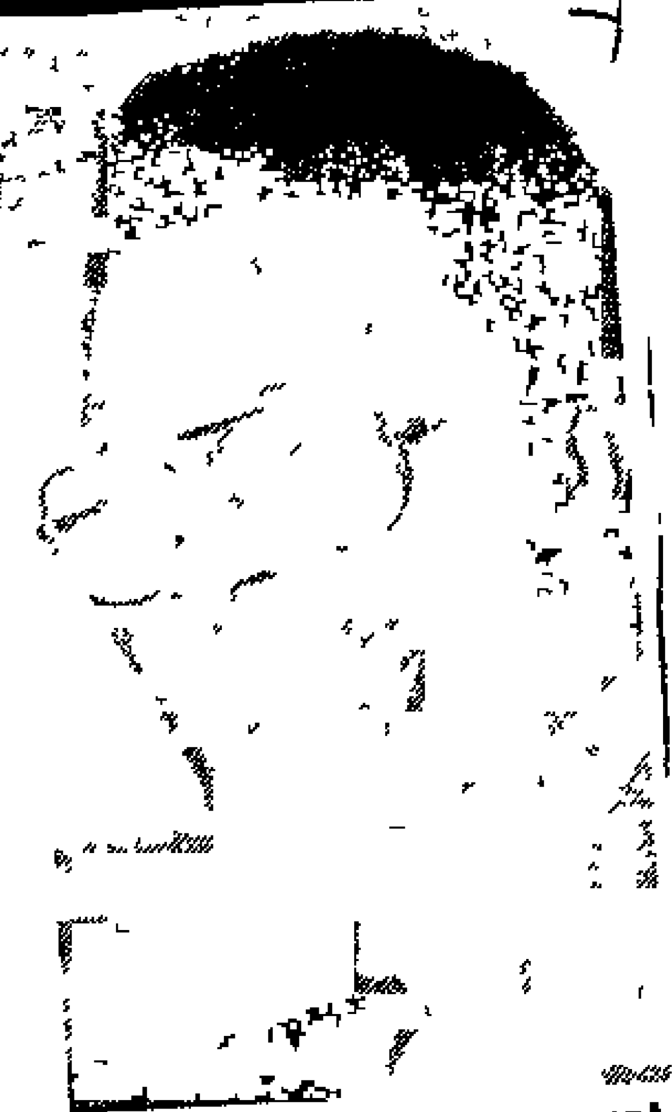
The Mwasa official said the 15 were victimised for joining the union The court ruled that these members should be compensated for six of the 15 months they were out of work

Mr Khala said "Mwasa appreciated the co-operation and perseverance of the workers Our top priority is to service and safeguard the interests of our members, to this end Mwasa would fight bitterly "

Meanwhile talks between Mwasa and Perskor newspaper group are scheduled to take place today.

The wage negotiations are a sequel to a work stoppage by about 2000 Mwasa members who downed tools at four Perskor plants on the Reef last week.

Mwasa members participated in a work stoppage in support of their wage demands The stoppage was called off pending fresh talks between the two parties



MWASA'S general secretary, Mr Sthembele Khala.

Cape Times 18/5/88 (165)

'Labour revolution' in industrial courts

IN what has been described as a "labour revolution", the industrial courts are set to hear 9 000 cases this year — a 3 900% increase since 1983

According to Mr Andrew Levy, managing director of a Johannesburg-based industrial relations and training organization, the industrial courts are one of the enduring institutions to emerge from the 1983 Wiehahn labour reforms

"Apart from intervening in the wage-bargaining processes, they have brought about a whole new set of standards for relationships between employers and employees by introducing checks and balances to the previously unfettered power of the boss," he said, describing this change as a labour revolution

The bulk of cases handled by the industrial courts were cases of unfair dismissals brought by individuals and non-unionized employees

For every case that appeared before the court, there were probably five or six which were settled before they reached court

Latest NMC emerges more streamlined

Cape Times 27/5/88

165

Political Staff

THE newly reconstituted "fourth" National Manpower Commission (NMC) has emerged in a considerably trimmer form than the previous NMCs. Excluded from representation are the state departments, the academia and the main black union movements.

Providing details of the new NMC membership in a statement released in Parliament yesterday, Manpower Minister Mr Pietie du Plessis said the smaller commission — whose function is to advise the government on any labour matter and developments in this area — will afford members the opportunity of discussing problem areas in greater depth.

Although there is a disadvantage that not all interest groups will now be represented on the NMC, Mr Du Plessis said the objectitive is that members do not represent their organizations, but serve in their personal capacities on the NMC.

"Furthermore, steps will be taken to involve all interest groups where possible in the activities of the NMC," Mr Du Plessis promised

He said that it was a matter of high priority to appoint the NMC from nominations which were submitted by various interest organizations, but certain unspecified orgainzations were not prepared to make nominations.

Union appeals to court against minister's ruling

Supreme Court Reporter

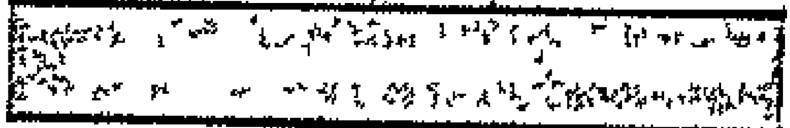
THE South African Chemical Workers' Union lodged papers in the Supreme Court yesterday in anticipation tomorrow of an urgent application asking that the Minister of Manpower exercise his discretion to appoint a Conciliation Board to mediate in a dispute.

In April this year the Industrial Court reinstated 80 illegally striking Sacwu members — all employed at Cape Lime. They were dismissed following a sympathy strike in November after fellow union members at Sasol had allegedly been assaulted by police during a strike.

The union would ask that the minister show cause why a decision made by him on June 9, not to approve the establishment of a Conciliation Board to mediate in the dispute, should not be reviewed or set aside.

165

Cape Times 30/6/88



Unions set for 'growth'

Own Correspondent

JOHANNESBURG — The most important development since the introduction of the 1979 labour reforms was that workers had turned into human beings in the eyes of employers, the architect of the 1979 legislation, Professor Nic Wiehahn, said yesterday

Speaking at the public launch of Webber Shepstone Findlay, a new law firm specializing in labour law, Prof Wiehahn said the 1990s would see a further growth in unionization

New system 'costly and slow'

Star 22/7/88

(165)

BY ADELE BALETA

The Industrial Court, initially greeted with scepticism, has gained increased acceptance. Now it is to undergo changes

When the Industrial Court was established in 1979 in response to the Wiehahn Commission recommendations, it was regarded with scepticism by both capital and labour

The labour movement viewed the entire Wiehahn dispensation as an effort aimed at co-option into the system while managment felt that the Industrial Court would result in a lessening of their powers

Almost 10 years later the court has gained increasing acceptance with both parties as an arena where managment and labour can fight out disagreements and reach a settlement

According to Andrew Levy and Associates, less than 500 cases were heard by the Industrial Court in 1983 This year, the court's caseload has been increased to over 8 000

The majority of decided matters processed by the court (over 66 percent) were handled in terms of the status quo (interim relief from unfair labour practices) provision of the Labour Relations Act Final determinations accounted for 26 percent and others 7,9 percent.

However, the court is bowing under the pressure of the workload because of a drastic shortage of personnel It has also been criticised for the quality of findings made by some part-time members

The court is presently staffed by four fulltime members based in Durban, Cape Town, Johannesburg and Bloemfontein

Johannesburg member, Advocate E Bulbullia, said the courts could rely on between four and five ad hoc members They were mainly lecturers and professors who were not practising advocates, he said

"Our problem is attracting labour law fundis"

He said advocates who presided over Industrial Court cases could expect to be paid only R200 a day

Mr Bulbullia said costs were another problem to be tackled "They need to be flexible and reasonable to keep the doors of the courts open"

The Industrial Court is soon to undergo changes when the Labour Relations Amendment Bill is passed

Some labour law observers believe that instead of solving court problems, the new procedures would be more time-consuming and more expensive

Others, however, feel that the changes would have the effect of increasing the court's status, power and effectiveness

The amendments, some say, would result in a further departure from the initial idea of the court — to relieve pressure on general courts, to enable quicker and cheaper judgments, making access available to all

The establishment of an Industrial Appeal Court over which a Supreme Court judge would preside, has been slated by some experts who say it could take up to two years to settle cases

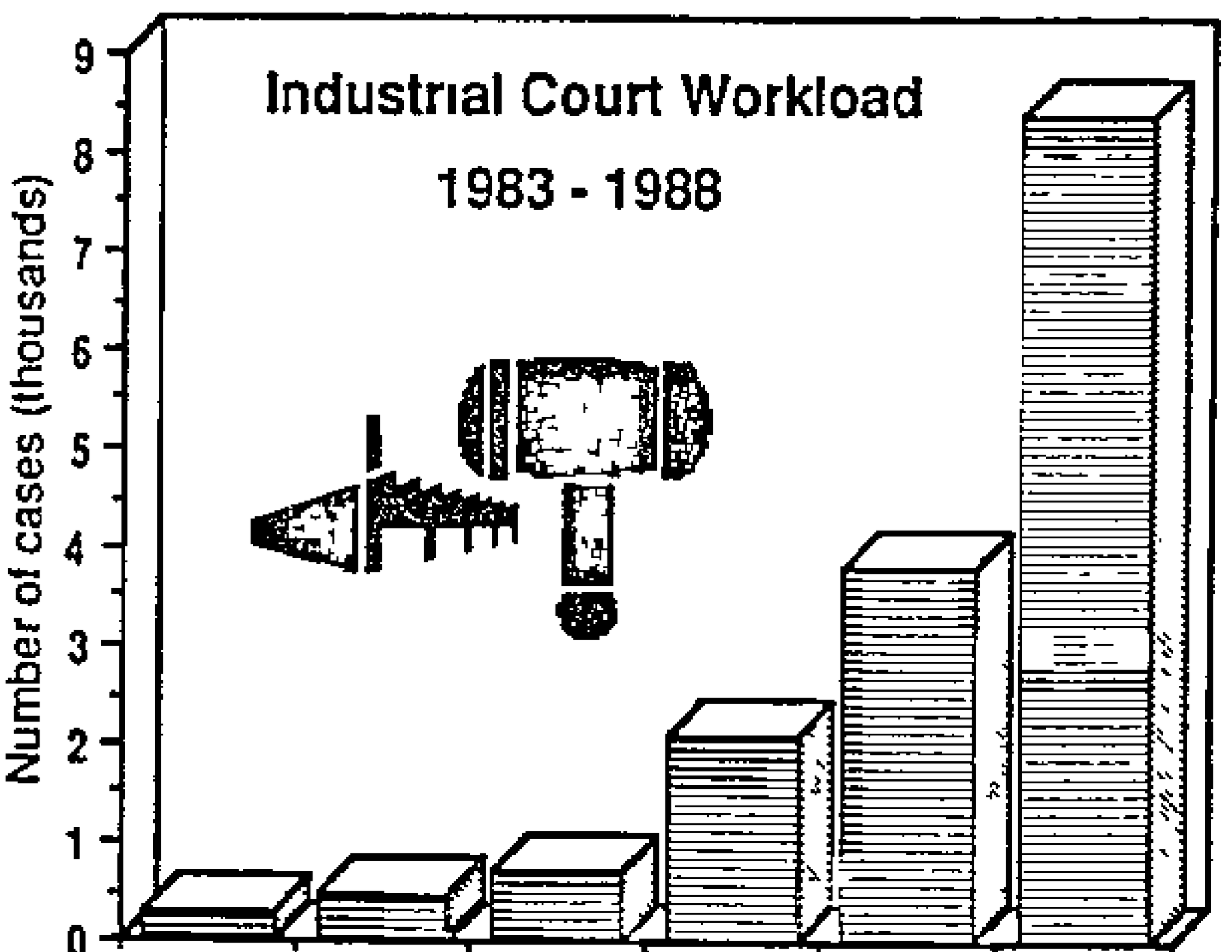
The cost of litigation would increase dramatically and place pressure on an already overworked Supreme Court

Senior research officer of the Centre for Applied Legal Studies, Mr Paul Benjamin, said the selection of one judge with set views could have an impact on settlements

If selection was varied on a rotational basis, major cases could be lengthened as judges who were not familiar with labour law would have to be taken through the basics This, he said, could also result in higher costs

Leading labour lawyer, Mr Edwin Cameron, said at a recent labour conference that the controversy surrounding the provisions of the Labour Relations Amendment Act indicated the extent to which union's treasured gains secured under the Wiehahn dispensation

'Unions would not fight to preserve a dispensation which has proved to hold nothing of value for their members, while employers would not fight to change a dispensation which did not at least in some ways imperil their interests"



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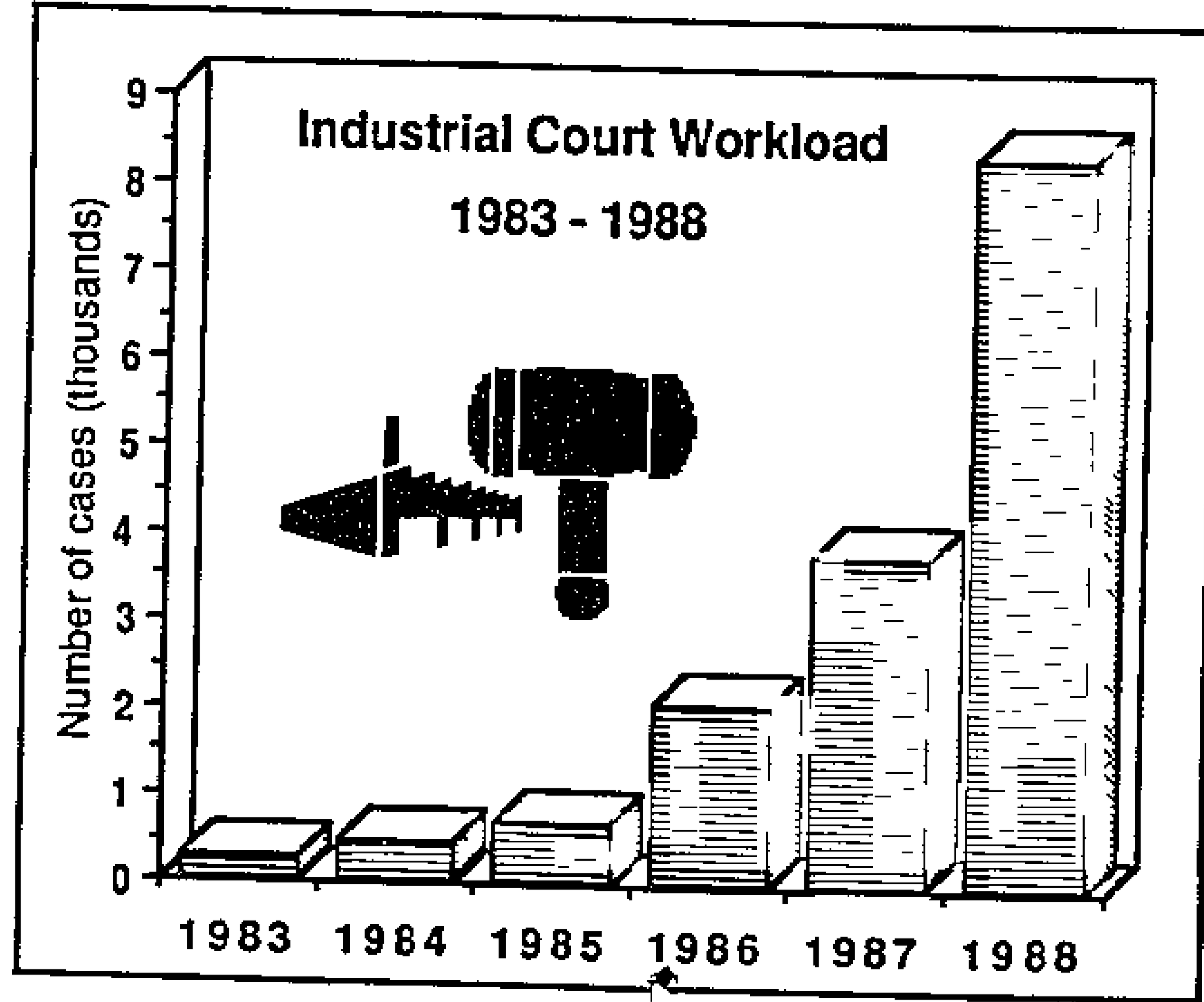


(165) W/Mail 22-28/7/88

If the labour courts can't cope, disputes could shift elsewhere

A labour law conference talks of likely responses to changes in the labour laws, such as an exodus from the industrial court process. CARMEL RICKARD reports

DISILLUSIONMENT with the industrial courts, so overloaded they are unable to cope with all disputes, may lead many to avoid the courts altogether

This was one of the major trends to emerge from last week's labour law conference at the University of Natal, Durban, organised jointly by the university's Centre for Socio-Legal Studies and the Centre for Applied Legal Studies at the University of the Witwatersrand

Commenting on the conference, director of the Centre for Socio-Legal Studies, Chris Albertyn, said he felt there was a recognition the industrial court could not cope with the resolution of all disputes before it During the conference he had discerned a strong feeling that private labour arbitration had a significant role to play

He added, "If the state is going to compound the complexity of dispute resolution mechanisms, which appears to be the case, then parties must look to the regulation of all their disputes outside of the Act and to the possibility of contracting out of the act entirely "

Albertyn believes the effect of such a contract could be that unions might waive the right to strike in rights disputes (such as alleged unfair dismissals and agree on such issues being settled by arbitration

In return they could be given protection from dismissals on strikes over other issues, such as wages and working conditions In effect, this would mean they had a right to strike on such issues without endangering job security

"This kind of arrangement is quite possible and a number of companies seem to be investigating this idea It would make for a much simpler procedure and clarity over rights in the event of a dispute In those circumstances, the role of the industrial court would be to bring those employers and unions which refuse to bargain collectively within the process of collective bargaining "

An industrial relations lawyer who specialises in advising management said the conference was "extraordinary" in bringing together such a large group of managers and unionists, as well as management and union lawyers

He agreed there seemed to be a trend towards an increasing use of arbitration and that among his own management clients there was a growing tendency to prefer using private arbitrators instead of the industrial court, "partly because the industrial court is so busy"

The general secretary of the Chemical Workers Industrial Union, Rod Crompton, said the advantages of private arbitration as a speedy way of resolving disputes were "aired" at the conference

"There was also a lot of interest in creating a system of handling disputes outside the Labour Relations Act "

Asked whether he thought it possible the unions might be prepared to waive the right to strike on some issues he said it was "too early to tell"

"In a crude way employers are already trying to do this in some cases, with a demand for a 'peace clause' However, there has so far been a paltry quid pro quo

"However, as management's return offer becomes more realistic, there is a possibility both sides could reach an agreement on this issue "

In a paper suggesting the possibility of such a contract between management and unions outside of the act, Clive Thompson, the director of the Labour Law Unit, University of Cape Town, said such a system "would allow for both fair and orderly trials of strength on a periodic basis in respect of wages and working conditions"

"The objective is to extend an effective right to strike consistent with international norms and unencumbered by the provisions of statute

"To that extent, one is attempting to anticipate and contribute towards a future society which is both more pluralistic and democratic than the present order

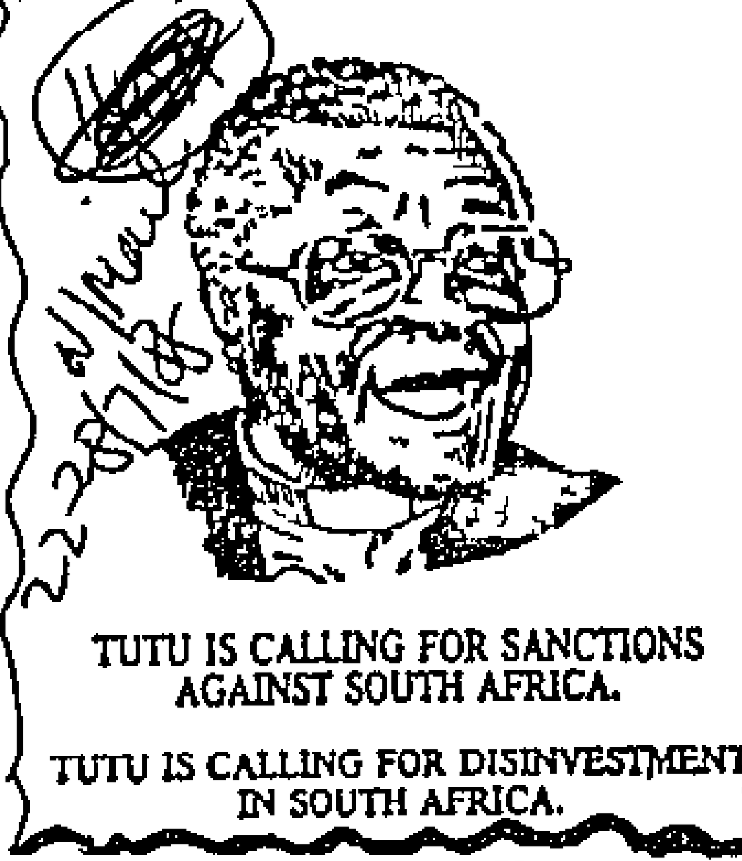
"By giving protection in the area of core bargaining topics, the expectation is that unauthorised industrial action can be discouraged and curtailed "

The gossip is juicy, the facts ... imaginative

By EDDIE KOCH

A NEWSLETTER which recently hit the streets with promises to publish hot-off-the-press gossip about labour leaders every month, has sparked a pamphlet war between the anonymous publication and trade unions.

Under the masthead *SA Trade Union Monthly Titbits*, the latest edition of the newsletter claims that Archbishop Desmond Tutu spent 73 days of the first 151 days this year campaigning for sanctions "instead of praying for his congregations"



Titbits on Tutu

Other pieces include reports that the 70 000-strong Food and Allied Workers' Union (Fawu) "is falling apart because of internal corruption" and that last month's stayaway was a failure because "black workers don't need Indian Jay Naidoo to run their lives".

Naidoo is general secretary of the South African Congress of Trade Unions (Cosatu).

Thousands of copies of the newsletter have been distributed in major centres, says Cosatu press officer Frank Meintjies. *Titbits*, he says, is just the latest in a spate of smear pamphlets.

The smear campaign was high on the agenda of Cosatu's recent central executive committee (CEC) meeting where it was reported that an average of three different pamphlets are being distributed every week in what appears to be a co-ordinated attempt to undermine the Cosatu leadership.

Allegations in *Titbits* that Fawu's general secretary stole R15 000 from union funds and that other union officials had been caught with their hands in the till have prompted the union to lay defamation charges with the police.

Another counter-measure has been to issue thousands of pamphlets that reply to the smears in *Titbits*.

The accusations against the leadership of Fawu, the third biggest affiliate of Cosatu, came at a time when the union was experiencing serious internal divisions that erupted over the misuse of funds that should have been used to support striking workers at the Spekenham factory.

After the publication of *Titbits*, Fawu responded with a counter pamphlet confirming that the organiser responsible for the funds had been dismissed and stating that the union had drawn up a strict leadership code which provides for immediate dismissal of union officials involved in embezzlement.

W/Mail 29/7-4/8/88

THE ECONOMY

Out to sea means out of court for oil men

The Industrial court rules that workers on an oil rig off-shore are not protected by the Labour Relations Act because they are outside South Africa CARMEL RICKARD reports

SOUTH AFRICAN riggers off the coast of the Republic have no right to the protection basic labour legislation

The vulnerable position of workers on oil rigs drilling for gas has been shown in an industrial court judgement which ruled that the riggers were beyond the protection of the court

In terms of the ruling the court has no jurisdiction to intervene in a dispute between riggers and employers The Labour Relations Act doesn't apply to workers on rigs which all technically operate outside the country

The court was asked to intervene following a dispute between workers and Sopelog, the company which manages the rigs drilling for gas off Mossel Bay and the west coast

The workers who are members of the Chemical Workers Industrial Union, were objecting to the company's attempts to introduce new conditions of employment some months ago

During the case, Sopelog lawyers conceded that the workers were employed in Cape Town where the company was based that they were paid in rands and that the staff — who work two weeks on and two weeks off — were taken back to Cape Town during their off duty periods as most live in or near the city

However, despite these concessions, the lawyers argued that the oil rigs operated outside South Africa's "territorial waters" which extend 12 nautical miles off shore

They said that since the rigs operated outside South Africa, the Labour Relations Act did not apply to the workers and the industrial court thus had no jurisdiction over them

In their ruling on the case, handed down last week, the presiding officers, Pierre Roux SC and Professor Klaus Schwietering, accepted this argument and dismissed the application by the workers, saying "the dispute is one concerning conditions of employment outside South Africa

"In the absence of any provision in the Labour Relations Act giving (the Act) extra-territorial operation, (it) consequently does not enjoy such extra-territorial operation "

Cape Town labour lawyer John Sandler, who acted for the CWIU in the case, said the effect of the court's judgement was to deprive the workers on the rigs of the rights and protection of the Act.

Chris Albertyn, director of the Centre for Socio-Legal Studies at Natal University, Durban, said, "The law should apply an even hand between capital and labour

"Capital is able to operate within the economic zone of South Africa — 200 nautical miles off shore — and yet take advantage of and operate within South Africa's company and other laws

Labour lawyers said the judgement was important as it had implications far beyond this particular case

"There are many people who enter into a contract in South Africa, but who are then taken by the employer to work in a 'homeland'

"The implication of this judgement is that when people are recruited and employed in this country and then relocated to a 'homeland' to work, they lose the protection of the Labour Relations Act."

allegedly absconded with R160 000.

At least three other companies have been served with summonses

had done nothing after taking his R2 500 deposit last year.

Unfair but not unlawful

(165)

5/8/88 ALAN FINE B/Day

THE Industrial Court has discharged a *rule nisi* order which compelled lawfully striking Chemical Workers' Industrial Union members, employed by Linamex in Palaborwa, to return to work on the grounds that their strike was unfair.

The order, granted three weeks ago, caused consternation among labour lawyers because it was the first time the court had granted a section 17(11)(a) interdict on the grounds of unfair, as opposed to unlawful, conduct.

New labour Bill could draw out legal processes

W/ARGUS 13/8/88

CRITICS of the amendments to the Labour Relations Act may have certain of their fears heightened by the history of a dispute in Natal

Many legal people involved in the industrial relations field have said that one main effect of some of the amendments will be to increase the volume of litigation and extend the time it takes to get disputes settled

This is mainly because there will be more to argue about and the amendments will create a special labour court which will effectively add another step to the legal ladder

"A major effect of the Bill will be that lawyers will get rich," was how one expressed it

According to a report from Bloemfontein, the dispute involved the National Union of Textile Workers (NUTW), Jaguar Shoes and the National Industrial Council for the Leather Industry, footwear section

The report said that an appeal the industrial council was to have made to the Appeal Court in Bloemfontein, due to be heard on September 1, had been withdrawn

So, the process has finally reached conclusion

The point is that it all started in 1984 which, if my arithmetic is any good, is four years ago

The NUTW is now the Amalgamated Clothing and Textile Workers' Union and nobody I could contact at the union had been there when it all started so I wasn't able to get complete details of what the dispute was all about

But, to illustrate the fears about drawn-out legal processes, the report said that the dispute arose over the extent of NUTW's representivity at Jaguar's Pietermaritzburg factory, the imposition of an overtime ban in September 1984 and the retrenchment of some employees in November 1984

The disputes were referred to the industrial council which was unable to settle them

They then went to the Industrial Court where in June 1985 Mr M Bulbulia authorised the deduction of union dues by stop order

Presumably the company was unhappy with this judgment because the matter then went to the Supreme Court in Natal where, in January 1987, Mr Justice Law dismissed an application by the industrial council for an order declaring that it was not compe-

CAPE TIMES 13/8/88

Saccola 'regrets' Labour Bill decision

JOHANNESBURG — A group representing employers on labour affairs has expressed regret over the decision by the Minister of Manpower to promulgate the Labour Relations Amendment Act in full on September 1

Mr Bob Godsell, chairman of the the SA Employers' Consultative Committee on Labour Affairs (Saccola), said his organization, as well as Cosatu and the National Council of Trade Unions (Nactu), had agreed to approach the minister to delay the promulgation of six of the 31 clauses in the act.

He said a joint, written motivation of this proposal was also agreed on on Thursday This was submitted to the director-general of the Department of Manpower yesterday, Mr Godsell said

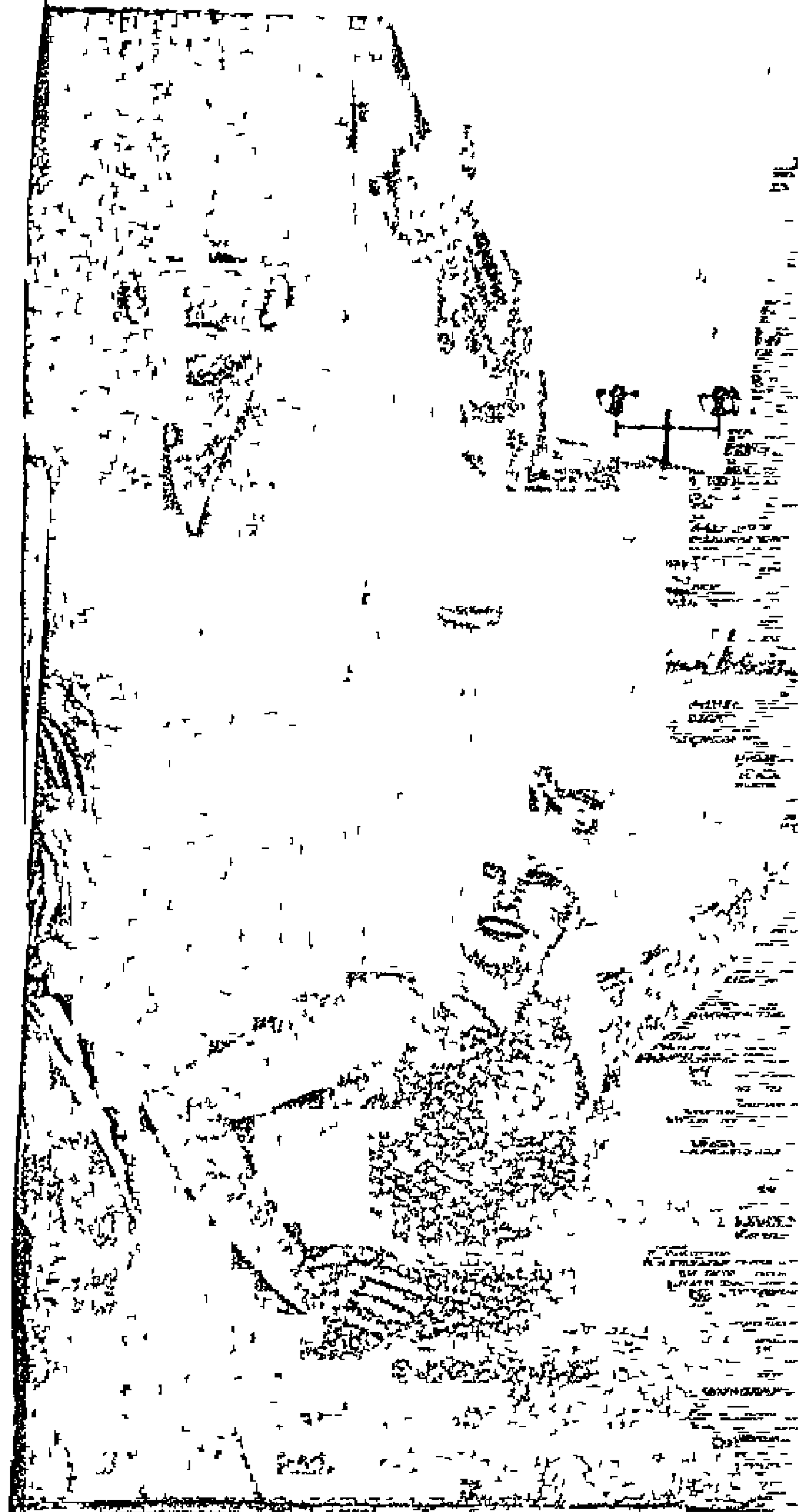
"We hope the minister will be able to reconsider this decision in the light of the joint Saccola, Cosatu and Nactu motivation "

Mr Godsell said the detailed discussions between Saccola and the two trade union federations had so far produced significant areas of agreement in principle, as well as proposals to improve the wording of sections of the amending legislation

Cosatu spokesman Mr Frank Meintjies said the minister was "painting himself in a corner" and the move would "precipitate conflict on the factory shop floor". He described the decision as "reckless"

The Labour Relations Amendment Act of 1988 will come into operation on September 1, according to a government proclamation gazetted in Pretoria yesterday.

The Bill, among other issues, led to a massive three-day national stayaway action by workers in June. — Sapa



The executive with nowhere to go

by CARRIE CURZON
Weekend Argus Correspondent

THIS is William Walsh's executive suite

A spartan office A desk No curtains. No car pets. A kettle. A telephone. Two chairs And, a cardboard box which he uses as a wastepaper basket.

He earns less than R2 000 a month — for doing nothing

Seven months ago it was a different story for 51-year-old Mr Walsh

R11 000 monthly

He was a highly paid executive for Anchor Life was responsible for six branches of the company a staff of 10 and had 100 agents working under him.

He says he enjoyed an income of about R11 000 a month and worked in a large wood-panelled office with curtained windows, a bookcase, a bar cabinet, a refrigerator, a large desk, high-backed swivel chair, five visitors' chairs, a seven-seater lounge suite, a glass topped coffee table, plants, a microfilm reader, *two* telephones and coffee-making equipment.

Then, he was fired

Mr Walsh took his case to the Industrial Court and won a temporary reinstatement He reported back to work on July 29 — and found himself in this spartan office

"I just want compensation for my livelihood being destroyed,' he said.

Mr Walsh, who lives in Weltevreden and has five children, was an agency manager with Anchor Life for 15 months before he was fired

Last month, the Industrial Court in Pretoria found the dismissal to be an unfair labour practice and made an interim order reinstating Mr Walsh to his former position

Mr Walsh was reinstated retrospectively for 90 days, extended for a further 30 days — this period being renewable until the case was finalised

A further court hearing is pending

An angry Mr Walsh now claims his employers are in contempt of the court order, that he has only been part paid since January ("my basic salary is about 10 percent of my earnings") and his work has been taken away from him

"They are withholding certain remunerations, such as my car allowance and bond subsidy, quite contrary to the court order," alleges Mr Walsh.

"I am getting only a fraction of my former monthly income, which amounted to about R11 000

"I cannot carry on like this" he told Weekend Argus. "Because of their (Anchor Life's) money and position, they have ground me down to where I must compromise from a financial point of view

"I felt I had been unjustly treated I went to court for relief, which was granted — but, they have still not complied"

After the first week in his bare office across the road from his former luxury accommodation with Anchor Life, Mr Walsh's attorneys advised him to stay at home until the matter was resolved.

Speaking for Anchor Life, attorney Mr Alan Gordon said "He has been totally reinstated in his former position and has been paid his basic salary

"Commission is no longer due to him — that has to be earned — but he was paid whatever had accrued to him by way of agreement up until the time he left."

According to Mr Gordon, the essence of the submission by Anchor Life is that Mr Walsh "was the author of his own misfortune"

"The bone of contention is that he repudiated his contract of service at the beginning of this year and he was then dismissed He chose to treat the dismissal as an unfair labour practice

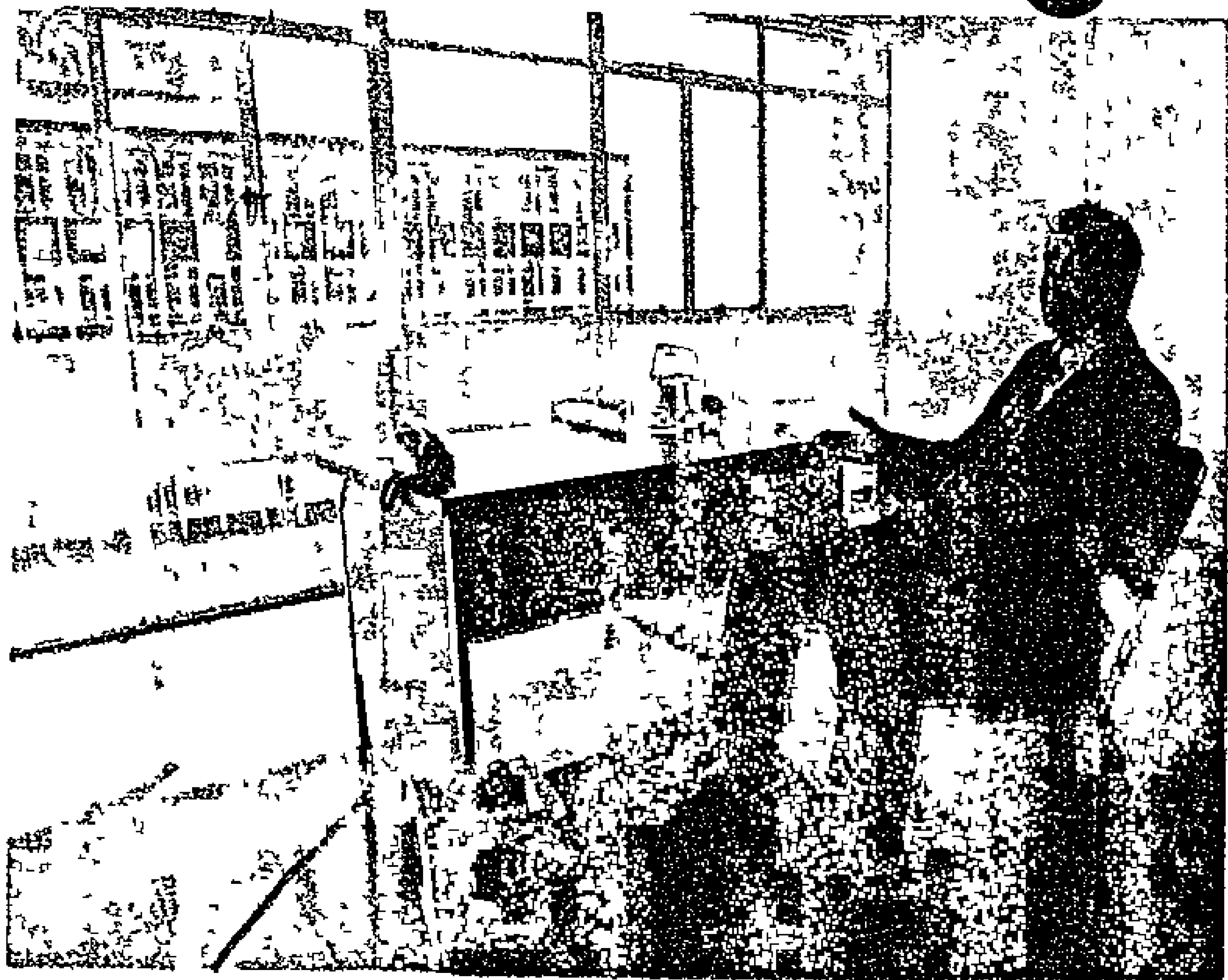
"Everything Mr Walsh complained about has been treated with great seriousness by the managing director and general manager," added Mr Gordon

Things have changed

"They spent many hours going through what was upsetting him and deciding how best to reinstate him to his former position.

"Although the court ordered this, things have changed since Mr Walsh left. You cannot turn back the clock.

"Mr Walsh has received R14 497,26 since the repudiation of his agreement. The greater bulk of his original monthly earnings constituted commission earned through the efforts of subordinates."



Union undertakes not to sell employer's assets

Cape Times 30/9/88

165

Supreme Court Reporter

THE Electrical and Allied Workers' Trade Union of South Africa undertook in the Supreme Court yesterday not to proceed with the execution of a warrant for the sale of an employer's movable assets to recover wages owed to workers.

An urgent application by the managing director of Photocircuit (SA), Mr Horst Peschkes, asking for an order setting aside a warrant for a sale in execution, was removed from the roll by Mr Justice P Tebbutt after the union gave the undertaking.

Two portable computers, three printers, a colour monitor and a photocopier worth about R40 000 were attached from Photocircuit after Mr Peschkes failed to comply with an industrial court order to reinstate 11 dismissed workers.

The respondents were advocate Ms A M de Swart, the union, 11 workers, the deputy sheriff of Wynberg and the Registrar of the Supreme Court.

Court stops hotel pay increase

By Dawn Barkhuizen

An interdict restraining Karos Hotel Group management from granting a unilateral wage increase was granted to the Commercial Catering and Allied Workers' Union (Ccawusa) in the Johannesburg Industrial Court late on Friday.

The court ordered that the matter be referred to an industrial council within 10 days, a union spokesman said

This followed sporadic striking by hundreds of Karos employees over the company's dismissal of workers who did not report for duty on June 16.

According to Ccawusa's spokesman, other developments on Friday included

- The release of Karos Wilderness Hotel shop steward Mr Gladwell Somana from police custody
- The lockout of striking workers from the canteen at the Karos Safari in Rustenberg
- The detention of four workers from the Johannesburger Hotel for picketing outside the hotel The four were released later that night
- Three visits by police to Arthur's Seat Hotel in Sea Point, Cape Town, after management alleged that strikers were picketing

Meetings between management and the union on police intervention and lockouts continued on Saturday with the union attempting to obtain the assurance that the company would not invite police to intervene

A Pretoria police spokesman said it was not policy to give details of detentions or routine police action

Karos Hotel Group management could not be reached for comment

Other hotels affected are the Bayshore Inn and Karos Richards in Richards Bay, the Manhattan in Pretoria, and the Karos Tzaneen in the north-eastern Transvaal

Star 3/10/88 165

80 sympathy strikers get R210 000

CAPE TOWN — Eighty workers dismissed after a sympathy strike and reinstated by a landmark Industrial Court ruling, have been awarded R210 000 in an out-of-court settlement

In April the Industrial Court reinstated the 80 workers — all members of the Chemical Workers' Union — after it held that employers Cape Lime Limited had to apply fair disciplinary steps before dismissing workers

The 80 men had asked the company to intervene on behalf of workers allegedly assaulted by police during a Sasol strike last November and had then struck in sympathy

After legal costs have been met, the R210 000 will be distributed among the 80 — Sapa.

R210 000 payout to dismissed workers

ARGUS 1/11/88

Supreme Court Reporter

CAPE Lime Ltd has paid R210 000 in an out-of-court settlement to 80 workers dismissed from its Robertson plant in November last year

The dismissals followed a series of industrial actions at the plant

Issues included a demand for management to intervene in the detention of a national union organiser and a strike in sympathy with union members striking at Sasol

In April, the Industrial Court ordered the reinstatement of the workers

In his judgment, presiding officer Mr P Roux said "Even if the actions may have been unlawful, regard still has to be had to both the fairness of ensuing procedural steps and the fairness of the sanction"

Yesterday two Supreme Court review applications were removed from the roll after the settlement was reached.

Cape Lime agreed to withdraw an application against Mr Roux and the Chemical Workers Union on the basis that each party paid its own legal costs

The union withdrew its application against the Minister of Manpower and Cape Lime.

As part of the settlement the 80 workers accepted their dismissals from Cape Lime on November 6, 9 and 11 last year.

In addition to R125 684,88 paid by Cape Lime to the union in terms of an order by Mr Roux, the company undertook to pay the union an additional R210 000

Eskom in court over salary rises for 22 000

Argus 8/11/88

Labour Reporter

SALARY increases for about 22 000 Eskom employees hinge on the outcome of arbitration due to start in the Industrial Court in Cape Town today

The arbitration involves eight unions representing Eskom employees and arises from cost-of-living increases given by Eskom from April this year

The matter has gone to arbitration because Eskom employees are barred from striking

The unions claim that in November last year they and Eskom management agreed that pay increases for this year, to be implemented from April 1, would combine a cost-of-living and a merit component

HIGHER ACHIEVERS

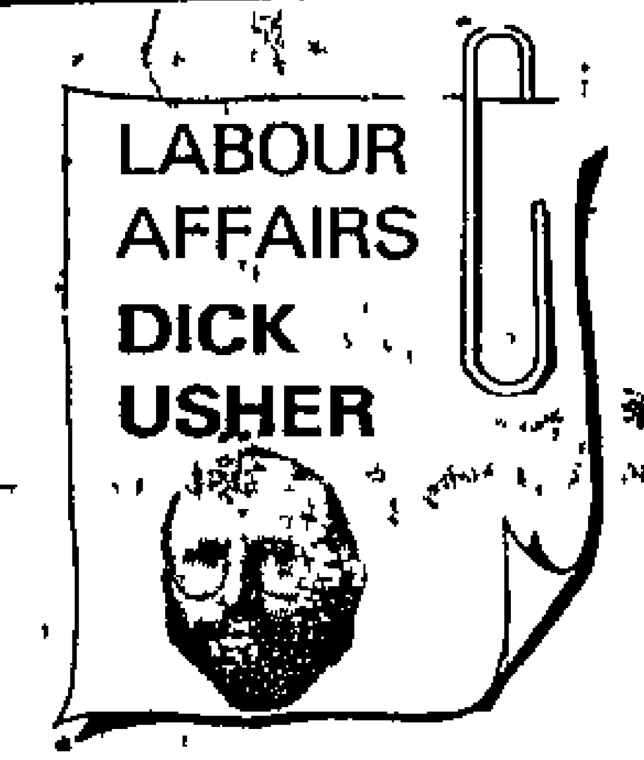
But that in the interim Eskom worked out a "pay for performance" system and in March announced 4 percent increases for employees in band three of performance ranking and slightly higher increases for those in bands one and two of higher achievers

Both the increases and the unilateral implementation by management are being contested by the unions.

They claim that a 16 percent increase would be necessary to keep pace with inflation as salaried staff's pay has been significantly eroded over several years, that previous salary increases consistently showed some relation to the consumer price index but the April increase fell far short of the pattern, and that the performance system showed serious shortcomings in design and implementation.

It is amazing what a little goodwill can do

WHEN it takes six days for a company and a union to nail together a recognition agreement and conclude wage negotiations, you have to wonder why the process becomes so lengthy and troublesome in other cases



The wonder increases because the recognition agreement included an accord that, provided both sides stuck to procedures, neither would use the provisions of the Labour Relations Act, and the wage agreement was struck in spite of a very wide initial gap between what the union demanded and what the employer could offer

Perhaps it does something to demonstrate what can be accomplished with goodwill and a willingness to negotiate on both sides, rather obstructiveness and "intransigence"

The agreement in question is between Pepsi-Cola and the Food and Allied Workers' Union (Fawu)

Company industrial relations manager Adrian Graham said the starting point was a belief that one had to build a relationship with a trade union rather than trying to "nail them wherever you can".

With this, and with both sides having similar understandings about certain aspects of the Labour Relations Act, an agreement was struck that neither would resort to the Industrial Court — arbitration and mediation would take its place

At the heart of this was a recognition by the company that once rules had been established, and provided they were adhered to, the workers had the right to redress the balance of power in a dispute by going on strike.

The agreement included disciplinary, grievance and retrenchment procedures and the same definition of an unfair labour practice as the "old" Labour Relations Act

and retrenchment procedures and the same definition of an unfair labour practice as the "old" Labour Relations Act

The agreement also has clauses about intimidation and harassment and there is an understanding that the company would keep authority out of labour relations

"It is our relationship with the workers which has nothing to do with government or the police," said Mr Graham.

Developing on this, the wage agreement was concluded on the basis of what the company could afford

"We made a realistic offer of increases and although Fawu started off with much higher demands we didn't have to get into financial disclosure to prove our case, the workers could see we had a bad situation and common sense won," said Mr Graham

A communication structure has been created with eight shop stewards and eight alternates for each department

One representative from each department attends a monthly meeting between the stewards' committee and management

There is also a monthly general meeting for workers at which company and union matters are discussed.

~~GM Times~~ 25/11/88

Court rules in favour of unions

JOHANNESBURG. — The Industrial Court has rejected an urgent application by the De Beers Premier Mine for a declaration that the refusal of two unions and 1 133 employees to work overtime on Saturdays represents an unfair labour practice.

The court also refused to direct the employees to work overtime on a reasonable and fair basis requested by the mine.

Discrimination is unfair practice

Star 30/11/88 (165)

By Mike Siluma, Labour Reporter

A collective bargaining tactic used by employers to discourage employees from participating in strike action has been declared an unfair labour practice by the Industrial Court.

The case, before Mr J C B Schoeman, was a sequel to a 1987 wage strike by members of the National Union of Mineworkers (NUM) employed by Ergo.

Before the strike in August 1987, the company said workers who did not join in the industrial action would receive the company's final wage offer, backdated to June 1 1987.

Prospective strikers were informed that the new wage increases would not be backdated in their case.

In the Industrial Court, the NUM had argued that the company's decision regarding strikers was unfair in that it was contrary to the established collective bargaining relationship between the parties, it was a discriminatory practice and that it constituted victimisation of workers for taking part in a legal strike.

Mr Schoeman ruled that the decision not to backdate strikers' increases was unfair and ordered that the company pay those who went on strike wages they forfeited

ANUM spokesman, Mr Marcel Golding, said that, in the light of the Ergo judgment and this year against Henry Gould Mines and the Gold Fields group, employers should stop using the awarding of increases as a lever during collective bargaining.

In the Henry Gould case, the court declared that discrimination against union members on the grounds of their participation in a strike was unfair.

The decision by certain mines in the GFSA group to adjust wages unilaterally was similarly found to be an unfair labour practice.

An industrial relations consultant, Mr Gavin Brown, said the Ergo decision raised a number of questions.

"The people going on strike want to cause harm to (the employer's) business. Is it right that you reward people who inflict harm the same way that you pay people who have come to work normally?" asked Mr Brown.

Star 1/12/88

Court prohibits strike

DURBAN — The Industrial Court has confirmed the interdict prohibiting National Union of Metalworkers (Numsa) members from striking at BTR Dunlop.

This is despite the fact that the strike, to compel Dunlop to agree to arbitration on the dismissal of the chairman of the BTR Dunlop National Shop Stewards Council, was legal in terms of the Labour Relations Act, said a statement from the union yesterday

The court held that the strike should be prohibited because there was an alternative remedy — that the case could be referred to the Industrial Court, Numsa said

"The judgment makes it clear that the court feels it has a duty to inhibit strikes"

The court also held that the strike was a "repeat" strike and so was unfair

"This constitutes a gross interference in the right of workers and unions to bargain collectively" — Sapa

Sun group settles with unions

JOHANNESBURG — A settlement has been reached between Southern Sun Hotels and three hotel workers unions in their dispute over the proposed cancellation of a procedural agreement, said group personnel director Mr Carl Ludick yesterday

The two parties reached agreement in the Pretoria Industrial Court where the unions — affiliated to the Commercial, Catering and Allied Workers' Union — challenged the hotel group's resolve to go ahead with the cancellation

The challenge followed a ruling by the Natal Industrial Council that the cancellation was an unfair labour practice Mr Ludick said the alliance withdrew its dispute at the Industrial Court this week

"It was agreed between the two parties that the procedural agreement would terminate on 31 December," he said "Wage negotiations will begin in January 1989" — Sapa

LABOUR DEPARTMENT

1989

January 1989.

Union wage rises beat inflation

By Dick Usher

CAPE TOWN — Unionised wages on average increased above the rate of inflation for the second half of 1988, says an analysis by the Labour Research Service

Only 24 companies gave increases below 13 percent, approximately the inflation rate These included several where wages were already quite high

The average wage agreed was R120,66 a week for labourers

The survey covers agreements negotiated between unions and management, industrial council agreements and wage determinations

"After a first-half increase of 22,9 percent, the second-half average of 20,6 percent is highly creditable, given poorer economic conditions, tougher bargaining and increased anti-union activities by employers and government," the survey says

It says the inclusion of mining wage settlements at 16,5 percent contributed to the lower average increase for the second half

Only four of the companies in the survey gave increases lower than 10 percent, 90 awarded 10 to 19 percent, 59 awarded 20 to 29 percent and 18 awarded 30 to 49 percent

There were six companies where wages increased by more than 50 percent

The best increase — nearly 73 percent — was negotiated by the National Union of Mineworkers (NUM) at Cullinan Minerals

But the minimum weekly wage is still only R71,55 At Mintek, NUM negotiated a 72 percent increase to R138,46 E12

Only four companies paid labourers more than R200 a week, 72 paid less than R100 a week 56 between R100 and R150, and 40 paid between R150 and R200

Of gazetted wages, the Cape clothing industry had the highest percentage increase, negotiated by the Garment & Allied Workers Union at 52,7 percent, bringing the minimum to R113 a week

Bottom of the log was a wage determination for rural labourers, with a 10 percent increase, raising the minimum to R55 a week

Industrial council and wage determination increases were 25,1 percent on average

But many were well over a year old, so these are not comparable with the private sector's average of 20,6 percent over a year

Only nine agreements, of those which provided figures, had a 40-hour week

Perskor ordered to rehire 212

Star 27/1/89

By Adele Baleta

The Industrial Court in Pretoria has ordered Perskor to reinstate 212 members of the Media Workers Association of South Africa (Mwasa) who were dismissed after a wage strike in June last year

A Mwasa spokesman said yesterday that the 212 workers were required to report for duty at Pretoria, Doornfontein and Benoni Perskor outlets on Monday next week at 7 am

The workers were dismissed after the company alleged they had failed to heed a return to work deadline on June 29 after the wage dispute had been settled

In July last year Mwasa's lawyers gave Perskor an ultimatum to take back all dismissed workers by July 6 or face legal action

Industrial Court overridden

Pretoria Correspondent

An Industrial Court order compelling a newspaper group to reinstate workers dismissed after a wage strike last year was yesterday suspended by the Pretoria Supreme Court

The urgent application was brought by Perskor after it was last week ordered by a Pretoria Industrial Court to reinstate 213 members of the Media Workers Associaton of South Africa (Mwasa)

Mr Justice Daniels yesterday suspended the order pending the outcome of a review by the Supreme Court — adding that Perskor must pay, on a weekly basis into the trust account of the workers' attorney, an amount equal to the employees' wages

In the application brought against two members of the Industrial Court, Mr J Schoeman and Mr E Hartdegen, Mwasa and the 213 workers, Perskor requested that the Industrial Court order be suspended pending a review by the court

The workers — who were dismissed after Perskor alleged they had failed to heed a return-to-work deadline on June 29 after the wage disute was settled — were to report for duty at Pretoria, Doornfontein and Benoni Perskor outlets on Monday, June 30

Mwasa claimed that the firm had selectively re-employed the majority of workers who went on strike but refused to accept the remaining 213

Mr Justice Daniels further ordered that the Industrial Court furnish their judgment within one week, while counsel for the respondents said the case would probably be heard on March 8

Star 21/2/89 165

'Tribunal's composition unfair'

Mawu alleges improper finding

Own Correspondent

MARITZBURG — Hundreds of people jammed the Natal Supreme Court yesterday as the Metal and Allied Workers' Union asked a judge to review and set aside a decision of the Industrial Court given here in September 1987

The Industrial Court in 1987 dismissed an application by Mawu to direct BTR Industries to recognise or negotiate with Mawu for the reinstatement of its members who had been dismissed The dismissed workers had on average of 18 years' service

Mawu's lawyers say that the findings and conclusion of the industrial court were such as to permit the inference that the court had not properly applied it's mind to the matter

Mawu's lawyers said in papers that factors justifying the conclusion that the participation of the chairman of the Industrial Court, Mr P E Roux, in a seminar was irregular were

- His knowledge that the seminar he was to address was organised by Andrew Levy and Associates, who had been retained by BTR to advise the company on its dealings with Mawu
- His knowledge that the propriety and content of the advice tendered by Andrew Levy and Associates, and the adherence to the advice by BTR, had been a matter of controversy in the cross-examination which had preceded the seminar
- His knowledge that BTR might call testimony from that firm on matters relevant to the issues in dispute
- That to the knowledge of Mr Roux the seminar was of a partisan nature, aimed at identifying and debating the strategies and options of management in its relationship with labour
- His knowledge that the seminar was to be addressed by members of the legal team engaged by BTR in the dispute with Mawu and it would not be addressed by members of Mawu's legal team or by its officials or members
- That Mawu had clearly articulated its objections to Mr Roux's participation in the seminar before the seminar and had refused to withdraw the objections after being invited to do so by Mr Roux
- His knowledge that Mawu and previously expressed unhappiness about the composition of the tribunal

The matter is being opposed

Star 21/2/89

Mozambicans high and dry

The Star's Africa News Service

MAPUTO — Hundreds of would-be passengers have been left stranded by the crash of a Mozambican airline last week, according to the national news agency, AIM

The national airline's fleet has been reduced to two planes by this and an earlier crash and domestic services have as a result been severely curtailed

Attacks by Mozambique National Resistance rebels on road and rail traffic have made travel by these means hazardous and Mocambicans have come to rely heavily on air transport to move between the towns and cities

One of the four Boeing 737s operated by Mozambique Airlines, LAM, was badly damaged in a landing accident at Quelimane in March 1983 and another was damaged last week when it ran off the end of the runway at Lichinga

The aircraft is reported to have touched down half way along the runway and the pilot was unable to stop it on the runway It ran for 120m into the veld beyond the runway before coming to a stop, badly damaged

The resultant reduction in LAM's domestic flights has left hundreds of passengers stranded Many are secondary school students who normally fly at this time from their homes in outlying towns to schools in the major centres, according to AIM

Court suspends Mwasa order

THE Pretoria Supreme Court has suspended an industrial court order forcing Perskor to reinstate about 212 workers dismissed after a strike last year.

Mr Justice Daniels issued the order pending review proceedings into the matter on Wednesday this week.

Perskor successfully sought the suspension of an industrial court decision which ordered the company to reinstate the workers, all members of the Media Workers' Association of South Africa, dismissed after a four-day strike in June, 1988.

Should the review dismiss Perskor's application backdated wages would then be paid to the individual workers.

EPG Times 15/2/89

Allegations investigated

Political Staff

ALLEGATIONS of malpractice involving among other things the use of job creation funds to build houses for councillors are still being investigated by the Commercial Crime Unit in Port Elizabeth.

The MP for Port Elizabeth Central, Mr John Malcomess, who revealed the alleged malpractice in Parliament in September 1987, said yesterday that he had been told by the Advocate-General, Mr Justice P J van der Walt, that the investigation was now in the hands of Port Elizabeth police

Mr Malcomess disclosed in 1987 that a total of R268 000, earmarked for job creation, had been used to build nine houses for Ibhayi town councillors. He stated at the time that he had also sent documents relating to several allegations of malpratice in Ibhayi to the Advocate-General.

Clerk fights for job

Sowetan 20/2/89

By MONK NKOMO

THE suspended Atteridgeville town clerk, Mr Solly Rammala, who is fighting for his reinstatement claimed in the industrial court in Pretoria on Friday that his indefinite suspension for alleged irregularities was an unfair labour practice

The case was postponed to March 1, after Mr Rammala and the council agreed that he be suspended with full pay The council slapped Mr Rammala with a fresh suspension without pay last Tuesday. He is presently facing charges inefficiency and will appear before the council's disciplinary committee, according to the mayor, Mr Velaphi Mathebula.

Threats

Mr Mathebula yesterday said the council "compromised" that Mr Rammala be suspended with full emolument after he had pleaded in court that he had many debts to pay and that his wife was only earning about R1 000 a month

Another council official, Councillor Victor Zobane, who was recently suspended for 45 days and ordered to pay R500 for misusing a council vehicle for a week, yesterday threatened to take the council to court unless he is reinstated today

Judge sets aside BTR ruling

Own Correspondent

MARITZBURG — The Supreme Court yesterday set aside a decision by the Industrial Court which had dismissed an action brought by the Metal and Allied Workers' Union (Mawu) against BTR Sarmcol in 1987

Mr Justice Didcott's order followed the refusal of the presiding officer in the Industrial Court dispute to recuse himself

He ordered that the matter be remitted to the Industrial Court for a fresh hearing by a different court

Leave to appeal and cross-appeal to the Appellate Division by all parties was granted

The dispute concerns the reinstatement of more than 1 000 workers dismissed during a strike at the BTR Sarmcol plant at Howick in May, 1985

Mr Justice Didcott said yesterday he was not in a position to give a ruling on the merits of the dispute

His decison to set aside the Industrial Court ruling was on the grounds that the court's deputy president, Pierre Roux, SC, who presided over the Mawu/BTR Sarmcol dispute, had attended a labour seminar organised by Andrew Levy and Associates, advisers to BTR Sarmcol during the dispute, and Roux's subsequent refusal to recuse himself

Mawu lawyers had applied for Roux's recusal on the grounds that there was a "reasonable apprehension" of bias on his part through his attendance at the seminar Roux refused the application

Mr Justice Didcott said Roux's attendance had been most "unwise", particularly as he had received a telex from Mawu lawyers before the seminar stating their client's objection

The judge said it was not neccessary to prove actual bias on the part of Roux, and stressed that it had not been argued that any actual bias on his part had been proven He said the test was whether there was a reasonable perception on the part of the layman that there was a likelihood of bias

New perspectives on South African justice

Star 6/3/89.

Equity, the Court and Labour Relations, by T Poolman (Butterworths R47,00)
Law and Justice in South Africa, edited by John Hund (Centre for Intergroup Studies)

Reviewed by MARK LEVIN

The establishment of the Industrial Court in 1979 was initially greeted with scepticism, but has gained increased acceptance by both labour and capital The court's caseload was less than 400 in 1983, last year the figure passed the 8 000 mark

In **Equity, the Court and Labour Relations**, Dr Poolman examines the nature and scope of the functions of the Industrial Court including its role as a Court of Equity, applications for status quo orders, its arbitration, advisory and appeal functions and unfair labour practice

Clearly set out with many cases cited and the relevant sections for the Labour Relations Act, this book will be welcomed by those involved in labour disputes and the law

Law and Justice in South Africa is a collection of 14 scholarly essays which deal with important jurisprudential questions in today's South Africa

"What is law? What is justice? What is the role of ideology in securing law and order?" These are some of the questions on which the writers express diverging opinions

Many of the issues have been debated frequently in the past — access to justice, legal aid, the role of the judiciary — but here the writers often have a differing emphasis

A topic about which less has been written is the unofficial justice system in the townships It is one of great significance

John Hund construes it as a form of social control that exists in pockets of anarchy where the formal legal system has no reach or control

In such areas, the regime rules in terms of illegal police, illegal prosecutors and judges and other illegal officials

Their ruthless legal system is regarded by the State as criminal That their rules and sanctions are more severe than those of the State is well known "Consequently, the dogma regarding the law of the State as the most powerful source of social control proves to be a myth"

Although for the more academically inclined, some of these essays deserve a wider public Their relevance is such that they should not be ignored

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ZCC men absent at hearing

THE Concilia[illegible] Board sitting schedul[illegible] to discuss the dismissal [illegible] 20 members of the Transport and Allied Workers Union by Bahwaduba Bus Service in Pietersburg did not take place because the company representatives failed to turn up the union said

The matter has now been referred to the Industrial Court for hearing, a union spokesman said The decision to refer the matter to the Industrial Court came after the Conciliation Board had waited for an hour after the starting time for Bahwaduba representatives

The 20 workers were dismissed on February 1[illegible] following a work stoppage three days earlier to demand wage increases The company is owned by the Zion Christian Church and the dismissals were done by the head of the church, Bishop Barnabas Lekganyane

The company had earlier opposed the institution of the Conciliation Board

Labour council is set up for Sats

By LEN MASEKO

THE South African Transport Services yesterday launched its own industrial council that will serve as a platform for the resolution of labour disputes within the sector.

The Labour Council (LC), formed in August last year, is a forum for wage negotiations between the Sats management and trade unions organising in the railways

Opening the council's offices in Johannesburg, Professor Nic Wiehahn, chairman of the LC, said the newly-formed body paved the way for "a new era in labour relations in the South African public sector"

Sowetan 31/3/89

He said the LC "symbolised" a move from "an old but outdated labour practice in the Sats" Sats management and 11 trade unions, which are part of the bargaining system, would have equal voting rights on the council

"The objectives of the council are to maintain and promote labour peace and to prevent labour disputes," Prof Wiehahn said.

He said the council would be able to invoke provisions of the Labour Relations Act within the next two years The body aimed at becoming an industrialised council in the transport industry as soon as the privatisation in the transport sector became a reality

ultimately on trial

Cape Times 4/4/89

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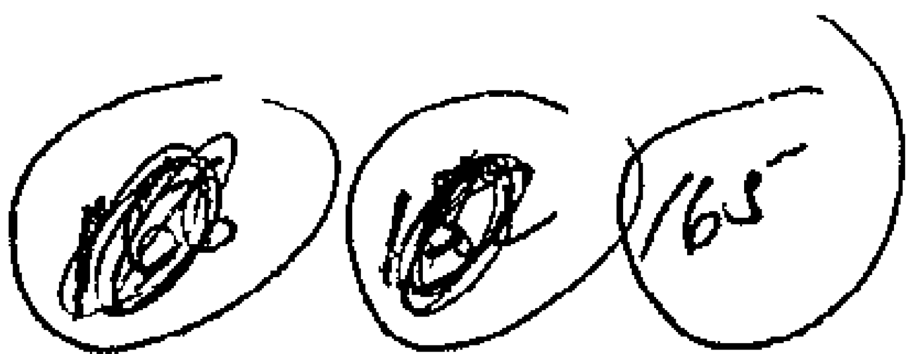
State lesson in public spending

HOW to cut state expenditure? The Department of Manpower (freshly bereft of its erstwhile minister, Pietie du Plessis) has given an object lesson in this field It will save about R8 million in the coming year by cutting on services to the blind, such as subsidies to workshops, on employment of the disabled, and on job creation and training programmes for the unemployed No doubt all these categories of person will realise that their sacrifices are for a good cause — the state of the economy

But that leaves R8 million What to do with it? The Department of Manpower swiftly showed its resourcefulness, according to reports, by creating another 45 jobs for mainly senior officials, thereby increasing the deployment of manpower within the public sector, if not within the private one The cost About R9 million. That constituted a deficit of only R1 million, if the R8 million saving is taken into account

Who says government departments are not taking seriously the need to save taxpayers' money?

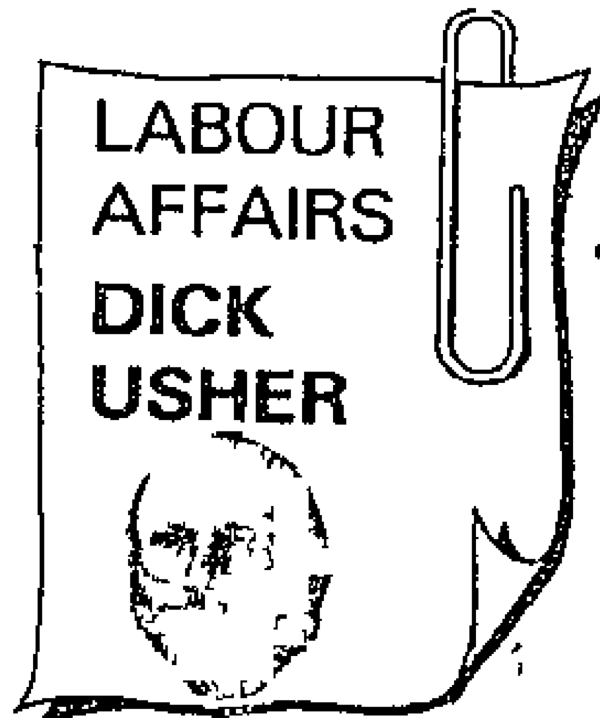


INVESTMENT/COMPANIES

Lock-outs, Strikes and Arbitration

THE stream of books on industrial relations in South Africa is growing all the time, an indication of the increasing importance of this once-neglected field

In this, Cape Town-based publishers Juta are making a significant contribution and their latest offering, *Strikes, Lock-outs and Arbitration in South African Labour Law*, is another important work



The book is a compilation of papers read at the 1988 Labour Law Conference held in Durban which attracted 400 delegates, including judges, trade unionists, managers, IR practitioners, lawyers, academics and students

The fact that the conference drew such a wide range of participants and that it was held at all is a reflection of the great sea change that has come over the field since the early 1970s, forced into the forefront by the will of workers in their determination to change what was a hugely unjust system of industrial management

As Mr Justice H C Nicholas, acting judge of Appeal, says in his introduction "Ten years ago, a conference such as this would not have been possible. Then labour law occupied a dark neglected corner of our legal system Largely ignored by university law schools, it received scant attention from the legal profession There were few who would have claimed to call themselves labour lawyers"

Since the changes to the Industrial Conciliation Act which started in 1979, however, a vast body of law, practice and precedent has evolved to deal with the regulation of conflict in the workplace and the guarantee of the rights of all parties

The conference focussed on the twin themes of industrial action and arbitration and the papers collected here were presented by many of South Africa's highest experts in the field, including the president of the Industrial Court, Dr Daan Ehlers, eminent lawyers such as Martin Brassey, Edwin Cameron and Clive Thompson, and leading arbitrators including Theo Heffer and Charles Nupen

The papers cover an overview of the Industrial Court, including an *ad hoc* reply to "some very nasty criticism" by a permanent member of the court, Mr M Bulbulia, strikes and lock-outs, and arbitration

'They give what is essentially a very well-informed overview of the two disaparate methods of settling industrial disputes while, at the same time, making the important point that industrial relations is essentially a matter of people trying to work out their own arrangements for co-existence and progress — socio-economic and psychological concerns that cannot be addressed solely by the law

The book has a table of cases, is well indexed and as an appendix includes a comparative table of sections of the Labour Relations Act on strikes and lock-outs

Finally, its publication will continue the process of developing industrial democracy through education, a process whose importance was summarised in his concluding remarks by David McQuoid Mason, dean of the law faculty at the University of Natal, when he said " what we have to do is workk out a middle road If we can do that, then in a post-apartheid democratic South Africa we can have a vibrant industrial conciliation machinery based on a firm tradition on industrial democracy, and we can all play our rightful role in generating this country to be the powerful industrial giant of Africa that it should be"

Reinstatement of workers challenged

ARGUS 19/4/89

Labour Reporter

THE reinstatement of 11 workers by the Industrial Court, dismissed after they went on strike last year, has been challenged in the Cape Town Supreme Court.

Mr D van Reenen, appearing for Photocircuit, the company from which they were dismissed, claimed that the Industrial Court did not have jurisdiction in the case, had not applied its mind to the matter and the reinstatement was invalid

He argued that the dispute procedures for the Iron, Steel, Metal and Engineering Industries Industrial Council promulgated in 1987 had not been extended to non-parties such as Photocircuit

The council had no jurisdiction in the matter and could not refer it to the Industrial Court and it had been improperly referred there by the union

The dismissed workers went on strike and were dismissed in May last year after Photocircuit had refused to recognise the Electrical and Allied Workers Trades Union or to implement stop orders for union dues

They were reinstated by the Industrial Court on the grounds that their dismissal was unfair

Mr A Oosthuizen, appearing for the Industrial Council, said the problems which led to the strike were very much wider than the question of stop orders and Mr Horst Peschkes, director of Photocircuit, had consistently refused to negotiate with the union

(Proceeding)

Employer's challenge rejected

by DICK USHER

A CHALLENGE in the Supreme Court against the reinstatement of 11 workers ordered by the Industrial Court has been rejected

The reinstatement was ordered after the workers were dismissed from Photocircuit, a Cape Town photographic processing concern, last May

They had gone on strike in an attempt to force recognition of their union

In September the Industrial Court made final a temporary reinstatement determination

Mr Horst Peschkes, director of Photocircuit, sought review of the Industrial Court decisions on technical grounds He claimed the court was not competent to hear the case because the industrial council agreement was not applicable to his company

In November the Electrical and Allied Workers' Trades Union, to which the dismissed workers belonged, secured a writ of execution against company assets worth about R4 000 to secure payment of all amounts owing to the dismissed employees

Cape Times 3/5/89

Disinvestment: Union to fight Mobil in court

Staff Reporter

THE Industrial Court has been urgently called to compel Mobil SA to negotiate a disinvestment agreement with the Chemical Workers' Industrial Union (CWIU).

The move follows the company's "consistent refusal" since 1987 to negotiate on disinvestment procedures and the job security of 650 union members at Mobil plants in the country, CWIU general secretary Mr Rod Crompton said yesterday.

The giant United States multinational disclosed the planned sale last week of its local assets to the Gencor mining group — drawing angry union charges that the company had lied about its disinvestment plans.

Explaining the grounds for last Friday's court action, Mr Crompton said Mobil had reneged on a written undertaking to consult with the union once it considered disinvesting.

This followed press leaks in New York last year revealing Mobil's intention to withdraw its South African operation — despite regular assurances to the contrary, Mr Crompton said.

After union representations earlier this year, Mobil had indicated it did not intend disinvesting, thereby seeing no need to negotiate a disinvestment agreement, he said.

...of reporting, comment and pictures in the Cape Times

Interdict granted against Numsa

ALAN FINE

ALTRON'S Standard Telephones and Cables (STC) was granted an urgent interim interdict in the Industrial Court on Wednesday against two trade unions and more than 600 employees in regard to the week-old retrenchment strike.

And as the 11-day-old strike by 500 employees at Altron's Lascon Lighting continued the metal sector wildcat strike wave on the Reef spread to another three companies

In each case the National Union of Metalworkers of SA (Numsa) has refused to intervene unless it receives an undertaking from the company to waive its right to sue for damages In the one case where the undertaking was made the strike ended yesterday

The court order declared the conduct of Numsa and the Electrical and Allied Workers' Union to be unfair

It also declared the conduct of the more than 600 employees to be unfair and restrained "any one or more of them" from threatening the safety or property of STC employees, from creating a disturbance and from engaging in any unprocedural or unfair industrial action

Numsa legal officer Ruth Edmonds said no evidence had been led alleging threatening behaviour by strikers

She said the order against the two unions "makes no sense" as it did not specify the alleged unfair conduct or say what they should do Parts of the order against the other respondents were also unclear she said

Altron spokesmen could not be reached for comment

Numsa regional official Tony Kgobe said officials had visited the Lascon plant on Tuesday offering to intervene once they had received the undertaking

He said had been refused Altron has said it has been advised by lawyers against making such an undertaking

The action is in support of demands that two management members be relieved of duties to conduct disciplinary hearings

Kgobe said strikes involving some 520 workers had begun earlier this week at Champagne Lighting Thorn Lighting and Cinqplast

Granted

Actions were related to retrenchment in the first case and dismissals at the other two

In each case Numsa had requested the undertaking It had only been granted at Cinqplast Although Kgobe said talks ended on Wednesday night without resolution a management spokesman said employees had returned to work yesterday

A Champagne Lighting spokesman said the small problem' may be resolved today while Thorn could not be reached for comment

Six electronics plants hit by workers' strike

Star 8/3/89

165

Labour Reporter

Nearly 1 500 members of the National Union of Metalworkers (Numsa) are on strike at six electronics plants in the Transvaal and the Cape over issues centring on retrenchments and disciplinary action

The Industrial Court is expected to make its decision known today on an application brought by one of the companies affected, Standard Telephone and Cables, in an effort to end an eight-day strike at its Boksburg plant. Numsa, the Electrical and Allied Workers' Trade Union and about 600 workers have been cited as respondents.

A Numsa spokesman said the union would not intervene to end the Boksburg strike unless the company waived its right to sue the union for damages

The strike was sparked by the company's intention to retrench between 200 and 300 workers as a result of cutbacks in orders from the Post Office

In addition to the STC workers, Numsa members at Lascon Lighting continued a strike which began on Thursday last week. Numsa refused to intervene for fear of being held liable for damages

● Several hundred workers are on strike at four Aberdare Cables plants in Port Elizabeth and Rosslyn in solidarity with a shop steward who has been suspended with pay for alleged poor workmanship.

Interdict on 457 strikers

ALAN FINE

ALTRON's Lascon Lighting was granted an urgent interim interdict in the Rand Supreme Court on Friday ordering 457 employees, cited individually as respondents, to end their unlawful two-week-old strike at the plant

The National Union of Metalworkers of SA (Numsa) was also cited, but no relief was sought against it and it did not oppose the application

Numsa has distanced itself from the strike following a management refusal to undertake that the union would not be sued for lost earnings sustained in the strike

The remaining respondents were not represented by legal representatives, and four "delegates" gave evidence on their behalf

The interdict further ordered the 457 employees not to interfere with or intimidate other employees, customers or distributors, from obstructing the normal operation of business, and from damaging the applicant's property

In delivering the order, Mr Justice MacArthur said, while it was not his job to give advice to the company, it may be propitious for the CE, a Mr Sutton, to take "short cuts" in the normal grievance procedure and get involved in the dispute as employees were requesting

Workers went on strike on April 24 demanding that two members of management be relieved of responsibilities to conduct disciplinary inquiries

In a another strike, some 200 Numsa members at Thorn Lighting in Johannesburg were dismissed after going on strike last Tuesday

However, a company spokesman said management had offered conditional re-engagement

Talks were continuing

He said management was considering whether to make an undertaking to Numsa not to sue the union in terms of section 79(2) of the Labour Relations Act

Workers take Mobil to court

DURBAN. — The Chemical Workers' Industrial Union (CWIU) "will be exercising its rights" in the Industrial Courts today when its application for an interdict against Mobil SA is set down for a hearing, it said after a meeting here yesterday to discuss the oil company's disinvestment plans.

A statement by CWIU said the only undertaking that Mobil would give was that the union could exercise its rights under the law if Mobil attempts to change workers' conditions of employment.

The union claimed that Mobil negotiators denied they had any prior knowledge of the disinvestment plans.

It said Mobil refused to disclose information about the disinvestment. — Sapa

B/Day 10/5/89

Mobil pullout: CWIU urgent application postponed

ALAN FINE

THE Industrial Court yesterday postponed until May 24 the Chemical Workers' Industrial Union's (CWIU) urgent application for the sale of Mobil Southern Africa to be suspended pending negotiations with the union

Court deputy president Pierre Roux, sitting with president Daan Ehlers, said the second postponement (the court initially sat on April 28) was made "with some reluctance".

The most persuasive factor in this decision was an undertaking by Mobil SA's counsel to seek instructions from his principal in order to provide the union with information about the pending sale to Gencor to try allay disquiet existing among union members, he said

The CWIU has also asked that the court declare Mobil's alleged failure to negotiate the terms of disinvestment, and to disclose information, an unfair labour practice, and to order the company to negotiate

Jeremy Gauntlett SC, for Mobil SA, earlier pointed out CWIU's real target was the US-based Mobil Corporation, which, while cited as a respondent, had not had papers served on it and was not represented in court

Commitment

He said Mobil SA was the equivalent of "a pound of cheese which has been sold"

Senior management, with the possible exception of MD Bob Angel, had not known of the sale any sooner than had the union

He said Mobil SA was as much the victim of the sale as the union Angel had made a commitment that existing conditions of employment would remain unchanged, and no more could be asked of the local subsidiary

Paul Benjamin, for the CWIU, said the Mobil SA negotiating team at Monday's meeting between the two had been headed by industrial relations manager Jaques Franken, who had repeatedly stressed his ignorance of the situation This was evidence, he said, of the absence of serious negotiation by the company.

CWIU general secretary Rod Crompton described the meeting as a "farce"

In an affidavit filed yesterday backing Mobil's request for a postponement, Franken said there were substantial and fundamental disputes of fact in Crompton's version of the meeting

Mobil hearing postponed

JOHANNESBURG. — The urgent Industrial Court hearing in which the Chemical Workers' Industrial Union (CWIU) is asking the court to stop the sale of Mobil's South African assets was yesterday postponed to May 24.

A union spokesman said the case was postponed after Mobil lawyers undertook to secure the provision of full information to the union about the proposed pull-out.

The union has asked the court to restrain Mobil from going ahead with the sale until Mobil agrees to negotiate the union's preconditions for disinvestment.

A meeting between the union and Mobil ended unsuccessfully on Monday. — Sapa

High Tech

PR

BACKIN

Ergo wage offer justified, says Labour Appeal Court

BD 18/5/89 ALAN FINE (165)

IN ITS first judgment, the Labour Appeal Court (LAC) has overturned an unfair labour practice finding against Ergo made last November by the Industrial Court in a case brought by the NUM.

The LAC was established in terms of the Labour Relations Amendment Act passed last year

The judgment, delivered in Pretoria on Tuesday, found Ergo was justified in offering to backdate wages to all employees in an attempt to dissuade them from striking, an Anglo American spokesman said. Mr Justice de Klerk also found it was not unfair for the company to backdate the wages of those who did not strike.

The appeal was upheld with costs. It arose out of the NUM's 1987 wage strike.

The spokesman said Mr Justice de Klerk had relied heavily on the "bad faith" bargaining of the NUM which included personal insults during bargaining, setting pre-conditions, bargaining without the intention to settle and unreasonably delaying the process.

He said the separate but concurring judgment of the assessors Hans Fabricius, SC and Professor Adolf Landman relied to a lesser extent on bad faith, but found Ergo's conduct justified by reason of the impasse which had been reached, which justified unilateral action

The court found the fact that the offer was made without distinction and to all employees in the bargaining unit meant that Ergo had not acted in a discriminatory manner. Any discrimination was due to the rejection of the offer, and not any action on the part of Ergo

The spokesman said the assessors appeared to regard impasse after good faith bargaining as conferring certain rights of unilateral action Where impasse is reached by one party's lack of good faith, the extent of these rights would be greater, the spokesman said

He said that, in effect, the test formulated by Justice de Klerk was more stringent than that of the assessors in that it required an employer to prove bad faith to justify unilateral action.

Minister asked for car, says MD

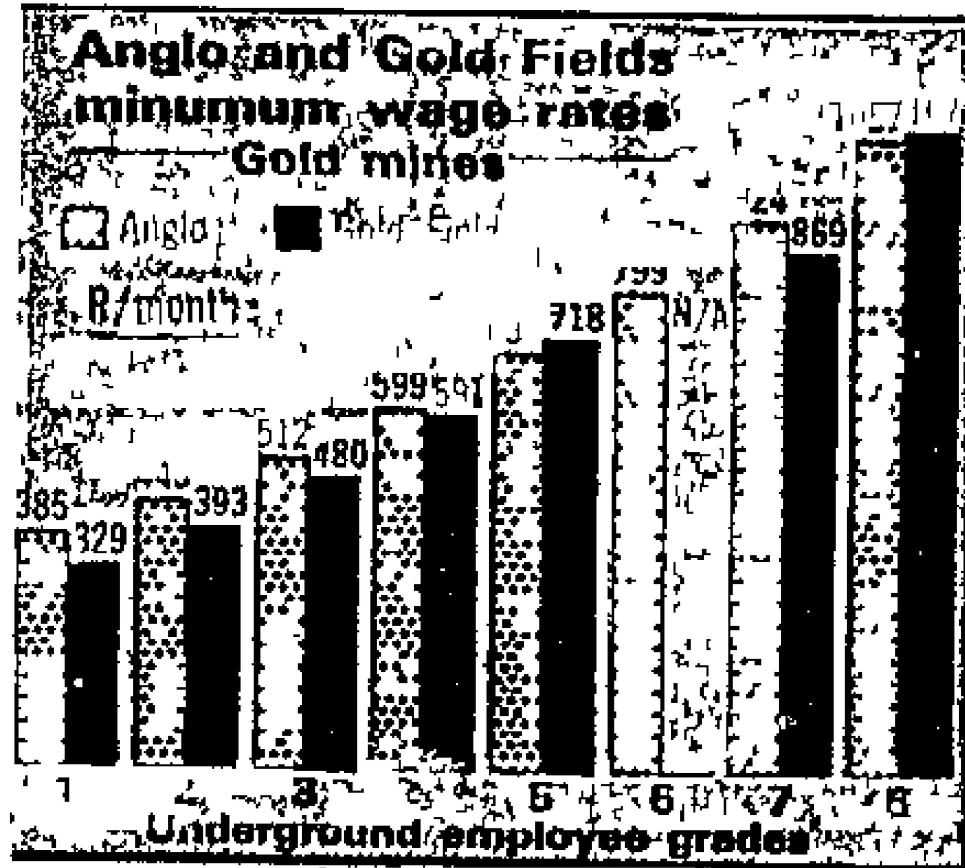
Anglo black wages higher than GFSA

ALAN FINE

ANGLO American black wage levels are higher, and its attitudes to union organisation policies historically freer, than those at mines administered by GFSA, in which ConsGold holds a 38% interest

As part of its defence against the failed Minorco takeover bid, ConsGold criticised Anglo's black staffing policies and accused it of deriving profits from apartheid

Minimum wages in the lower job categories at Anglo mines are up to 20% higher



Graphic FIONA KRISCH Source ANGLO AMERICAN & NUM

than the same grades at GFSA At Anglo most black miners fall into these grades

Anglo confirmed wage statistics supplied by the NUM GFSA was unable to do so, or to comment on other matters, by the time of going to press

NUM national organiser Gwede Mantashi said yesterday union organising rights at Anglo mines had deteriorated markedly since the 1987 wage strike — a matter documented in the NUM's controversial report on repression released this year

However, he said previous to that the union officials had enjoyed at most mining groups, apart from GFSA, open access rights for organising purposes They were also entitled to operate union offices next to hostels

The NUM claims a total 111 000 members at Anglo Membership at GFSA had only recently begun to climb and had now reached 24 000, he said

Both Mantashe and Anglo said Anglo's freer attitude to allowing organisers to enter hostels for organising purposes explained the NUM's vastly quicker progress at Anglo, although Mantashe repeated the

□ To Page 2

Higher wages

□ From Page 1

NUM had had difficulties since 1987

Neither would comment on whether progress had been made towards normalising the relationship in the past two months' "Code of Conduct" talks

Mantashe said GFSA, in contrast to such groups as Anglo and Gencor, allowed access by union organisers only once the union had achieved majority membership in bargaining units

Office accommodation was granted at GFSA only temporarily and in special circumstances, for example earlier this year when due to an increase in subscriptions each member had to sign a new stop-order form

He said a dispute had arisen in this period when NUM activists at West Driefontein had used the temporary office for organising purposes Management had closed the office and threatened disciplinary action against offenders, he said

Court issues 'directive' against Mobil strikers

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ALAN FINE

THE Industrial Court yesterday issued a "directive" against the Chemical Industrial Workers' Union (CWIU) to end the strike by union members at 15 Mobil depots

Court vice-president Pierre Roux directed if the strike did not cease within 24 hours, the court would hear argument tomorrow on why urgent interim relief should not be granted to Mobil

A union spokesman said it was unprecedented for the court to issue a directive in such circumstances

The CWIU has said about 350 workers were on strike against Mobil's failure to negotiate the terms of its disinvestment

A Mobil spokesman said the company urged employees to co-operate He put the number of workers involved at 240

Foskor review application upheld

BDay 22/5/89

Industrial Court ruling overturned

THE establishment of a Labour Appeal Court under the Labour Relations Amendment Act did not necessarily preclude the Supreme Court's right to review Industrial Court judgments.

That was the finding of a Pretoria Supreme Court judge, who overturned a Pretoria Industrial Court (IC) unfair labour practice ruling against Foskor Ltd on Friday

The new Labour Appeal Court delivered its first judgment on May 16, overriding an unfair labour practice finding against Ergo, handed down in November 1988 by the IC in a case brought by the NUM

Mr Justice Eloff upheld Foskor's application for review with costs

The NUM, which represented 30 dismissed workers from Foskor's Phalaborwa plant in the northern Transvaal, submitted that the Supreme Court did not have the jurisdiction to review the IC's decision

This right, it contended, was invested exclusively in the Labour Appeal Court (LAC)

ADELE BALETA

The NUM submitted that with the establishment of the LAC, the Supreme Court's jurisdiction to review IC proceedings had been ousted by necessary implication

Communication

The 30 NUM members were dismissed in October last year for alleged breach of their service contracts with Foskor by refusing to take part in Foskor's "internal communication forum"

The forum was established to act as a channel of communication between management and workers

The workers were fired after they failed to take part in electing employee representatives to the forum

On January 20 1989, the Pretoria IC ruled that the company had acted unfairly, and ordered Foskor to reinstate the workers on terms and conditions no less favourable than before their dismissal

Union suspends Mobil strike

Sowetan 22/5/89

SOWETAN Reporter

THE Chemical Workers' Industrial Union has suspended a week-long strike by members at 16 Mobil installations in the Transvaal and the Cape after an out-of-court agreement with management.

The strike was meant to induce Mobil to negotiate with the union workers' pre-conditions for disinvestment, following the American oil company's decision to sell off its southern African assets.

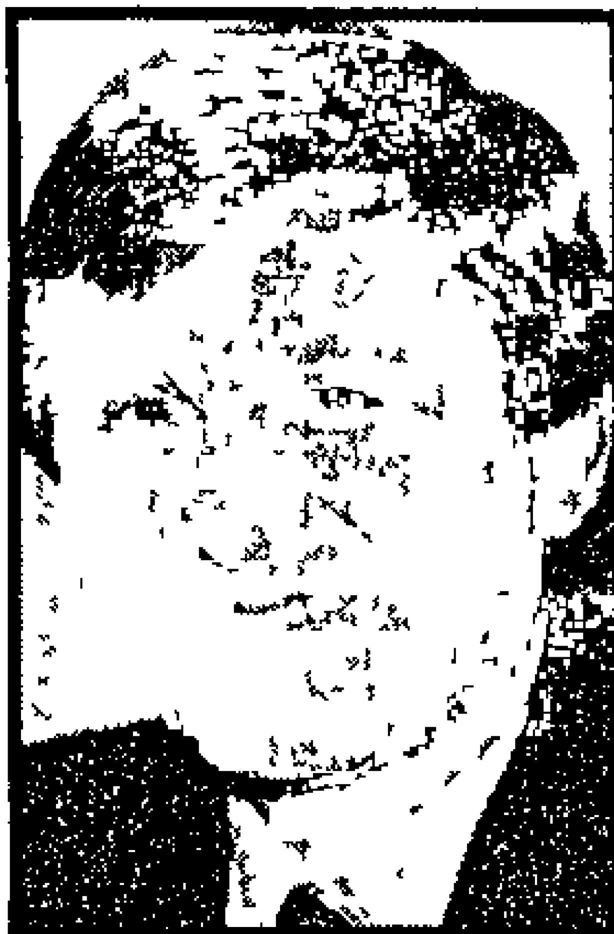
A CWTU statement said out-of-court discussions on Friday between the union and management — just before Mobil's industrial court application to halt the strike was heard — had led to the suspension of the strike until midnight on Wednesday.

The suspension of the strike followed "significant progress" made in talks between the parties on Friday morning. In that meeting some of the information sought by the union had been provided by management, although the agreement of sale had been withheld.

"Mobil has agreed that the suspension of strike action in the Transvaal and Eastern Cape will not preclude the union recommencing strike action," said the union, adding that without such an undertaking, resumption of the strike "would have been illegal under apartheid law."

In terms of the agreement, Mobil also undertook to "urgently canvass" its parent company on the union's demand for a meeting with the company's New York head office, and the union's claim for compensation, the CWIU said.

Local management is to report back to the union this evening after a meeting in London, scheduled for last weekend.


MIKE SPAGNOLETTI

TCMA calls for council's deregulation

THE Transvaal Chemical Manufacturers' Association (TCMA) has applied for the deregulation of the Industrial Council for the chemical industry

Does this reflect a disillusionment with industrial relations?

"Not at all," says TCMA chairman Mike Spagnoletti

"The industrial council did not work because it is too far removed from the work," he says

Spagnoletti, an Adcock-Ingram executive director, says employers withdrew from the council two years ago and it consequently became defunct Since then the focus has been on company bargaining

Is this then the beginning of a trend that will see the collapse of other industrial councils?

"Not necessarily There are two opposing forces at work Unions are generally seeking greater unity and centralisation of power They might therefore favour industrial councils even though they have regarded them as a dirty word in the past

"Employers, on the other hand, are under increasing competitive pressure They are therefore likely to reject the inefficiency of two tier bargaining arrangements that industrial councils inevitably create"

Thus more flexible and innovative industrial relations structures could start to emerge For instance, voluntary groupings of companies and unions could reach agreement on specific issues.

News 21/5/89

Nat MP's link in R1-m payment to company

Political Staff

THE Department of Manpower under former Minister Piettie du Plessis paid R1-million to a company partly owned by former National Party MP, Mr Peet de Pontes, for a job creation project which was never completed.

Both politicians have since resigned from politics in a cloud of controversy unrelated to this deal.

Mr du Plessis left when it became known that the Advocate-General was probing property deals between his department and his son. Mr de Pontes was forced to resign as MP for East London City after the Harms Commission exposed his dealings with Mafia boss Vito Palazzolo.

The present acting Minister of Manpower, Mr Eli Louw, disclosed details of the 1985 deal in parliament in a written reply to questions by Mr Ken Andrew, Democratic Party MP for Gardens.

Mr Andrew said last night that "this allocation of a very large sum of money to a company in which a Nationalist MP would appear to have had an interest in at the time needs to be thoroughly investigated and the findings made public".

Mr Louw said the Department of Manpower had paid R1-million to the Duncan Village Corporation in 1985 for a housing and temporary school project, the purpose of which was job creation, and it was authorised by the Committee for Job Creation.

It had not been completed because it "did not progress satisfactorily" and only 64 units were completed while 104 were not.

"Payment was finalised on an auditor's certificate for work completed and final payment was only for work com-

2 The Argus, Wednesday May 31 1989

Sacked store workers in court bid to get jobs back

Labour Reporter

SIXTY-ONE former employees of Seven-Eleven Superettes, dismissed after a strike in March, have applied to the Industrial Court for reinstatement

They have alleged that the Hotel, Liquor, Catering and Allied Employees Union tried to negotiate recognition with the company but the managing director, Mr George Hadjidakis, obstructed this, leading to dissatisfaction and the strike

In papers bfore the court the company denies it was unwilling to recognise the union and instead blames the union for delays in negotiation over recognition.

It says the union failed to respond to a request for further details about new members and for other particulars which would have established the union's status and representation.

The dismissed employees claim their dismissal was an unfair labour practice because no disciplinary enquiries were conducted.

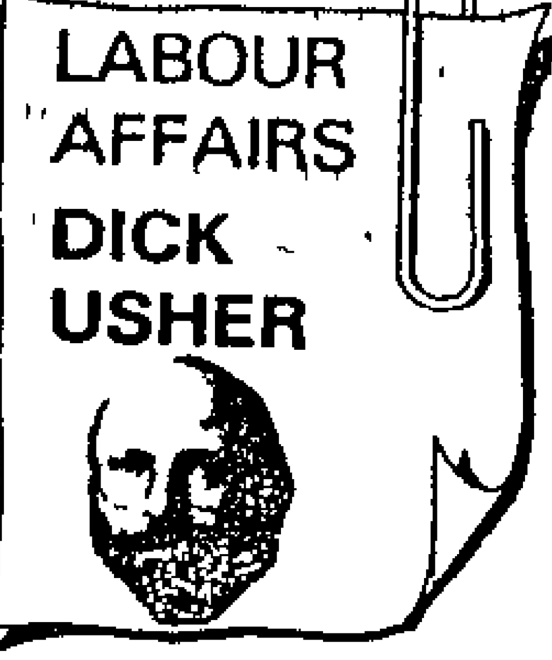
They say an attorney acting on Seven-Eleven's behalf gave an undertaking that a deadline for their dismissal would be extended pending discussions.

Seven-Eleven denies this and claims disciplinary enquiries were unnecessary in the circumstances, particularly in view of repeated requests that the employees return to work.

Mr P Roux presided. Mr A Freund, instructed by K G Druker, appeared for the applicants. Miss M de Swardt, instructed by Leonard Hotz and Associates, appeared for Seven-Eleven.

W/G Argus 10/6/89

Industrial Court in the Nineties



THE greatest challenge facing the Industrial Court, if it wished to remain relevant in the 1990s, was finding and training members with the expertise necessary to handle the difficult problems it would face, according to Professor Pak le Roux

He was speaking at an industrial relations seminar in Cape Town organised by Andrew Levy, Johan Piron and Associates.

He said the court's members would have to provide the actors in the IR sphere with workable, consistent guidelines which reflected the realities of our situation.

Decisions would have to be well motivated and understandable to the parties so that they could grasp the underlying public policy assumptions and legal rules.

This would be all the more difficult if the court had to rely on too many *ad hoc* members and a significant number of well paid, independent and competent permanent members was needed

If the court could succeed in this it would go a long way towards ensuring credibility and relevance in the future, and any political objections to its jurisdiction would at least be blunted if not eliminated

A most important factor for the court would be whether it would be able to interpret the unfair labour practice definition of the Labour Relations Amendment Act so as to develop a coherent set of rules acceptable to employers and employees

By interpreting the unfair labour practice definition the court could create standards of industrial justice which would reduce the potential for conflict in the workplace.

But in the long term the court could play and even more important role by creating guidelines to establish the "rules" of collective bargaining, an opportunity it had been given by the wide definition of an unfair labour practice.

While decisions about whether there was a duty to negotiate were still contradictory, the weight of cases appeared to support the view that there was a duty.

If that view should become generally accepted the court would have to start developing more detailed guidelines.

The court could therefore play a pivotal role in creating a more co-operative system of industrial relations by formalising the "rules of the game", by establishing the rules of industrial justice to avoid unneccessary conflict and by providing a forum other than the economic arena for the resolution of disputes.

Conciliation Board hears mine dispute

Star 21/6/89

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Labour Reporter

A Conciliation Board hearing to resolve the wage dispute between the National Union of Mineworkers (Num) and the Chamber of Mines, potentially affecting at least 500 000 black mineworkers on Chamber mines, was held in Johannesburg yesterday

Spokesmen for the Chamber and Num declined to comment. The board meets again tomorrow.

The Chamber applied for a hearing after declaring a dispute with Num on Thursday

At the time, Num, representing about 210 000 members on Chamber mines, was demanding a monthly national minimum rate of R543 for surface workers and R600 for underground workers

It had rejected a Chamber offer of increases of between R33 and R117/month

The Chamber's opening offer was an across-the-board increase of 11 percent.

● The Chamber has already reached agreement with four unions representing mainly white workers in the semi-skilled and skilled categories.

Number of strikes drops 80% in 1988, says report

BDay 12/6/89 GERALD REILLY

PRETORIA — There were fewer strikes last year than in 1987, says the Manpower Department's annual report

The report, released on Friday, says goverment's job-creation programme played an important role in the maintenance of labour peace.

Last year the number of strikes, which involved more than 1 000 workers, decreased by 80%. This contrasted with an upward trend during 1986 and 1987.

An important reason for this was the greater involvement of trade unions in strikes and the use of dispute-settling mechanisms The Labour Relations Act could also have contributed to the decrease, the report says.

Work stoppages not accompanied by demands decreased from 123 in 1987 to 80 last year

About 31% of strikes last year lasted one day or less, and 29% lasted longer than 14 days. The average duration was 5,6 working days, as against 9,9 in 1987.

The number of man-days lost also decreased significantly from 5 825 231 in 1987 to 914 388 last year.

The report says this could be attributed largely to a more frequent use of dispute-settling machinery in the Act

There was a 13,6% increase last year in the number of disputes referred to industrial councils, and of these 46,8% were settled by the councils

Trade union membership went up by 10,7% in 1988 A total of 2 084 323 belonged to registered unions and 330 000 to unregistered unions at the end of last year

(165)

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Papers served on company

Cape Times 29/6/89 Staff Reporter

PAPERS have been served on Premier Wire and Steel Products following the dismissal of 143 workers over a June 16 stay-away controversy

The papers were served yesterday by Bernadt, Vukic and Potash, attorneys for the Electrical and Allied Trade Workers' Union of which the 143 are members

They were dismissed on June 15 this year and seek an Industrial Court order directing the company to reinstate them on the same terms and conditions as prevailed at the time of their dismissal

According to an affidavit filed by shop steward Mr Ivan Daniels, he and his colleagues had several meetings with the management regarding the issue of June 16 during that week

Initially, shop stewards had suggested that employees work either on October 10 or two Saturdays as an alternative to June 16

In addition, workers requested that they be paid on June 15 and not the following Monday, as this would cause them severe financial hardship

On June 13 management rejected their proposals and "was not prepared to enter into an agreement"

Mr Daniels said the entire workforce reported for duty on Thursday, June 15, but found the company's front gates locked Wages were paid after 9am

OK, union dispute unresolved

Sowetan

THE urgent application launched by OK Bazaars against the Commercial Catering and Allied Workers' Union of South Africa was not resolved yesterday and was postponed until today after both sides gave undertakings

When OK approached the court on Tuesday, they asked that section 65 of the Industrial Relations Act be complied with before the union called a strike The act provides that a strike can only be called after a ballot results in more than 50 percent of the workers voting in favour of a strike

Yesterday the court heard OK was seeking an order that the ballot be declared invalid

Mr Denis Kuny, SC, who appears for Ccawusa, said the 95-page application was served on 10 or 15 minutes notice on Tuesday The parties agreed to postpone the application and a meeting was held on Wednesday It did not resolve the disputes

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30/6/89

COURT WILL DECIDE

Sowetan 12/7/89

THE dispute between Perskor and the Media Workers Association of South Africa will be determined next month by the Industrial Court in Pretoria.

An attempt to reconcile the two parties at the Industrial Court early this month had failed.

The source of discontent between the two groups was Perskor's refusal to re-employ some of the workers who were dismissed after the June 1988 seven-day strike.

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Wages

Mwasa successfully applied for temporary re-employment of the workers early this year but Perskor interdicted the decision with a proviso that workers' wages be paid to a trust account to be monitored by Mwasa lawyers. Perskor's application was however dismissed with costs and Mwasa workers were granted re-employment for six months.

Mwasa's general secretary Sithembele Khala said the union was gearing itself for a major confrontation with the company.

He said Perskor wanted to settle the matter financially. The offer was however ridiculous and an insult to workers, Mr Khala said.

Chemical workers up in arms against 2 companies

Star 14/7/87.

By Jovial Rantao

The Chemical Workers' Industrial Union has requested the Department of Manpower to conduct an inspection at two major oil companies concerning allegations of illegal overtime practices there.

In a statement to The Star, the union said the reason for this was the refusal of both Mobil SA and Shell SA to bring their overtime practices in line with the basic conditions of the Employment Act since the CWIU raised this problem 12 months ago.

The union believes it has condoned illegal overtime practices at Shell and Mobil for too long, and regards 12 months as sufficient time for them to put their house in order.

The union has offered to support the companies' application for any exemptions to the Act which are mutually acceptable, and which may be required to bring these companies into line with basic legal requirements.

COMPULSORY

The CWUI members' two main concerns are working overtime on a compulsory basis and being required to work overtime in excess of the legal maximum of three hours per day or 10 hours per week.

"We regard it as disgraceful that such large and reputable companies as Shell and Mobil are prepared to indulge in illegal overtime practices, instead of cutting down on overtime and employing more workers to do the work," the union said.

Rethink on Labour Act damages

AK66 21/7/89

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The Argus Correspondent

JOHANNESBURG — The government has confirmed it is looking into the possibility of revising South Africa's labour laws, with urgent attention being given to changing the clause enabling employers to sue unions for damages arising from industrial action

This was confirmed today in a statement by the office of the Minister of Manpower.

According to the statement, the minister had, in line with a long-standing programme to "restructure and consolidate" the Labour Relations Act, requested the National Manpower Commission (NMC) to give "urgent attention" to Section 79 (2) of the Act, which placed the burden of proof on the respondent

The inclusion of this section into labour legislation last year "caused practical problems, as trade unions sometimes did not want to assist with the settling of the dispute because of fear of this provision", said the statement

SPARKED SERIOUS DISPUTE

The NMC has been directed to look into, among other things, the possibility of retaining the status quo regarding the liability for damages in the case of illegal strikes and lockouts, whether the burden of proof should be shifted, and whether other methods can be found to "discourage illegal actions such illegal strikes, lockouts and intimidation"

The promulgation of the new Act sparked one of the most serious disputes between unions and employers, leading to a three-day national work stayaway last year. The unions, presently locked in talks with employers, have threatened to declare a national dispute — and possible industrial action — if their concerns are not addressed by September 1

Sacked workers get their jobs back

BDay 25/7/89

(165)

ALAN FINE

THE Industrial Court has ordered the reinstatement, with the maximum permitted six months' back pay, of 133 Iscor employees dismissed after participating in the June 6-8 stayaway last year.

Court member Prof G C Kachelhoffer made a final determination, in a judgment dated July 21, that the dismissals constituted an unfair labour practice.

The court has not yet given reasons for its decision but the judgment set out the arguments brought by the applicant, Numsa, most of which relate to the alleged selective nature of the dismissals.

The reinstated workers were among about 7 000 Iscor employees at Vanderbijlpark who participated in the June protest against the Labour Relations Act.

They each received formal warnings which, together with their disciplinary records regarding absenteeism, Iscor determined made them liable for dismissal.

Numsa submitted, among other things, Iscor unfairly discriminated against the dismissed employees by relying on their individual disciplinary records.

It was further argued Iscor had failed to consider the motives and merits of the stayaway; the company had responded differently to most other employers; it did not take into account the social, political and economic realities in which employees found themselves; and failed to take properly into account the effect of dismissals on general employment relationships.

The union said Iscor had also not properly complied with its disciplinary procedure and code, and that the code was, in any event, ambiguous and did not comply with standards laid down by the court.

An Iscor spokesman said management was studying the judgment.

left groin caused by his daily weightlifting sessions, doctors reported.

CAR 7/-113 25/7/89 (380) 161 (1760)

Iscor workers reinstated

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CT 7/6/89

Court to decide on strike bid

ENGINEERING giant Dorbyl has brought an urgent application in the Industrial Court for an order declaring a planned national strike by more than 7 000 workers unlawful and unfair, a National Union of Metalworkers of SA (Numsa) spokesman said yesterday.

The court action follows 94% of Numsa's members at 50 Dorbyl plants country-wide voting in favour of a legal national strike, set to start on Monday, Numsa's Dorbyl national organiser Mr Bobby Marie said.

Between 900 and 1 000 Numsa members at four Dorbyl engineering and automotive plants in Cape Town are affected by the dispute, he said

Numsa is demanding that the company agrees to refer all disputes the right to private arbitration; to negotiate a service allowance, to negotiate severance pay in the event of unavoidable retrenchment, and to grant shop stewards 10 days paid training leave.

A strike ballot was held last week after Numsa failed to reach a settlement with Dorbyl, Mr Marie said

14 000 on strike

Cape Times 8/8/89

Own Correspondent

PORT ELIZABETH — About 14 000 workers are now affected as strikes for higher wages at several factories continue to escalate — 4 000 were dismissed at one factory yesterday, while lock-out notices were served on 2 000 at two other plants

Nearly 4 000 workers at the Prospecton assembly plant of Toyota in Durban were dismissed yesterday after they did not resume their duties

Meanwhile, nearly 1 200 National Union of Metalworkers of South Africa members on strike at Goodyear are to be served with lockout notices today, following the more than 800 Numsa members locked out of Eveready yesterday

At the Volkswagen plant in Uitenhage and the Samcor plants in Pretoria and Port Elizabeth, there was also no production

At Volkswagen the factory was closed because of the high absenteeism — affecting almost 5 000 workers — and at Samcor workers struck for the fifth consecutive day, affecting more than 3 000 workers

At Goodyear it was stated in a notice that contracts of employment would be terminated and workers would not be allowed access to the company's premises

Goodyear set out its proposals on the disinvestment dispute and attached it to the notice Public relations manager Mr Mike London said "If an employee does not sign the acceptance form and return to work by 9am on Friday, August 11, the company's offer will lapse and the termination of employment will stand."

Meanwhile, at Eveready Numsa members were locked out while office workers were told they could take a day's leave if they wanted to stay away or could be met at Greenacres and bussed into the plant

According to Numsa, workers assembling outside the company gates were met with a show of force from armed police, two Hippos and four other police vehicles yesterday They were told by a policeman using a loud-hailer that the company had resorted to a legal lockout

● It was reported earlier that nearly 4 000 workers at Toyota were dismissed yesterday after not resuming duties This follows the shutdown of the Prospecton plan on Thursday when Toyota obtained an urgent Industrial Court order calling workers to end unlawful action

Union seeks action over recognition

Sowetan 14/8/89.

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THE National Union of Steel and Allied Workers is to take the Besaans and Du Plessis company to the Industrial Court today for allegedly refusing to enter into a recognition agreement.

By LEN MASEKO

Nusaw official Mr Ndomane Tibane said the dispute with the Pretoria company revolved around management's refusal to negotiate with the union at plant level Instead, he said, management was prepared to deal with the union only at industrial council level.

"The problem is we are not members of the metal industry's industrial council, hence we have rejected management's response to our demand," Tibane said.

Nusaaw has filed the court application on the grounds that the company, because of its apparent refusal to negotiate with it, was guilty of an unfair labour practice.

Tibane said more than half of the company's black workforce belonged to his union

* About 250 members of the SA Chemical Workers Union have called off their work stoppage at Bayers South Africa, a Sacwu spokesman said.

The Sacwu members were fired on July 13 after they ignored an ultimatum to return to work They downed tools in protest against management's refusal to take disciplinary action against an employee allegedly found in possession of company property.

Sacwu's general secretary, Mr Humphrey Ndaba, said the workers resolved to return to work after management promised to attend to their grievances.

"The company offered workers their jobs without loss of seniority, and undertook to look into complaints that led to the stoppage," Ndaba said

Harwu workers win reinstatement

Sowetan 14/8/89

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By LEN MASEKO

ABOUT 140 members of the Hotel and Restaurant Workers' Union dismissed for not coming to work on June 16 last year have been reinstated following an out-of-court settlement between the union and their employers, Holiday Inns/Southern Suns.

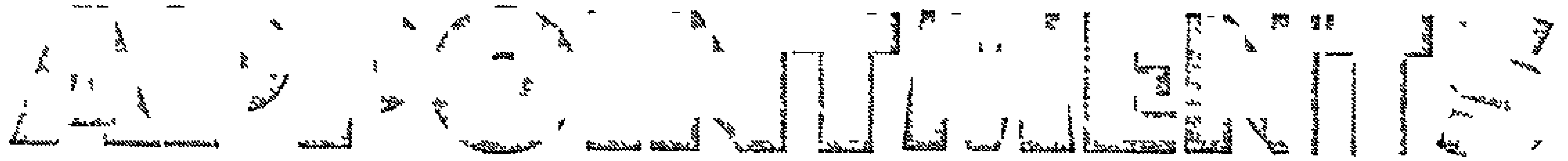
Harwu official Mr Alan Hurwitz said under the agreement, the hotel workers would be given two weeks' back pay and their pension contributions, discontinued after the employees were dismissed, will be updated.

The dismissal of the 140 workers sparked off placard demonstrations by Harwu members at Holiday Inn/Southern Suns hotels last year. Management responded to the action by locking out the demonstrators.

Hurwitz said the validity of the lock-out, which affected about 3 000 employees at the time, would be determined in the Industrial Court on October 16. He said Harwu members would be compensated for loss of pay if the court declared the five-day lock-out illegal.

Meanwhile Harwu has completed wage negotiations with Carlton and Braamfontein hotels, and Johannesburg and Bryanston country clubs.

PEOPLE AT THE TOP
ARE ON THE MOVE
SEE PAGE 17



PAGES AND PAGES OF THE BEST JOBS IN SOUTH AFRICA

MANPOWER MIRROR by ROBYN CHALMERS

Industrial court irks bosses and unions

LAST weekend's workers summit did more than confirm trade-union opposition to the Labour Relations Amendment Act (LRAA)

It again highlighted union dissatisfaction with the industrial court One of the demands Cosatu (Congress of SA Trade Unions) and Nactu (National Council of Trade Unions) has repeatedly put to employer body Saccola (SA Consultative Committee on Labour Affairs) is that arbitration be used instead of the industrial court

For once trade unions employers and lawyers agree. They are unhappy about the industrial court arguing that it has become too interventionist and inhibits the bargaining process

Elijah Barayi call for united trade-union action

It also appears to be severely under staffed One can understand why — the court received 3 838 cases in 1988 compared with 2 042 two years earlier

Of the 3 838 cases last year the court was unable to settle 1 314

It has also been involved in an increasing number of urgent interdicts The National Manpower Commission (NMC) report tabled in Parliament in April this year shows employees and employers applied for 189 urgent interdicts last year as opposed to 76 in 1987

The increasing number of cases coming before the court reflects both the growth of clashes between employers and trade unions and a swing to the law s being used as a first and not last resort

Labour lawyers and firms specialising in labour law have grown at an astonishing rate Many employers and consultants are highly critical of this trend

Among them is Chamber of Mines senior general manager of external relations Johan Liebenberg He believes that the legal profession has benefited enormously from the Wiehahn reforms

Because of the trend to legal solutions he says old fashioned emotional collective bargaining is being phased out

Recent developments appear to indicate that employers and unions are finding ways around the Industrial Court. Dorbyl s recent decision to refer dismissal cases to private arbitration is one example

Dorbyl adopted this course only after 7 000 National Union of Metal workers of SA (Numsa) members at 50 of its plants threatened to strike It did however reserve its right to have recourse to the court should it be unhappy with the decision of the arbitrator

The demand for private arbitration has been heard repeatedly at union employer meetings Reasons put forward for this by unionists at the workers summit included dissatisfaction with the arbitrary and inconsistent nature of court judgments

In addition, high costs of litigation and the difficulty of gaining access to the court played a part.

Private arbitration was punted recently by Amalgamated Clothing and Textile Workers Union (Actwusa) general secretary John Copelyn He says the unions believe they are unable to influence court appointments and the court is reluctant to reinstate unfairly dismissed workers as reasons for this

Although employers appear to be accepting the concept of contracting out of the LRAA, particularly on rights disputes there are some disadvantages to private arbitration

Mr Copelyn says because arbitration awards are private they cannot set a precedent or be quoted as a guideline for other parties not involved in the proceedings.

The industrial court does play a vital role in society, but a review of its functions may well be in order especially in the face of increased union militancy

Although unions are becoming more militant they also appear to be drawing closer together The fact that both Cosatu and Nactu attended the workers summit was amazing enough

A new initiative was adopted at the summit. It resolved to unite workers across the political spectrum through a Cosatu Nactu and independent unions National Co-Ordinating Committee

Cosatu president Elijah Barayi made it clear that he hoped united action against the LRAA would allow greater co-operation between Nactu and Cosatu the goal being one federation for all unions.

Amid the spirit of co-operation and peaceful protest, it is hoped that some clear-cut decisions will be taken on the LRAA soon. Employers and workers have lost too much both in terms of cash and in trust

Court overrules Minister

ARG5 12/9/89

Supreme Court Reporter

THE Minister of Manpower has had his decision not to appoint a conciliation board in the case of a dispute over 31 Railit workers who stayed away overturned on review before the Supreme Court, Cape Town.

In the case of Mr Kolekile Lawrence Dlali and 30 others versus the Minister of Manpower and Railit, Mr Justice H J Nel, with Mr Justice J Foxcroft concurring, ruled that the Minister's decision had been misdirected and ordered that he appoint a conciliation board to deal with the dispute.

Evidence was that the workers stayed away on June 16 last year because they feared intimidation and there was no transport available.

They were fired, but reinstated by the industrial court, which ruled on September 19 last year that their dismissal was an unfair labour practice, pending a resolution of the dispute.

However, on November 8 last year the Minister refused to appoint a conciliation board.

Mr L J Krige, instructed by the Legal Resources Centre, appeared for the workers Mr A P Blignault, SC, instructed by Webber, Shepstone and Findlay, appeared for the respondents

Briefing

The Star

Disillusioned unions are shunning court

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The alleged forcing-out of the Industrial Court president has heightened concern about this vital institution, reports DREW FORREST.

The Industrial Court is wilting under a two-pronged legislative and administrative assault — and the long-term loser could be industrial peace in the country

This is the view of unionists and labour lawyers who warn that unions, particularly the more powerful ones, are turning from the institutional resolution of conflict to the use of collective muscle

There was widespread employer discontent over the Industrial Court in the mid-Eighties But union disillusionment has rarely run so deep In an unprecedented move in March this year, the labour summit, representing about 1,5 million workers, urged unions not to use the court

"We are reconsidering our approach to the court and in some circumstances have decided not to use it," said the National Union of Metalworkers' Jeff Schreiner

Often a pace-setter, Numsa led the unions into the court

Of current concern is the Government's refusal to extend the contract of Industrial Court president Dr Daan Ehlers, a man with a record of enlightened judgments who has voiced misgivings over the impact of last year's Labour Relations Act (LRA) amendments on the court

Insisting he was told he would be kept on until a replacement was found, Dr Ehlers suggests he was sidelined because of differences with Manpower Director-General Mr Joel Fourie over the controversial amendments Mr Fourie denies this

Labour sources say the reining in of the court followed pressure from State securocrats during the countrywide upheavals of 1986, a time of militant union rhetoric

They see the appointment of Mr Fourie as part of a rightward swing in State labour policy and the LRA amendments as primarily his brainchild

Branding this "an absolute misconception", Mr Fourie said his only role had been to forward comments on the Bill to the parliamentary standing committee

Top labour lawyer John Brand said that until the amendments, the Industrial Court had enjoyed grudging union respect But the new law had distorted its jurisdiction by forcing its hand in vital areas.

Most crucially, it had codified "unfair labour practices", previously a matter of court discretion, in a manner highly favourable to employers

"Even a lawful strike may now be unfair To be safe from court action, a strike must be primary, procedural, lawful and non-intermittent These may be the most drastic strike curbs in the Western world," Mr Brand said

The result, he said, had been a stream of employer interdicts against strikes this year, many of them granted without hearing union argument

Numsa's Mr Schreiner said the "ridiculous" appeals procedure, which allowed employers to stall applications for years, was another key union grievance

Lawyers and unionists also complain that, either through ignorance of its key role or "to clip its wings", the court is starved of resources and that this is reflected in poor recruiting and adjudication

"We consider many of the appointees incompetent," Mr Schreiner said

Two court members are said to have failed Bar exams while another was adviser to the former far-rightwing unionist, now Conservative Party MP, Mr Arrie Paulus

And, according to Mr Brand, while some of the judges had acted for management,

when practising lawyers, none had acted for the new unions

Rejecting claims that the court faced a "crisis of legitimacy", Manpower's Mr Fourie said the LRA amendments had redressed the uncertainty surrounding the unfair labour practice concept, which had unfairly favoured the unions

On the quality of court staff, he stressed that members were better paid than other civil servants doing equivalent work

As they needed no knowledge of criminal or civil law, the question of Bar exams was irrelevant

"As they deal with more labour disputes, the court's members are more expert in labour matters than any practising lawyer," he added.

Mr Fourie said Government statistics indicated a drop in strike levels since the LRA was amended

BDay 20/9/89 1/65

Bid to prevent collapse of the Industrial Council

ALAN FINE

COSATU'S Paper, Printing, Wood and Allied Workers' Union (Ppwawu) has applied to the Industrial Court for an order barring the SA Printing and Allied Industries Federation from withdrawing from the Printing Industrial Council

The federation's withdrawal, announced in June and effective at the end of the year, would cause the collapse of the Industrial Council and the end of national bargaining in the industry

The federation's announcement followed shortly after Ppwawu's application to join the council The union represents some 6 800 of the industry's 47 000 employees

According to papers placed before the court in Pretoria on Monday, Ppwawu, through its national organiser Robin Rees, argued in an affidavit the federation's motive in withdrawing was to avoid legitimate collective bargaining between the two parties

The federation's conduct, he argued, was unfair and might have the effect of creating labour unrest and preventing the union from properly representing its members

Rees's affidavit was supplemented by the confidential minutes of a meeting of the federation's Midlands branch, in which federation executive director Chris Sykes outlined what he saw as the negative implications of Ppwawu's membership of the council

Voluntary

The meeting decided unanimously the federation should withdraw from the council

In his replying affidavit, Sykes said membership of an industrial council was completely voluntary, and the court had no power to compel anyone to join one He added the federation's conduct did not fall within the definition of an unfair labour practice.

He said the federation's decision to withdraw from the council was based on a number of factors These included the diverse nature of firms covered by the council, diversity in region, and disparity in size.

This diversity made it difficult for employers to negotiate as a single unit, and council agreements hampered them in achieving the most efficient operation of their businesses.

The council, he said, had also become inefficient in resolving disputes.

Sykes further argued Ppwawu's recognition agreements with firms allowed for plant level negotiations, and the union was thus able to effectively represent its members where it enjoys majority representation. Overall, he said Ppwawu was representative in a relatively small section of the industry.

Sykes said while there was nothing illegitimate in unions setting as goals the achievement of national bargaining, there was equally nothing illegitimate in employers formulating strategies they perceived to be in their own best interests

Judgment in the matter is anticipated within the next few weeks.

Court rejects SAB appeal in major test case on union overtime bans

ALAN FINE

IN A major labour relations test case on the legalities of overtime bans, the Appellate Division yesterday rejected an appeal by SA Breweries (SAB) in the matter involving the Food and Allied Workers' Union (Fawu)

Mr Justice J A Smalberger found an overtime ban did not constitute a strike

The decision comes in the wake of a number of contradictory judgments by divisions of the Supreme Court and the Industrial Court

SAB contended the ban on overtime amounted to a strike and that, if this was correct, such a strike would, pursuant to the terms of the Act, and particularly section 65, be unlawful.

Mr Justice Smalberger's judgment — with Chief Justice Corbett and Judges van Heerden, Milne and Steyn concurring — hinged on whether the collective refusal to work overtime to pursue a demand constituted a strike as defined by the Act.

"What is essentially at issue is whether the refusal to work overtime by the employees amounted to a refusal or failure by them 'to continue to work' or 'to resume their work'," Mr Justice Smalberger said

He said it was common cause that, though employees regularly worked overtime, they were not contractually obliged to do so.

Though the definition of a strike was not limited to breaches of contract, it would be impossible to define what constituted work "normally or usually" performed.

Furthermore, he said, the term "work" should be narrowly interpreted because under common law no employee can be compelled to perform work he is not contractually obliged to do.

"The right of workers to withhold labour they are not contractually obliged to perform is an important weapon they possess in the bargaining process .. It assists them to organise their labour power effectively in negotiations," Mr Justice Smalberger said

Although there were cogent arguments that could support a contrary view, Mr Justice Smalberger said the principles and considerations he had mentioned were, to his mind, decisive

☐ Future decisions of the Industrial Court will have a crucial bearing on the effects of this decision.

Fawu attorney Kuben Pillay said it remained to be seen whether the court would override this decision by determing that overtime bans could be unfair even if they were not unlawful.

Fawu assistant general secretary Mike Madlala lauded the judgment.

However, SAB human resources director Rob Childs said the judgment highlighted a loophole in the LRA SAB hoped it would not now be forced to make overtime contractually compulsory to overcome it.

He said any collective action to induce an employer to meet a union demand "should be preceded by negotiations and conciliation" He hoped unions would agree to do so before invoking overtime bans.

Court ruling strengthens unions' hand

Star 27/9/89

By Drew Forrest

In a watershed ruling, the Appellate Division yesterday upheld workers' right to impose a boycott on overtime where there is no contractual duty to perform it.

The judgment, on an appeal by SA Breweries, will greatly strengthen the hand of the trade unions in their current national overtime ban It has prompted SAB to call for changes in the Labour Relations Act "in the interests of labour peace".

Binding on all ordinary courts, it is likely to influence the Industrial Court in deciding whether to grant employers interdicts against the ban, lawyers said.

The appeal was against a Rand Supreme Court judgment last year. This had rejected an SAB application for an overtime ban by Food and Allied Workers Union members to be declared an unlawful strike

Upholding that decision, the Appellate Division ruled that an overtime ban was not a strike and that employers could protect themselves against such action only through contracts with employees.

Reacting to the ruling, SAB said it hoped employers would "not now be forced to make overtime contractually compulsory". It called for amendments to labour legislation to plug the "loophole" highlighted by the ruling.

Industrial court hears overtime ban case

By Drew Forrest

The SA Clothing and Textile Workers Union (Sactwu) is to meet a Pretoria firm in the Industrial Court today on the vital question of the fairness of an overtime ban

This week the Appellate Division gave an indirect boost to the labour movement's national overtime boycott by ruling that the refusal to do overtime was not a strike

The current case, in which Silverton Tannery is seeking an interdict against an overtime ban by Sactwu members, is the first to go before the Industrial Court since the Appellate Division ruling.

DISPUTE DECLARED

The tannery's managing director, Mr Glen Manley, said the company would argue that the overtime ban was an unfair labour practice.

In a related development, Sactwu this week declared a dispute after industrial council talks with Western Cape cotton employers over demands that employers bypass controversial clauses in the Labour Relations Act (LRA) Sactwu's Mr Ebrahim Patel said demands included a management undertaking not to use section 79 (2) of the Act, which creates a presumption of union involvement in illegal strikes

Sactwu has put the demands in over 150 bargaining forums More than 20 000 members are already covered by agreements bypassing the LRA, it says

Watershed judgment on overtime

W/C NEWS 30/9/87.

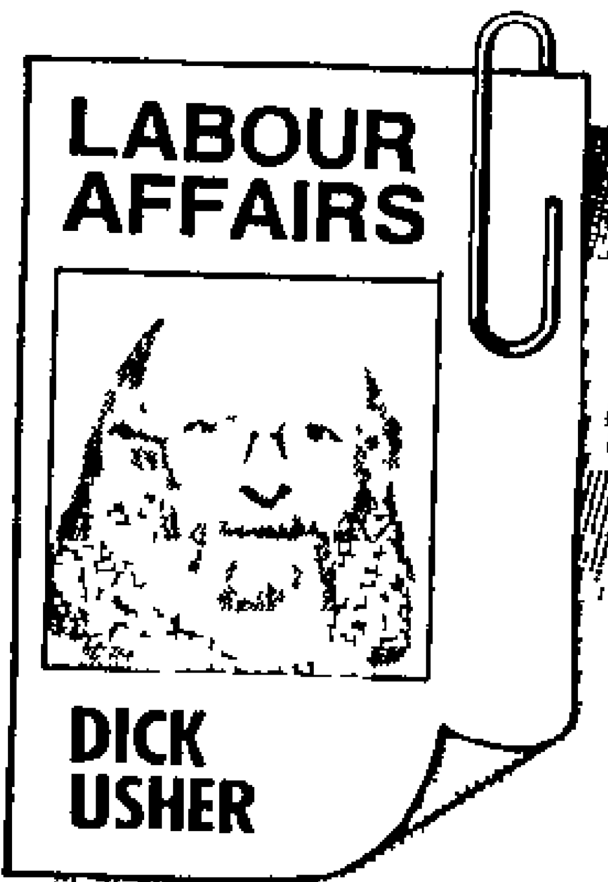
JUDGMENT this week in the Appeal Court about overtime bans did two things it has cleared up the confusion around this question and highlighted problems of justice being done over long periods of time

The Appeal Court judgment related to a dispute between the Food and Allied Workers' Union (Fawu) and South African Breweries in 1987, during which the union imposed an overtime ban

Breweries took the matter to court, seeking a ruling against the union and the ban This failed and the matter was appealed

Before this there had been several judgments on overtime bans in different divisions of the Supreme Court which gave rise to confusion over the issue

The judgment handed down this week upheld the right of employees not to work overtime where they were not contractually obliged to do so



The court held that "under the common law no employee can be directly or indirectly compelled to perform work he is not contractually obliged to do, no matter whether in refusing to do such work he acts individually or collectively with others, and irrespective of the reason or purpose for such refusal

Withhold labour

"The right of workers to withhold labour they are not contractually obliged to perform is an important weapon they possess in the bargaining process that underlies the theory of modern labour law "

Fawu welcomed the "watershed judgment"

It came at a time when the union movement has instituted a national overtime ban as part of its campaign against the Labour Relations Amendment Act and is likely to take the wind out of the sails of some employers who had gone to court seeking interdicts against employees upholding the ban

But the definitive ruling took two years to get and labour spokesmen point out that, where worker rights are concerned, such lengthy periods make many attempts to seek justice almost pointless.

Practical terms

For instance, in Natal a dispute during 1985 between the National Union of Metalworkers (Numsa) and BTR-Sarmcol led to the dismissal of more than 900 workers

The dispute then went through an application for a conciliation board, a board hearing, an Industrial Court hearing which started in November 1986 and ended in July 1987 with a decision handed down about September, a review by the Supreme Court in Pietermaritzburg which was followed by the company entering an appeal

A Numsa spokeswoman said this week that they did not expect the appeal to be heard until about May next year

By which time it's difficult to see, in practical terms, how justice can be done to the workers, if the Appeal Court decides in their favour

Another objection

They would have been out of work for about five years and it can hardly be expected that the court could order their reinstatement where would that leave the employees the company has employed in the meantime?

Five years' back-pay is unlikely, so what would a ruling that their dismissals had been unfair mean to them ?

Which question again points to another objection the unions have to the Amendment Act — it further complicates the procedures that have to be adhered to for legal industrial action and adds a further intermediate step in the search for justice

Overtime ruling a setback for unions

By Drew Forrest

In a setback for the trade unions, the Industrial Court has granted an urgent interdict against an overtime ban at Silverton Tannery in Pretoria.

As reasons were not given for the order — which falls against the backdrop of a national overtime boycott — lawyers say its full significance cannot be assessed.

It was hoped that the case, heard last Friday, would highlight the Industrial Court's stance on the fairness of overtime bans in the light of an earlier Appellate Division ruling that a non-contractual overtime ban was not a strike

The SA Clothing and Textile Workers Union argued that the Silverton Tannery ban could thus not be an unfair labour practice The return date for the case is October 11.

Chamber win 'a blow to racism'

JOHANNESBURG. — The Chamber of Mines said it struck a major blow against race discrimination yesterday when it won a court action allowing about 28 000 miners to join its Mine Employees' Pension Fund (MEPF).

In its ruling, the Industrial Court upheld an earlier court decision that it was an unfair labour practice to exclude skilled black miners from the pension scheme purely on the basis of race.

Welcoming the decision, chamber president Mr K W Maxwell pointed out there could be no place for discrimination in these times.

"We must pave the way for the new South Africa that is to come by taking resolute actions wherever possible to ensure non-discriminatory treatment of all our employees in the industry," said Mr Maxwell.

The decision follows a protracted struggle by the chamber to persuade the all-white Council of Mining Unions (CMU) to allow blacks in skilled mining jobs to join the pension fund.

When the fund was launched in 1949, black miners were excluded on the basis that they could not enter certain job categories.

When the government began scrapping job reservation in 1981, however, black miners were allowed to fill skilled positions and, in terms of their job category, were entitled to belong to the fund. — Sapa

Sasol and Natref played foul, says court

B/Day 4/10/89

ALAN FINE

SASOL and Natref "used rough and ugly tactics, played foul, and deserve to be shown the red card"

That was one of the hard-hitting criticisms of management made by the Industrial Court in ordering the reinstatement, with six months back-pay, of 730 SA Chemical Workers' Union (Sacwu) members unfairly dismissed during an October 1987 wage strike

The 102-page judgment, published in Johannesburg on Monday by advocate M A E Bulbulia with advocate V W Apostoleris concurring, was released yesterday by Sacwu

Sasol yesterday announced its intention to appeal against the judgment, and declined to comment on its contents

Bulbulia found management had used every means at its disposal — including unfair means — to paralyse the strike

It had established a special "labour unrest task force" which used informers to monitor union activities, and secured the presence of the police to induce or intimidate strikers to return to work

The strike, he said, had been a legitimate, economic strike Management had shut its eyes to the root cause of the action and was unable to resume wage negotiations after the strike began Instead, "they had concentrated their efforts on securing the capitulation of the union"

It was, he said, incumbent on the parties to resume negotiations as soon as possible after the commencement of the strike — which management had refused to do

This case, he said, was an illustration of diametrically opposing schools of thought on the purpose of economic strikes

4/10/89
STAR 165

Sasol ruled out of order in Industrial Court finding

By Drew Forrest

Sasol seemed to be paranoid about strikes and like Rip van Winkel had "slept through and entire revolution in industrial relations", the Industrial Court has said

The criticisms are contained in a judgment reinstating 865 Sasol and Natref workers dismissed and not rehired after a pay strike in October 1987

The court also awarded the workers six months' back pay, estimated by the SA Chemical Workers Union to total R3 million.

APPEAL

Sasol and Natref are to appeal against the ruling Sasol declined further comment yesterday.

In their judgment, Mr A E Bulbulia and Mr V W Apostoleris said the firms had also used "unfair means" to break the strike

Among the tactics were the creation of a "labour unrest task force" and the use of informers.

Ruling the dismissals unfair, the court said the strike had been legitimate, despite irregularities in balloting.

Management should have considered alternatives to firing, such as a lockout. During the strike little attempt was made to negotiate on the union's pay demands

Pension bar declared unfair

BDay 5/10/89

ALAN FINE

THE Industrial Court yesterday declared efforts by white mining unions to bar skilled black workers from the industry's pension fund an unfair labour practice

The case was brought by the Chamber of Mines against the Council of Mining Unions — the federation of miners' and artisans' unions — after protracted and failed negotiations on the issue

The chamber last night hailed the court decision as "a major blow against racial discrimination" A spokesman said the Mine Employees Pension Fund (MEPF), which presently has 28 000 members and assets of more than R2bn, was one of the country's largest

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Discrimination

It was established in 1949 when no black employees occupied skilled positions on the mines Job reservation in the industry was finally abolished only last year. The MEPF rules restrict membership to "Europeans" only

This was the second case related to discrimination won by the chamber this year In August the Supreme Court set aside regulations promulgated by the Minister of Economic Affairs and Technology relating to the employment of qualified miners which were potentially discriminatory

It is understood a similar battle is still being fought related to the industry's medical benefit fund.

Yesterday's decision followed a number of previous court applications, including one which forced the Minister of Manpower to appoint a conciliation board to consider the matter after his initial refusal This was a necessary step before bringing the case to court

Chamber president Ken Maxwell, in welcoming the court's decision, said there could be "no place for discrimination in this day and age We must pave the way for the new SA that is to come by taking resolute action wherever possible to ensure non-discriminatory treatment of all employees "

CMU spokesmen could not be reached for comment.

Mines' white pension fund must be 'open'

By Drew Forrest

Protracted attempts by white mine unions to exclude skilled blacks from the R3 billion Mine Employees' Pension Fund (MEPF) have been ruled unfair by the Industrial Court

Yesterday, the Chamber of Mines described the judgment as a "major blow against race discrimination".

Comment from the Council of Mining Unions, which represents white miners and artisans, could not be obtained

Beginning over four years ago, the dispute over the 28 000-member MEPF centred on the Chamber of Mines' demand that the 40-year-old fund be opened to skilled black workers on the mines

The CMU, representing white miners and artisans, resisted the demand.

Earlier this year the Chamber also won a Supreme Court action setting aside regulations promulgated by the Minister of Economic Affairs and Technology which could have been discriminatory.

Welcoming the judgment, the Chamber's president, Mr K W Maxwell said "There can be no place for discrimination of this kind in this day and age."

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Dispute over Ehlers post

Cape Times 5/1/89

JOHANNESBURG — His insistence on the independence of the Industrial Court might have been responsible for the non-renewal of his contract as president of the court, Dr Daan Ehlers said yesterday

He also said he was under the impression he would be given three months' notice.

The Minister of Manpower, Mr Eli Louw, denied that Dr Ehlers's insistence on the independence of the court was the reason for the non-renewal of his contract and said his contract had expired — Sapa

profits

LABOUR LETTER

Sacwu case breaks new ground

BDay 6/10/89

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ALAN FINE

AMID the football analogies (the red card) and colourful metaphors (ostriches, Achilles heel and Rip van Winkle), this week's Sacwu vs Sasol and Natref Industrial Court judgment contains an important discourse on the right to strike in SA

Court member M A E Bulbulia has added substantially to the body of court opinion on the protection from dismissal of strikers

However, his views differ from those in the previous key judgment on the subject, leaving for managements and unions some uncertainty as to their rights and obligations

Bulbulia's main conclusion is that "it is unfair to peremptorily dismiss, on the shortest of ultimatums, strikers who strike for higher wages or better working conditions, have observed the conciliatory procedures of the (Labour Relations) Act, and have conducted themselves peacefully"

In Sacwu vs Sentrachem, delivered in February 1988, member David John seemingly made protection from dismissal for lawful strikers absolute.

John, who recently rejoined the court as a full-time member, argued that, since the law grants unions and strikers immunity from penal and civil sanctions if legal conciliatory procedures are followed, "it would be anomalous if workers were nevertheless penalised by dismissal for striking"

The key word in Bulbulia's judgment is "peremptorily" — a partial retreat from the Sentrachem judgment — suggesting that dismissals may, at some stage, become justified

The question is When? What is clear is that it is impossible arbitrarily to set a time limit Bulbulia has, however, tried to set out certain basic principles

Possible options

He does this by quoting from an article by prominent advocate John Myburgh SC who, as it happens, appeared for Sacwu in this case

Dismissals, says Bulbulia, may take place only after all other possible options have been exhausted

The judgment, and Myburgh's article, suggest a number of such options These include, firstly, an obligation to continue negotiations, suggesting a preparedness to improve on the pre-strike offer Mediation is another possibility

Myburgh also proposes efforts to lessen the impact of the strike, including more overtime by those not on strike and the use, where feasible, of temporary labour

Attempts can be made to persuade strikers to return to work either through propaganda or the imposition of a lock out, although the latter carries with it its own problems

But eventually, the judgment says, quoting from Myburgh, "the day will dawn when, despite the steps I have mentioned, the strikers are steadfast in their determination not to return to work while their demands remain unsatisfied and the employer is no longer willing or able to tolerate a strike

"The employer's level of tolerance will be exceeded when, for example, loss of production and concomitant loss of profits become unbearable"

Of course, an objective definition of the word "unbearable" is not easy to come by, and one can envisage future cases fought on this principle becoming battles between accountants

Bulbulia, in line with John before him, refused to throw out Sacwu's case on the grounds of the alleged "unreasonableness" of the union's demand for R200-a-month wage increases But he did give some attention to the parties' pre-strike proposals — which may provoke criticism from that school of thought which believes it is not the court's function to pronounce upon the merits of substantive proposals made in disputes of interest

Bulbulia says he could not find that the union demand was a "final" one And Sasol's refusal to negotiate after the strike began on October 1 1987, made it impossible for the union to moderate its demand

He added Sasol's R100 offer for the affected Sasol 1 plant was lower than that paid by other comparable companies in the region, and also compared unfavourably with offers at its Secunda plants

REVIEW

Sacwu case breaks new ground

BDay 6/10/89

ALAN FINE

AMID the football analogies (the red card) and colourful metaphors (ostriches, Achilles heel and Rip van Winkle), this week's Sacwu vs Sasol and Natref Industrial Court judgment contains an important discourse on the right to strike in SA

Court member M A E Bulbulia has added substantially to the body of court opinion on the protection from dismissal of strikers

However, his views differ from those in the previous key judgment on the subject, leaving for managements and unions some uncertainty as to their rights and obligations

Bulbulia's main conclusion is that "it is unfair to peremptorily dismiss, on the shortest of ultimatums, strikers who strike for higher wages or better working conditions, have observed the conciliatory procedures of the (Labour Relations) Act, and have conducted themselves peacefully"

In Sacwu vs Sentrachem, delivered in February 1988, member David John seemingly made protection from dismissal for lawful strikers absolute

John, who recently rejoined the court as a full-time member, argued that, since the law grants unions and strikers immunity from penal and civil sanctions if legal conciliatory procedures are followed, "it would be anomalous if workers were nevertheless penalised by dismissal for striking"

The key word in Bulbulia's judgment is "peremptorily" — a partial retreat from the Sentrachem judgment — suggesting that dismissals may, at some stage, become justified

The question is When? What is clear is that it is impossible arbitrarily to set a time limit Bulbulia has, however, tried to set out certain basic principles

Possible options

He does this by quoting from an article by prominent advocate John Myburgh SC who, as it happens, appeared for Sacwu in this case

Dismissals, says Bulbulia, may take place only after all other possible options have been exhausted

The judgment, and Myburgh's article, suggest a number of such options These include, firstly, an obligation to continue negotiations, suggesting a preparedness to improve on the pre-strike offer Mediation is another possibility

Myburgh also proposes efforts to lessen the impact of the strike, including more overtime by those not on strike and the use, where feasible, of temporary labour

Attempts can be made to persuade strikers to return to work either through propaganda or the imposition of a lock out, although the latter carries with it its own problems

But eventually, the judgment says, quoting from Myburgh, "the day will dawn when, despite the steps I have mentioned, the strikers are steadfast in their determination not to return to work while their demands remain unsatisfied and the employer is no longer willing or able to tolerate a strike

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He added Sasol's R100 offer for the affected Sasol 1 plant was lower than that paid by other comparable companies in the region, and also compared unfavourably with offers at its Secunda plants

Rule on overtime ban not upheld

(165) STAR 9/10/89

The Industrial Court on Friday refused to confirm a temporary interdict against an overtime ban by workers at a Pretoria firm, Silverton Tannery.

Legal sources say the court ruled that the order would conflict with the Basic Conditions of Employment Act, which outlaws compulsory overtime.

Both the Appellate Division and the Industrial Court have now confirmed the legitimacy of non-contractual overtime bans.

The overtime ban is part of a SA Clothing and Textile Workers' Union overtime boycott.

A Business Times Survey October 15, 1989

S/Times 15/10/89

A thorn in the side of SA industry

By Andrew Gillingham

ONE of the thorniest issues currently facing the industrial relations experts in South Africa is the Labour Relations Amendment Act

The Amendment Act was intended to correct flaws in the 10-year-old Labour Relations Act At the core of the older legislation was the provision for black workers to join trade unions which could then be recognised as their representatives

There followed a period of rapid growth in the number of unions, their membership and strikes The Act also created the Industrial Court

AECI GM human resources, Bokkie Botha, says many of the first Industrial Court decisions went against employers They became concerned that the Court was acting against them However, many of these first cases were to do with fairness Autocratic employers were not used to being questioned and they didn't like it

Balance

The view of the Industrial Court changed as a balance was achieved and labour practices modified

However, the National Manpower Commission (NMC) was asked to investigate a number of aspects of the Act including the Industrial Court

The NMC produced a number of recommendations and the government prepared a series of draft amendments

Says Mr Botha "The Labour Relations Act is an all pervasive piece of legislation and the amendments covered a wide range of issues from administrative to those affecting basic principles'

Both the NMC and the Department of Manpower invited comment from over 100 interested parties

By the end of 1987 amendments were introduced which began to look as if they would be the final version

Then trade union federations became concerned about some of the proposed amendments and started to gear-up against them

The SA Co-ordinating Committee on Labour Affairs — which had been created to provide employer input into the Geneva-based International Labour Organisation — had begun to become more involved in internal issues

It suggested talks between the unions and employers

They tried to find common areas of concern regarding the new legislation For any such legislation to work it had to have general acceptance among both parties

Speeches

At the time some politicians made speeches calling for the need to control trade unions Unions were concerned that the legislation was intended to turn back the clock Employers didn t want legislation which would prove unworkable

The Minister of Manpower said he would consider joint proposals by the trade unions and the employers

However he set a time limit and both parties soon realised it could not be met Instead they agreed on certain clauses which they considered areas which should be discussed further and asked the Minister not to promulgate these clauses But the clauses were promulgated along with the rest of the Amendment Act and talks broke down

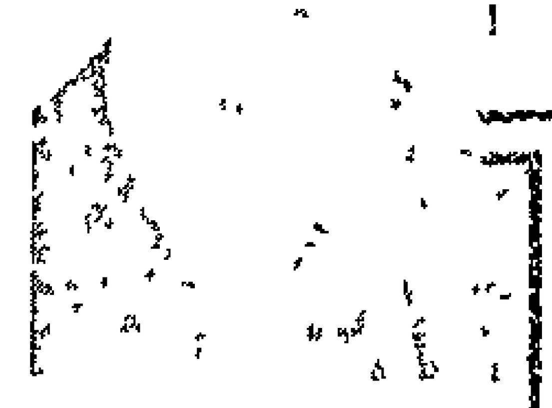
The trade unions began a series of actions aimed at both government and employers in protest

These included a call for a national overtime ban and various boycotts

The NMC has since been asked to review the entire Act and employers and trade unions have begun talks to find common ground on what the new Act should look like

Mr Botha says there are a number of areas which cause concern and some of the main bones of contention include

- The Schedule of Unfair Labour Practices This was a attempt to codify these practices for the guidance of both parties and includes sympathy strikes intermittent strikes and dismissals
- Time limits were introduced relating to dispute settlement , such as when a dispute could progress to a legal strike or to the Industrial Court
- Publication of Industrial Court decisions Both employers and trade unions want these judgements more widely publicised
- New admendments were introduced which put the onus on trade union leaders to prove they were not involved in illegal strike action And this introduced an element where the employer could sue the union for damages



BOKKIE BOTHA
thorny issue

elivers keynote address

road of labour relations

- Nasionale Pers group manpower development manager George Coetzee will address the need for a more focused and strategy-orientated approach towards management development
- Labour law and industrial relations consultant Charl de Witt will examine the legal implications of Aids and discuss policy considerations relevant to dealing effectively and fairly with its complications
- Shell SA manpower planning manager Godfrey Mashope will discuss the need to include more blacks in the higher echelons of management
- Nasser Associates director and partner Roy Dinsdale's address will cover mentorship as a powerful tool in bringing people into the core of the business
- Professor Pierre Goetschin, from Lausanne University, will address the impact of international demographic changes on business policy
- Cemento Polpaico Chile, human resources manager Mario Livingstone will discuss the problems facing Chile

PAUL JOHNSON
renown author

Court rejects union's halt-order application

Bday 18/10/89

ALAN FINE

165

THE Industrial court has rejected a union application for an order compelling the SA Printing and Allied Industries' Federation (Sapaif) to withdraw its notice of resignation from the Printing Industrial Council.

The case has important implications for the industrial relations debate on levels of collective bargaining

Cosatu's Paper, Printing, Wood and Allied Workers' Union (PPWAWU) brought the application in an effort to prevent the collapse of the council — an inevitable consequence of move by Sapaif

In June the federation gave six months notice of its intention to withdraw shortly after PPWAWU, which represents some 6 500 of the industry's 40 000-strong workforce, applied for membership of the council

Backing its argument with confidential minutes of Sapaif meetings, PPWAWU said the resignation was unfair in that it was clearly a response to the union's membership application and hence an attempt to avoid collective bargaining with the union.

Two-tier

Court member David John accepted that this was the reason for the federation's resignation. For the previous 64 years the conservative SA Typographical Union was the only union party to the council

Printing industry employers, it said, wished to avoid being faced by two-tier bargaining

It further notified the court that its three largest members — Nampak, Kohler and Consol — would resign from the Sapaif should it continue membership of the council This would force the dissolution of the federation

Explaining his decision, John said he could give no final decision on whether the refusal of a party to continue bargaining at a level desired by the other party was an unfair labour practice

However, he said, membership of an employer organisation was voluntary Given the stance of the three large companies, the Sapaif could not remain a council member and survive The debate about voluntarism was therefore theoretical "and fairness has no role here to play" The union had also failed to show the prima facie existence of an unfair labour practice

The battle for centralised bargaining

B Day 20/10/89

ALAN FINE

THIS week's Industrial Court decision to refuse to order an employer organisation to remain a member of the printing industrial council was a victory for management proponents of decentralised collective bargaining

But it represents neither the court's final word on the subject nor the end of the employer-union struggle for centralised bargaining through other means

The issue will continue as a contentious one for a long time

In dismissing the Paper, Printing, Wood and Allied Workers' Union (Ppwawu) application against the SA Printing and Allied Industries' Federation (Sapiaf), court member David John made it clear his decision was based on the peculiar circumstances of the case

His most powerful consideration, it seems, was the fact that three major Sapiaf members — Nampak, Kohler and Consol — had made clear their intention to resign from their federation should it decide, or be forced, to continue membership of the council

"The decision of the employers' organisation to leave the industrial council because (Ppwawu) wishes to come into it may look unfair, assuming that were the only reason for withdrawal," he said

But it was not contested that resignation of the three from the Sapiaf would cause the collapse of the federation and, hence, the collapse of the council — the very event Ppwawu has been seeking to do its utmost to prevent

Thus, said John, the debate about the federation's decision was theoretical and the question of fairness had no role to play

Elaborating on this, he said that had the union demand been made to a single employer, rather than to an organisation whose members might resign, it was more likely the court might have found the employer action to be unfair

□□□□

THE judgment raises the question of what Ppwawu will do next as an alternative to conceding defeat.

Official Rob Rees says the union has little choice but to fight the issue through taking it up with membership on the shopfloor.

Citing Nampak as the prime mover behind the Sapaif resignation from the council, Rees said the union also planned to set in motion a co-ordinated, inter-union campaign against the Barlow Rand group, which owns Nampak, over the question of centralised bargaining

"This court decision has strengthened our resolve to come to grips with the Barlow Rand phenomenon," he said

Barlows has for years advocated decentralised, plant-level collective bargaining, arguing that negotiations should be based on the economic factors affecting each individual plant.

But unions fear that decentralisation would both undermine their industrywide bargaining power and stretch their limited manpower resources

So Barlow's philosophy is in deep conflict with present-day union preference for industrywide bargaining.

Barlow's spokesmen could not be reached for comment on the prospect of the group becoming the focus of union attentions

However, should the Ppwawu plan materialise, it would be in line with what Sapaif counsel argued was the appropriate method of resolving disputes over levels of collective bargaining.

□□□□

SHOULD the court interfere with the right of a body such as an employer organisation to determine its own strategy regarding bargaining levels, he said, it "would be trespassing on a field where the issue should be decided by the relative power of the parties ...".

"To deny a party the right to withdraw from an industrial council would not enhance, but would in fact destroy, collective bargaining between the parties," he said.

It is a dispute of interest, in other words

Nampak group industrial relations manager Tony Mercer does not agree

It was clearly a dispute of right, otherwise the court would not have had jurisdiction, he argues.

"We would be very disappointed in Ppwawu if they were to instigate shopfloor action — use a power dynamic — in a dispute of right already adjudicated upon by the Industrial Court," he said

He added Nampak had consistently been willing to deal with Ppwawu through plant-level agreements despite the "iniquitous" closed shop agreement which forced workers to belong to the conservative SA Typographical Union.

The company had not taken advantage of the closed shop and, indeed, was probably in breach of that section of the council agreement.

"In that sense, we and Ppwawu are partners in crime," Mercer said.

He hoped the relationship between Nampak and Ppwawu would, in plants where it is good, remain so and, where not, only improve

REVIEW

Labour unrest brings 5 building projects to a halt

StW 7/12/89 By Drew Forrest

Labour unrest culminating in the dismissal of workers has brought five Combrink Construction projects in the Transvaal, with a total value of R90 million, to a standstill.

Two of the sites are prestige office developments by Old Mutual Properties in Pritchard Street, Johannesburg.

Mr Ed Wilson, managing director of Group Five Building, said Building Construction and Allied Workers' Union members had launched an "illegal and unjustified" overtime ban on November 20 at all Combrink sites. This followed eight months of wildcat action, he added.

When workers ignored an Industrial Court interdict against the ban, the company dismissed most of the workforce — about 240 workers.

Yesterday was the return date for the case. The union's general secretary, Mr Vusi Thusi, said he would wait for the ruling before commenting.

Mr Wilson said the overtime ban was based on the workers' mistaken perception that management would not negotiate on substantive issues.

Company efforts to continue operations had been hampered by former employees who were intimidating site managers, sub-contractors' clients and workers, Mr Wilson said.

Union leader wins appeal over firing

Star 7/12/89

165

Labour Reporter

The South African Clothing and Textile Workers' Union (Sactwu) has hailed the Industrial Court's reinstatement of its vice-president, fired from a textile firm in Parow.

Mr Bert Pitts was dismissed in August. The company argued that he fraudulently used a medical certificate to attend a Cosatu congress.

The court found that there was no evidence of misconduct, Sactwu said.

Secret group to fight for employers' rights

A SECRET mutual-support employer group has emerged in the Western Cape with the retention of employer rights under the Labour Relations Act as its top priority.

According to a copy of the group's newsletter, the idea was sparked by "outrageous" union demands in the dispute with South African Breweries

A core of members came together in August to share experiences and ideas on how employers faced with such demands could be assisted.

The result was Manco, which has since held several meetings and grown to 26 members

Membership is by invitation only "to ensure that only those prepared to stand up for employer rights are admitted"

The newsletter says that "this does not mean Manco is anti-union — we are however against the misuse of unions for political objectives antagonistic to free enterprise".

Stated objectives are to create a library, a data bank of union demands, to hold quarterly general meetings to receive "confidential security/intelligence reports" and deal with aspects of current importance on the labour front, to hold special meetings as warranted, to issue newsletters and make representations at ministerial level

Security

The newsletter says "a security source" (whether commercial or state is not said) proposed the name Management Services Co-ordination (Manco).

The group found it alarming that the South African Employers Co-ordinating Committee on Labour Affairs (Saccola) should agree that certain sections of the LRA should be dropped "as most employers object to their last few remaining rights currently assailed by Cosatu being further watered down .."

Priority

"Manco has been mandated by its members to oppose amendments which could adversely affect our existing rights"

On this level, top priority is to present an employer case to the Minister of Manpower not only for retention of employers' rights under the Act but for removal of unnecessary "cost consuming" aspects.

It wants the equivalent of an attorney-general to be appointed to the Industrial Court to vet cases and throw out those "manifestly unfounded".

"For example, why should we have to go to court for dismissal of an employee in his first six months as we are permitted to do under the new unfair labour practice definition, but still have to prove fair procedure ?

Throw out

"Surely the court's A-G can throw the case out on affidavits that have complied with the law ?" said the newsletter

Appealing for support from employers, the newsletter says that the Minister of Manpower is advised by a National Manpower Commission on which the legal profession, professors and consultants are well represented "whose ideas do not always coincide with what we as employers would like to see".

"Cool face"

"So when we see the Minister we should be able to convince him that we represent a sizeable segment of Western Cape employer thinking with practical and not theoretical experience of 'cool face' (sic) dealings with unions"

SHOPPING FOR YIELDS

FIXED DEPOSITS

	32 Days	3 Months	6 Months	9 Months	12 Months	13-17 Months	18 Months	19-23 Months	24 Months
Syfrets Bank	15,00	15,50	17,75	17,00	17,00	-	15,50	-	-
Nedbank	14,50	15,50	18,00	17,00	17,00	16,00	16,00	16,00	15,00
F N B	14,50	15,00	17,50	17,00	17,00	17,00	16,00	16,00	15,50
Standard Bank	14,25	15,00	18,00	17,00	17,00	16,50	16,50	16,50	16,50
Santam Bank	15,00	15,50	17,00	17,00	17,00	15,50	15,50	15,00	15,00
Trust Bank	-	-	18,00	16,75	16,40	15,90	15,90	14,90	14,90
Allied Bank	16,50	17,00	18,00	17,00	17,00	16,00	15,50	15,50	15,00
N B S	-	15,00	17,50	16,75	17,00	16,00	16,00	16,00	16,00
United Bank	14,50	15,00	16,50	16,25	17,00	16,50	16,50	16,50	16,50
Good Hope Bank	14,50	15,00	18,50	17,00	17,00	17,00	16,00	16,00	15,50
Boland Bank	14,50	15,00	18,00	18,00	17,50	17,50	17,50	17,50	15,50
Volkskas	14,50	14,75	17,50	17,00	17,00	16,00	16,00	15,50	15,50
E P B S	-	16,00	17,00	16,00	17,00	16,00	16,00	15,50	14,75
Personal Trust	16,50	17,00	18,50	18,00	18,00	17,00	16,50	16,50	16,00
Fidelity Bank	14,00	14,50	17,50	17,00	18,00	16,50	16,50	16,50	16,00
S A Perm	14,50	14,60	17,80	15,65	17,00	16,00	16,00	15,50	15,25
Provincial	-	-	-	-	17,15	16,25	16,25	16,00	16,00
Saambou	-	15,50	18,00	17,25	17,00	16,00	16,00	15,50	15,50

- Investors over 60 may qualify for an extra 0,5 percent on certain investments.
- All rates quoted are for interest paid monthly
- These rates apply to investments of R1 000

Figures compiled by Personal Trust

LABOUR DEPT. - 1990

Former bank chief seeks reinstatement

STAR 7/2/90 (165)

Former African Bank chief executive, Mr Gaby Magomola was due in the Pretoria Industrial Court today to seek his reinstatement or compensation for his dismissal

This was confirmed by Johannesburg lawyers advising Mr Magomola and those representing the bank's chairman, Mr Sam Motsuenyane Mr Magomola was dismissed last March

Lawyers said Mr Magomola would challenge the bank to reinstate him on grounds that his dismissal constituted an unfair labour practice or that he be compensated for damages incurred following his sacking

The lawyers said Mr Magomola, would apply to the court for the parties to make representations without legal representatives, but by late yesterday it could not be established if this would be acceptable

Mr Magomola was apparently fired after calls from bank staff for his resignation after he tried to reinstitute a rationalisaion and cost-cutting programme that was approved by the bank's auditors

After his dismissal, Mr Magomola sought legal advice on the matter and he is to challenge the bank to reinstate him or give him an award for losses incurred as a result of the action by the bank

Industrial court cases more than double in year

ARGUS 14/2/90

165

By MICHAEL MORRIS
Political Correspondent

INDUSTRIAL court cases more than doubled in the past year, the Minister of Manpower, Mr Eli Louw, told the Institute of Personnel Management in Stellenbosch.

The number of cases had risen from four in 1979 to 4 492 last year

Mr Louw ascribed the increase in the workload of the Industrial Court to a rise in the number of unfair labour practice complaints

The number of cases had more than doubled since 1988, from 1 230 to 2 980 last year

In a wide-ranging address on the manpower scene, Mr Louw expressed concern about the continuing high level of unemployment — more than 700 000 blacks, 20 000 Asians and 88 000 coloured people were out of work towards the end of last year — and the increasing incidence of violence during strikes

He advised employers to act firmly against strike violence and appealed to union leaders to accept the responsibility of their positions and act against members who were guilty of violence during disputes

In this way, he said, they could make a contribution to determining what role they would play in the "new" South Africa

The number of strikes had declined by 16 percent in the past year, but had involved more workers — 162 000 in 1988 to 177 712 in 1989 — and the number of man-hours lost had increased

He also said politics had become a more marked feature of labour disputes

Retrenchment: Workers win case

By DAVID YUTAR, Labour Reporter

A DECISION handed down by the Industrial Court has vindicated the right of employees to severance benefits on retrenchment and has provided relief to employees held to have been unfairly retrenched.

The test case was brought by the Legal Resources Centre on behalf of six employees who were part of a large group of employees retrenched by Bester Homes (Pty) Ltd during 1989

It held that there was an obligation on the part of employers to pay severance benefits on retrenching employees of more than one year's service

Failure to do so constituted an unfair labour practice.

The company concerned, which builds sub-economic housing on a vast scale, retrenched several of its employees, some of whom were of long standing

The company refused to pay severance benefits

The court held that the amount of benefits to be paid should be left to determination in the process of free and fair collective bargaining

The court made an award of two weeks wages for every year of service, for employees with more than one year's service

The court also confirmed an earlier decision reinstating two employees who were transferred to Port Elizabeth by Bester Homes in December 1989.

The other applicants were awarded three months wages in addition to two weeks' severance benefits per year of service

Commenting on the court's ruling a Legal Resources Centre spokesman said "The significance of this judgment is in its confirmation of the approach of enlightened employers in South Africa in providing severance benefits on retrenchment

"It should provide welcome relief to employees in the building industry which on account of its cyclical nature is subject to frequent retrenchments"

Argus 15/2/90

STAR 15/2/90 (165)

Steep rise in labour disputes

Political Staff

Industrial Court cases more than doubled in the past year, Manpower Minister Mr Eli Louw has told the Insitute of Personnel Management in Stellenbosch

Over the past 10 years, the number of cases had risen from four in 1979 to 4 492 last year.

He ascribed the increase in the workload of the Industrial Court to a rise in the number of unfair-labour-practice complaints

The number of cases had more than doubled since 1988, from 1 230 to 2 980 last year

In a wide-ranging address on the manpower scene, Mr Louw expressed concern about the continuing high level of unemployment — more than 700 000 blacks, 20 000 Asians and 88 000 coloured people were out of work to wards the end of last year — and the increasing incidence of violence during strikes

He advised employers to act firmly against strike violence and appealed to union leaders to accept the responsibility of their positions and act against members who were guilty of violence during disputes

In this way, Mr Louw said, they could make a contribution to determining what role they would play in the "new" South Africa

The number of strikes had declined by 16 percent in the past year but had involved more workers — 162 000 in 1988 against 177 712 in 1989 — and the number of manhours lost had increased

He also said politics had become a more marked feature of labour disputes This had led to a hardening of relations between employers and workers, and employers felt they were coming under unreasonable pressure on issues not connected with the workplace

STAR 15/2/90 (165)

Firm ordered to pay benefits

Court gives job security a boost

CAPE TOWN — In a major boost for job security in the building industry, the Industrial Court this week held that employers are obliged to pay severance benefits to retrenched workers with more than one year's service

In a judgment given in Cape Town on Tuesday, the court awarded the relief to six employees held to be unfairly retrenched by Bester Homes (Pty) Ltd in September last year

Bargaining

The application was brought on behalf of the retrenched workers by the Cape Town Legal Resources Centre

The presiding officer, Mr Jacques Botha, SC, determined that a failure to pay severance benefits would be an unfair labour practice

The court held that the amount paid in severance should be left to free and fair collective bargaining, but in the absence of this the court would have to determine the amount

In the case in question, the court awarded two weeks' wages for every year of service for employees with more than one year's service

The court also confirmed the reinstatement of two applicants who were transferred to Port Elizabeth by Bester Homes in last December

Other applicants in the same case were awarded three months' wages in addition to the severance pay

The applicants' attorney, Ms Angela Andrews, said the significance of the judgment lay in its confirmation of the approach of enlightened employers who provided severance benefits on retrenchemt

"It should also provide welcome relief to employees in the building industry which, because of its cyclical nature, is subject to frequent retrenchments — Sapa

Strike set to end today

Star 19/2/90 Labour Reporter (165)

A strike arising out of union rivalry at Brollo Africa in Elandsfontein is set to end today following Industrial Court action by the company.

Nearly 500 National Union of Metalworkers members downed tools on February 8 over a demand that the company withdraw stop-order facilities for the Inkatha-backed United Workers Union.

Refusing the demand, and a call to stop consulting Uwusa, as being "improper and unfair", the company applied for urgent relief from the Industrial Court.

Brollo said strikers had agreed to return to work today, and to comply with the company's recognition agreement

ANC T-shirt at centre of dismissal row

STAR 21/2/90 By Monica Nicolson 165

A Soweto shampooist claims she was fired last week for wearing a Mandela T-shirt The hairdressing salon maintains she was fired for always causing trouble with her employees and co-workers

Mrs Grace Ncongwane says:

She arrived at work at Cut 'n Blow in Westgate, Johannesburg, last Thursday wearing a Mandela T-shirt under her overall

"The manager called me into the kitchen and demanded I unbutton my overall because she believed I was wearing a radical T-shirt. She started screaming and demanded I take it off I refused since I had nothing else to wear — so I was fired"

When she reported to the hairdressers' head office in Northcliff to pick up her cheque the next day, she asked why her monthly salary had been decreasing — from over R500 in December to R355 in February

"They told me to wait, then called the police and said I was threatening them and causing trouble."

She received no severance pay

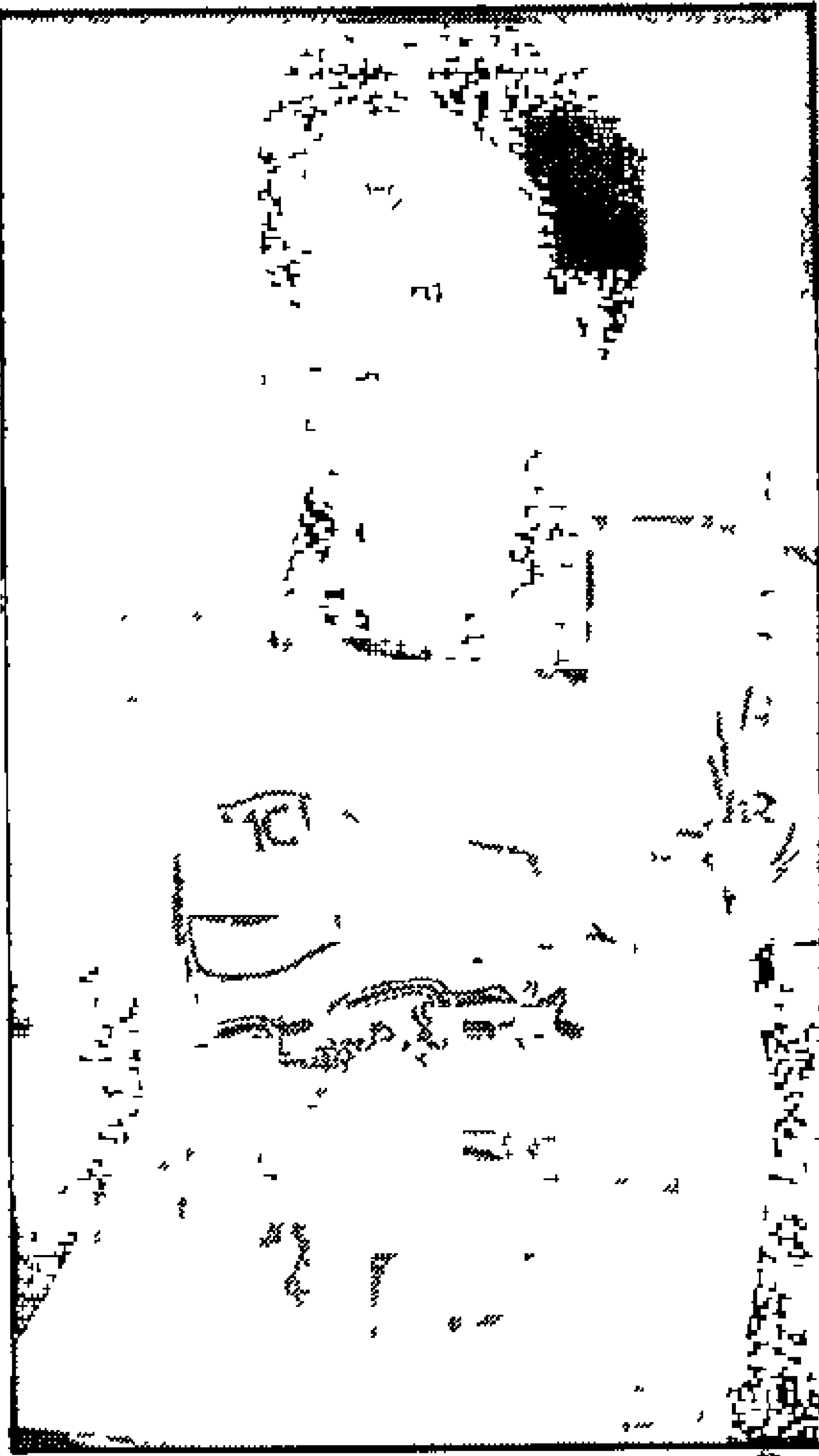
A Cut'n Blow spokesman says:

Mrs Ncongwane was not fired for wearing a Mandela T-shirt only.

"She was a trouble-maker, always inciting the other shampooists. She received two verbal warnings and three written warnings so we had no choice but to dismiss her

"Refusing to take off or cover up her T-shirt was just the last straw," the spokesman said

She said the Industrial Court had advised the company that it was within its rights to fire her



Mrs Grace Nglongwane claims she was fired for wearing this T-shirt to work.

NMC expected to make drastic labour law changes

26/2/90 (165)

By Drew Forrest

The decriminalisation of strikes and lockouts and union rights in the farm, domestic and public sectors are among the issues being debated by the National Manpower Commission in its current inquiry into labour law

This was revealed by a member of the NMC's legislative committee, Mr Clive Thompson, at a labour law conference in Johannesburg last week

The NMC is framing proposals for the most far-reaching changes to labour statutes since the Wiehahn reforms

Mr Thompson, director of the Labour Law Unit at the University of Cape Town, also said the NMC was debating the abolition of remaining racial provisions in the Labour Relations Act

Union registration for racial interests was likely to be replaced by a simple certification process, he said

Other areas of debate were

- The introduction of a duty to bargain with representative unions, "with some flexibility"
- A move away from the unfair labour practice concept to a "rights-based system", in which the rights of employers, unions and individuals would be protected in charters.
- An ban on strikes over disputes of right, such as dismissals, which were amenable to third-party resolution
- The reduction of Industrial Court proceedings to one hearing and one appeal

Numsa to continue legal battle

Star 28/2/90

By Drew Forrest

The legal battle between the National Union of Metalworkers and Barlows Manufacturing Company, already the subject of industrial and Supreme Court action, continues

Numsa announced last week that it is to appeal against a recent Supreme Court ruling in the case with vital implications for union rights in strikes

The case originated in Numsa moves to mount strike action at BMC as part of the 1988 national metalworkers' strike

Arguing that the dispute was between Numsa and the employer body Seifsa, of which it was not a member, the firm successfully applied for an interim restraining order from the Industrial Court

The court later refused to confirm the order But in a setback for the union, this was overruled by the Supreme Court last December

Mr Justice R J Goldstone, with two judges concurring, confirmed that an industry strike can be legal But Numsa is alarmed by another finding that a union cannot strike lawfully unless it has a reasonable chance of winning its demands

In the latest edition of the influential *Labour Law Briefs*, experts argued that the judgment "loads the odds against the union" by imposing an unreasonable new requirement

Labour Act demos mooted

165

Star 27/2/90

By Drew Forrest

The Congress of South African Trade Unions has proposed marches during working hours in industrial areas countrywide if employers and the Government fail to meet its demands on the Labour Relations Act

The proposal is contained in a pamphlet apparently distributed to workers, which also calls on members to defy interdicts against strikes The pamphlet also proposes that Cosatu meet Minister of Manpower Mr Eli Louw and that a congress be held in April or May to plan further action on the LRA and living wage campaigns

Interim demands

Three demands are listed in the pamphlet

- That all employers, including those in the public sector, take part in LRA talks with the employer body Saccola (SA Consultative Committee on Labour Affairs)
- That employers agree to a package of interim demands on the LRA, including one labour law for all workers and the right to sympathy strikes
- That the Government will enact whatever is agreed on at the Saccola talks.

Cosatu also proposes that its LRA demands be tabled during pay talks, so that employers can put pressure on Saccola.

Seven-week strike ends, R11,3-m is lost

Labour Reporter

The seven-week Mondi board mill strike has been settled — without the company raising its pre-strike pay offer.

Production worth R10 million and R1,3 million in wages were lost through the strike, said Mondi's Mrs Brigid Hopkins.

Mills in Springs, Belville, Piet Retief and Felixton were originally hit by industrial action, although the Bellville workers settled some weeks ago.

Mrs Hopkins said the Paper, Printing Wood and Allied Workers Union had accepted the firm's final 16,8 percent offer at a meeting last Friday

Union considers code of conduct for companies

By Drew Forrest

In a significant shift on disinvestment, the Chemical Workers Industrial Union is to investigate the drafting of a code of conduct for multinational companies investing in South Africa

CWIU general secretary Mr Rod Crompton stressed in a statement that the union's support for sanctions and disinvestment remained unchanged, and that it would continue pressing for a fair disinvestment procedure

The union joined the ANC in condemning the Thatcher government "for its efforts to undo the sanctions campaign"

But in the light of multinational firms' "avaricious and manipulative" conduct in the Third World, and assuming multinationals had a role in a post-apartheid economy, a code of conduct might be needed to protect workers, Mr Crompton said

The CWIU has spearheaded the labour movement's disinvestment campaign, and the statement reveals an important shift of focus from the terms of disinvestment to conditions for investment

It is understood that the issue is also under debate in the National Union of Metalworkers

Star 2/3/90 (165)

Meeting proposed to discuss labour Act

By Drew Forrest

The Congress of SA Trade Unions has written to Minister of Manpower Mr Eli Louw proposing a meeting on the Labour Relations Act (LRA).

This raises the prospect of the first face-to-face meeting between a Government Minister and black union leaders.

Welcoming the move, Manpower Director-General Mr Joel Fourie said Mr Louw's "open door" policy meant he would speak to any grouping

"Liaison between employers, unions and the State is essential in creating labour stability," he added.

He also revealed that the redrafting of the labour Bill planned for this session of Parliament had been put on hold in anticipation of a meeting.

The National Union of Mineworkers' Mr Marcel Golding said the intention was to meet Mr Louw soon to convey union concerns about the LRA and procedures for arriving at a new labour law.

According to National Council of Trade Unions (Nactu) acting general-secretary Mr Cunningham Ngcukana, the unions are adamant that no Bill should be tabled before interim agreement has been reached in their talks on the LRA with the employer body, Saccola.

Nactu had agreed in principle to the initiative, but had proposed a prior meeting with employers to discuss Mr Louw's possible attendance at the next Saccola talks

Industrial Court president named

Star 2/3/90 By Drew Forrest (165)

A new president of the Industrial Court has been appointed. He is a senior member of the court in Natal, Mr Dawie de Villiers.

The appointment of Mr de Villiers (58), an advocate for 15 years and a former magistrate, follows the death last week of the court's acting president, Mr Pierre Roux SC.

The news of Mr de Villiers's appointment was received with some misgivings within the labour fraternity yesterday.

"He is a likeable and fair-minded man, but his skills lie more in the arena of law than labour relations," said University of the Witwatersrand law professor Mr Martin Brassey.

Top labour lawyer Mr John Brand said he was "very disappointed".

"Given its vital role ... the court needs a president with the stature of a Supreme Court judge," he said.

In an interview, Mr de Villiers said recent criticism of the court arose from the perceived inadequacies of the unfair labour practice legislation it had to apply.

STAR 2/3/90 (165)

Water board to seek interdict against union

Labour Reporter

Fearing a strike at major pumping stations, the Rand Water Board will today seek an Industrial Court interdict against a black trade union and more than 2 000 black employees

In the event of a strike, threatened for Monday, the RWB would maintain its services, a board spokesman said

The general secretary of the non-aligned Municipal, State, Farm and Allied Workers' Union, Mr Philip Masiya, confirmed that workers had threatened action to win the reinstatement of 300 colleagues fired after striking last year.

Hundreds of workers from the Swartkoppies pump station, near Johannesburg, last week staged a march to the RWB's Rietvlei head office to present their demands.

The board spokesman said that the RWB would argue that strike action would pre-empt a forthcoming Industrial Court case on the dismissals. And as water supply was an essential service, a strike would be illegal, he added.

Firm sacks 360 strikers

Star 5/3/90

Labour Reporter

Rolfes, near Johannesburg, has sacked 360 workers who took legal strike action last week demanding that the company join a union-initiated national provident fund

Reacting, the Chemical Workers Industrial Union said it would "continue its fight to allow workers to invest their retirement money in worker-controlled funds of their choice, and to destroy the paternalism of companies such as Rolfes"

Rolfes' general manager Mr Andrew Petrou said the firm had long-standing pension and provident funds which provided "excellent benefits"

The union had said it planned to go to the Industrial Court The strike was, therefore, "illegitimate"

Advocate is new president of Industrial Court

ARGUS 26/3/90 (165)

By DAVID YUTAR
Labour Reporter

ADVOCATE Mr David de Villiers, SC, has been appointed president of the Industrial Court.

His appointment, from April 1, was announced today by the Minister of Manpower, Mr Eli Louw.

Mr De Villiers, 58, is a senior member of the Industrial Court in Durban and has been acting president of the court since February 27, after the death of former Industrial Court president, Mr P E Roux

Mr De Villiers received his Ll B from the University of Pretoria in 1965 and was admitted as an advocate.

During his career, he has served as regional court prosecutor, senior magistrate, senior law adviser and lecturer at the Department of Justice's training centre for public prosecutors and magistrates.

From 1972 until 1987 he practised as an advocate at the Maritzburg Bar where he took silk in June 1987.

ON BAR COUNCIL

While at the Maritzburg Bar he has acted as an ad hoc member of the Industrial Court and he was made a permanent member of the court in August 1987.

Mr De Villiers will move to Pretoria to take up his new post.

● Another appointment to the Industrial Court announced last week was that of advocate Mr Johannes van Niekerk, 58, as senior member in Cape Town with effect from March 1, 1990.

Mr Van Niekerk practised at the Cape Bar from 1963 until 1985 and has served on the Bar Council for four years.

Labour conference material 'useful'

Title: The Private Regulation of Industrial Conflict
Edited by: Alan Rycroft
Publisher: Juta
Book Review: Mokgadi Pela

RYCROFT has compiled a collection of speeches delivered at the 1989 Labour Law Conference held in Durban - which provided some useful material for trade unionists and academics on issues affecting workers.

Among the issues dealt with at the three-day conference, was the role of industrial councils in dispute resolution and the part played by collective bargaining in industrial relations.

The conference was attended by 400 delegates - including lawyers, managers and trade unionists.

In his welcome address, Justice RJ Goldstone, said a meeting of management, academics and labour activists was conducive to a meaningful interchange of ideas

Such a meeting, he said, contributed towards proper understanding of economic and political future of the country

Delivering the keynote address, Professor Clyde Summers of the University of Pennsylvania Law School, dwelt on the nature of industrial relations in different parts of the world.

He said conflict between management and workers was an inevitable ingredient of the workplace.

Such a conflict existed in every economic system - whether capitalist or communist.

He stressed however, the importance of collective bargaining in solving problems at the workplace

"Collective bargaining reduces conflict over control who makes the decisions by providing workers a share in the control.

"It gives workers a voice in the decisions that affect their working life. Domination is softened by participation."

"Collective bargaining - by establishing agreed-upon rules and a process for interpreting and implementing those rules - provides a system of industrial justice," Summers said.

Sowetan 30/3/90

165

Huge increase in strike action

Star 4/4/90 (165)

By Shareen Singh

Statistics released by industrial relations consultants yesterday, indicate a 293 percent increase in the number of man-days lost in strikes for the first quarter of this year, compared with 1989 figures.

Between 500 000 and 600 000 man-days were lost in the first quarter of 1990, 140 000 for the same period last year, and between 60 000 and 84 000 for the first quarter of 1988. These figures exclude man-days lost during stayaways.

This extremely high level of strike activity, together with a marked increase in stayaways has resulted in low morale and businesses losing production, the report states. Thus pressure from management can therefore be predicted in the next two quarters.

The metal sector was responsible for 26 percent of all strikes, followed by 11,6 percent in the mining industry and 10 percent in the paper and wood industry.

Paper and wood

The paper and wood sector was responsible for the most number of man-days lost — 25 percent, due to a number of long-lasting strikes in the sector involving a large number of employees.

An estimated 14,3 percent man-days were lost in the metal sector and 6,5 percent in the mining industry.

The report states that sectoral shifts reflect militancy and union organisation in State, provincial and municipal sectors which counted for 12,9 percent of all strikes and 16,8 percent of man-days lost.

Strike-related violence increased to levels higher than usual, the report said. It also noted an increase in racial tension and a tendency for white workers to resort to strike action.

Most strikes (42 percent) were wage related but retrenchment and union recognition continued to be important triggers. Significantly, strikes over disciplinary issues had declined to four percent.

According to the report, political developments during this time must be seen as more than incidental to the increased strike activity.

Time for bold management

As the reform process speeds up, relations between workers and managers will be severely tested in most companies. But this offers a golden opportunity to create a powerful competitive advantage for the future, says Johannesburg management consultant and author, **TONY MANNING**

Strike action escalated dramatically last year, and all the signs point to even more problems this year. Add to that the sudden sharp increase in township violence, and a new feeling of political confidence among blacks, and you have a potentially explosive situation

The ANC's views on nationalisation and the redistribution of wealth have made managers extremely edgy and uncertain about the future

Foreign companies are unlikely to invest in South Africa in the short term, as it seems a high risk arena Local managers will of necessity become even more short-term in their thinking.

But any time of change is a time of great opportunity

Those managers who have the foresight and the courage to commit themselves to a bold new course of action will gain a valuable competitive advantage for the future.

Participation

It's senseless trying to repeat strategies that worked in the past What's needed now is fresh thinking and real commitment to a totally new way of managing

A priority for every firm should be to introduce participative management as fast as possible Every worker should be exposed to the harsh realities of business and involved in decision making

If workers are attracted by socialist ideology, it's because they haven't been shown an attractive alternative

Most of them don't understand how business works, they don't know enough about their own firms, and they are kept out of the decision making processes

The unions have done a masterful job of selling their point of view. They are expert communicators. They've been shaping work force attitudes for years, while managers have sat back and done nothing or, at best, tried to communicate in a totally amateurish way

The solution is to develop a total communications stragegy and to treat information as a key strategic resource.

Every worker should go through a thorough induction programme which explains the company's competitive position and its strategy. In addition, they should get far more on-the-job training than is currently the norm, and they should be encouraged to set their own goals, to measure their performance and to suggest new ways of working.

Only when the new management style has been totally accepted and implanted should share schemes or other financial incentives be introduced Money is an important motivator, but psychological rewards must come first.

When people are "counted in", they develop a sense of pride and commitment When they're treated like adults, they deliver the goods

But we're rapidly running out of time, if we're to secure our economic future If it's tough coping with change today, it'll be far more difficult and dangerous in the years ahead

The future is a matter of choice, not chance. But we must empower people to make informed choices, and give them the experience of thinking about wealth creation Only when that happens will we have a hope of building robust companies and a dynamic economy.

Impressive

Participative management has yielded impressive results in many other countries Some South African companies practise it to a degree, but there's a dangerous — and growing — gap between management and the workforce

Most formal sector workers are adults who take total responsibility for major personal decisions about finance, housing, education and welfare. They're also being increasingly called upon to make far-reaching socio-political decisions.

At work, however, they're treated like children. The "us and them" feeling is perpetuated in virtually every encounter with management.

International experience shows that on-the-job learning is the most vital part of any manager's development Participative management is a great way to grow people It's also the most sensible way to cope with the nationalisation threat.

165 B Day 4/4/90

Labour law set for significant changes

SIGNIFICANT changes to the Labour Relations Act (LRA) were proposed by the National Manpower Commission (NMC) technical committee in a 16-page document released yesterday.

ADELE BALETA

A significant proposal is to widen the ambit of the Act to include domestic and farm-workers, state employees, academics and oil rig employees within the limits of SA territorial waters These workers have never enjoyed protection in terms of the Act

The proposals encompass major aspects of the Act including its scope of application, registration of trade unions, industrial councils and courts, strikes and unfair labour practices, but does not reflect suggestions on technical aspects of the Act.

Although not part of its mandate, the committee proposed that labour legislation in SA, the self-governing territories and the TBVC countries be "harmonised"

Among others, the goals of the proposed labour legislation should promote industrial peace, foster collective bargaining, protect freedom of association, simplify procedures and address the duty to bargain, the NMC said

The NMC, commissioned by Manpower Minister Eli Louw to invesitgate a revision of the Act, has invited comment and public debate on the proposals and has suggested that May 21 to 23 be set aside for oral representations

The proposals are independent of the draft agreement reached between employers' body Saccola, and two major black trade union federations, Cosatu and Nactu

It was suggested certain sectors such as farm workers and domestic workers be included in principle but provision could be made in the Act to include them by proclamation.

Different parties should be allowed to agree on their own dispute resolution procedures They should be able to choose independent mediation or private dispute resolution procedures

Strikes should be decriminalised but regulated in terms of the unfair labour practice (ULP) definitions Strikes on rights disputes including ULP disputes should be outlawed and strikers who complied with procedures should be protected

Secondary industrial action should not be declared illegal Instead of a cooling off period of 30 days before the start of a strike, the NMC has proposed this be changed to 24 days Employers' right to interdict strikes should be restricted.

The Act should impose a duty on the employer, if requested to do so, to bargain on appropriate matters with a union which is sufficiently representative.

The NMC committee was divided on the question of trade union registration.

One proposal was to retain the existing system but to make it compulsory and the other suggested "representivity" was relevant when a union sought to bargain, but not at the level of registration.

Agreement

A simplified certification process should replace complicated registration requirements — representation, gazetting and the noting of objections Any union denied certification would have the right of appeal to the Industrial Court

On the issue of Industrial Council agreements the NMC suggests provision be made in law for the Manpower Minister to consider the position of smaller businesses before signing an agreement.

The existing Conciliation Boards (CB) time limits should be abolished, but a dispute should still be referred within 180 days, a period which could be extended. The CB would have 30 days in which to attempt to settle the dispute.

There should be a single labour appeal court with no further appeal to the Appellate Division and trade unions should be allowed to affiliate to poltical movements.

It was recommended the NMC be reconstituted as the National Labour Council — a bipartisan body with state representatives enjoying observer status

● Comment: Page 10

Industrial Court figures

Political Staff

ALTHOUGH 4 492 cases were referred to the Industrial Court last year, only 154 successful status quo orders were granted, Manpower Minister Mr Eli Louw said.

However, 2 059 of the cases were settled or withdrawn before hearing. The court refused 183 status quo orders for the period between November 1, 1988, until October 31, 1989

Mr Louw's department paid R21 664 during 1988-89 in legal costs in cases where decisions were taken to the Supreme Court concerning the establishment of conciliation boards It paid R106 493 in costs in respect of Industrial Court decisions taken to the Supreme Court on review

News in Brief

Two for Industrial Court

Cape Times 13/4/90 165

PRETORIA — Two Cape Town advocates, Mr Petrus Hendrik Meyer and Mr Stephanus Adriaan Jordaan, have been appointed additional members of the Industrial Court

(2)

	(a) Whites	(b) Coloureds	(c) Indians	(d) Blacks
Industrial council agreements	172 138	196 576	64 617	536 590
	(Estimated figures)			
Conciliation board agreements	—	—	—	—
Arbitration awards	Figures are not readily available			
Wage Board determinations	169 000	135 000	39 500	554 550
	(Estimated figures)			
Orders (sect 51A)	All races 142 800 (separate figures are not readily available)			

Note Figures supplied are according to the definition of "wage regulating measure" in section 1 of the Labour Relations Act 1956 Some persons may be accounted for twice as all wage regulating measures are included See paragraph 1 29 of the Department's Annual Report, 1989, as well as paragraph 24 of the Preface and Review

Industrial Court cases

251 Mr P H P GASTROW asked the Minister of Manpower

(a) How many cases were referred to the Industrial Court, (b) how many of these cases were settled before evidence was called, and (c) how many *status quo* orders were (i) granted and (ii) refused, in 1989?

B641E

The MINISTER OF MANPOWER

(a) 4 492

(b) 2 059 cases settled or withdrawn before hearing

(c) (i) 154

(ii) 183

Note These figures are for the period 1 November 1988 until 31 October 1989 Please see table 1 1 on page 146 of the Department's Annual Report of 1989

Industrial accidents

252 Mr P H P GASTROW asked the Minister of Manpower

(1) (a) How many industrial accidents occurred in 1989 and (b) what was the total cost of these accidents to (i) the State, (ii) the Accident Fund and (iii) insurance companies,

(2) (a) how many persons (i) applied for and (ii) received compensation in terms of the Workmen's Compensation Act, No 30 of 1941, and (b) what was the total amount paid out in compensation, in that year,

(3) what was the total period for which the persons injured in such accidents were absent from work?

B642E

The MINISTER OF MANPOWER

(1), (2) and (3) Figures for 1989 are not as yet available

Industrial accidents

253 Mr P H P GASTROW asked the Minister of Manpower

(1) How many workers (a) suffered permanent disablement and (b) died as a result of injuries sustained at work in 1989,

(2) (a) how many industrial accidents occurred in the Republic during the latest specified period of 12 months for which figures are available, (b) what amount was paid out by the Accident Fund in respect of such accidents and (c) what was the total period for which the persons injured in such accidents were absent from work?

B643E

The MINISTER OF MANPOWER

(1) The figures for 1989 are not as yet available

(2) The most recent figures available are for 1986

(a) 247 784 as contemplated in the Workmen's Compensation Act, Act No 30 of 1941

(b) R118 314 740,80

(c) 3 346 125 man-days

Note Also see paragraphs 23, 27, 28 and 31 of the Accident Fund Annual Report 1989

Director-General, administrative post

256 Mr C W EGLIN asked the Minister of Foreign Affairs

(1) Whether a former Director-General of his Department, whose name has been furnished to his Department for the purpose of his reply, has been appointed to an administrative post in his Department, if so, (a) to what post, (b) (i) what are his powers, functions and responsibilities and (ii) over what areas will he exercise them and (c) what is the name of this person,

(2) whether any agreement has been reached with the present Government of Ciskei in relation to this post, if so, what is the nature of this agreement?

B667E

The MINISTER OF FOREIGN AFFAIRS

(1) (a) Dr B G Fourie has been appointed on a short term contract in the Department of Foreign Affairs to act in an overall co-ordinating capacity in the Eastern Cape area as from 9 March 1990

(b) (i) and (ii) He has no executive powers but acts in consultation with the Department of Foreign Affairs and the Ciskei Council of State in a co-ordinating capacity with regard to government functions in the region as well as those concerning relations between the RSA and Ciskei

(c) Dr B G Fourie

(2) The Chairman of the Ciskei Council of State was consulted on the desirability of the appointment and he welcomed the appointment

SATS: publicity programme

258 Mr H H SCHWARZ asked the Minister of Mineral and Energy Affairs and Public Enterprises

(1) (a) What is the cost of the publicity programme presently being conducted (i) on television, (ii) on radio and (iii) in the printed media by the South African Transport Services and (b) (i) for how long is it intended to continue with this programme and (ii) what is the purpose thereof,

(2) (a) what is the cost of the publication *Transnet — a leadership corporate profile* and (b) how many copies of this publication have been prepared?

B669E

The MINISTER OF MINERAL AND ENERGY AFFAIRS AND PUBLIC ENTERPRISES

(1) (a) (i) R2 038 289,16

(ii) R191 709,54

(iii) R1 503 990,17

(b) (i) Television until 12 May 1990
Radio until 16 April 1990
Press until 15 April 1990

(ii) To introduce the SA Transport Service's name change and to obtain the maximum acceptance for the new Corporate Identity

(2) (a) R456 250.00

(b) 35 000

Aggrieved parties, decisions/legal costs

260 Mr P J PAULUS asked the Minister of Manpower †

(a) What amounts were paid by his Department in 1986, 1987 and 1988, respectively, in legal costs in respect of cases in which decisions of the Minister, Director-General and

Regional Director of Manpower concerning the establishment of conciliation boards were taken to the Supreme Court by aggrieved parties and (b) what legal costs were incurred by his Department in each of these years in respect of Industrial Court decisions that were taken to the Supreme Court on review?

B691E

The MINISTER OF MANPOWER

Financial year*	Amount
(a) 1986/87	R 252 20
1987/88	R 7 071,60
1988/89*	R 21 664,00
(b) 1986/87	R 1 956,60
1987/88	R 1 799,50
1988/89*	R106 493,00

*NOTE The Department only has the information requested available per financial year and not per calendar year

Strikes

267 Mr P J PAULUS asked the Minister of Manpower †

(1) (a) How many strikes occurred in the Republic during the period 1 January to 31 December 1989 and (b) how many (i) Blacks, (ii) Whites, (iii) Coloureds and (iv) Indians took part in them,

(2) (a) how many man-days were lost as a result of these strikes and (b) what was the average duration of each such strike,

(3) how many of these strikes in which only (a) Blacks, (b) Whites, (c) Coloureds and (d) Indians took part were illegal?

B703E

The MINISTER OF MANPOWER

(1) (a) 783

(b) (i) 135 714

(ii) 1 245

(iii) 19 103

(iv) 5 437

(2) (a) 1 189 262

(b) 7,4 man-days

(3) (a) to (d) The Department of Manpower does not have this information available

Note The figures are for the period 1 November 1988 until 31 October 1989 The figures as requested will only be available during the debate on the Manpower Budget Vote on 27 April 1990 Please see paragraph 1 36 on page 30 of the Department's Annual Report for 1989 as well as the replies to questions 109 and 110 by Mr P H P Gastrow

Posts in mining, certificates of competency

268 Mr P J PAULUS asked the Minister of Mineral and Energy Affairs and Public Enterprises †

(a) How many applications were received by the Department of Mineral and Energy Affairs during the period 1 January to 31 December 1989 from Whites, Blacks, Coloureds and Indians, respectively, in respect of the obtaining of certificates of competency in the categories of (i) blasting, (ii) banksman, (iii) onsetter, (iv) locomotive driver, (v) hoist driver, (vi) mine captain and (vii) mine manager and (b) how many applicants in each of these categories obtained certificates?

B704E

The MINISTER OF MINERAL AND ENERGY AFFAIRS AND PUBLIC ENTERPRISES

Applications received and certificates issued during the period 1 January to 31 December 1989

(i) *Blasting Certificate*	*Applications* (a)	*Issued* (b)
Whites	1 901	1 451
Blacks	644	402
Coloureds	50	46
Indians	4	4
Total	1 599	1 903

(ii) *Banksman and* (iii) *Onsetter Certificate*	*Applications* (a)	*Issued* (b)
Whites	919	733
Blacks	229	156
Coloureds	30	14
Indians	3	2
Total	1 181	905

NB The onsetter's certificate is valid for both onsetters and banksmen

(iv) *Locomotive Drivers Certificate*	*Applications* (a)	*Issued* (b)
Whites	2	2
Blacks	0	0
Coloureds	0	0
Indians	0	0
Total	2	2

(v) *Hoist Driver Certificate*	*Applications* (a)	*Issued* (b)
Whites	143	122
Blacks	0	0
Coloureds	4	3
Indians	0	0
Total	147	125

(vi) *Mine Captain Certificate*	*Applications* (a)	*Issued* (b)
Whites	1 570	733
Blacks	0	0
Coloureds	0	0
Indians	0	0
Total	1 570	234

(vii) *Mine Managers Certificate*	*Applications* (a)	*Issued* (b)
Whites	710	94
Blacks	1	1
Coloureds	0	0
Indians	0	0
Total	711	95

While every effort has been made to ensure the accuracy of the figures quoted above the application forms for examination do not make provision for the race or colour of the applicant to be disclosed and no formal record is kept of the race or colour of the recipient of a certificate

SATS: retirement package offer

270 Adv J J S PRINSLOO asked the Minister of Mineral and Energy Affairs and Public Enterprises †

(a) How many (i) White, (ii) Black, (iii) Coloured and (iv) Indian employees have retired voluntarily in terms of the retirement package offer of the South African Transport Services from 1 February 1990 up to and including the expiry date of the offer and (b) what total amount was paid out in each of these categories to the employees in terms of the said offer?

B712E

The MINISTER OF MINERAL AND ENERGY AFFAIRS AND PUBLIC ENTERPRISES

	(a)	(b) (R million)
(i)	5 372	95,6
(ii)	1 031	7,4
(iii)	378	2,2
(iv)	25	0,25

Labour bureaux: registrations

282 Mr P H P GASTROW asked the Minister of Manpower

How many males and females, respectively, were registered at labour bureaux as work-seekers in terms of the Guidance and Placement Act, No 62 of 1981, as at the end of each month in 1989?

B727E

The MINISTER OF MANPOWER

Month	*Male*	*Female*
January	75 531	37 637
February	96 843	50 365
March	88 729	45 079
April	87 001	42 451
May	86 772	41 311
June	90 254	41 530
July	88 231	40 823
August	90 082	41 964
September	88 279	39 195
October	83 396	36 008
November	90 850	37 626
December	77 951	31 229

Work-seekers registered

283 Mr P H P GASTROW asked the Minister of Manpower

How many Black males and females, respectively, were registered as work-seekers in the Republic in each month of 1989?

B728E

The MINISTER OF MANPOWER

Month	*Male*	*Female*
January	49 947	16 909
February	65 071	23 980
March	56 741	19 349
April	55 541	16 550
May	56 221	16 213
June	59 080	16 941
July	58 118	17 172
August	59 535	17 570
September	61 062	16 946
October	57 219	15 824
November	64 638	17 620
December	54 922	13 340

Workers win court battle in Rustenburg

165

The Industrial Court has ordered a Rustenburg company to negotiate wages and working conditions with a union representing its employees.

The court decision follows an application by the Federated Mining Union (FMU) which challenged Rolan Essential Oils' alleged refusal to negotiate with it.

By LEN MASEKO

FMU general secretary Mr Sydney Zimba said the court found that the company's refusal to negotiate with the union constituted an unfair labour practice.

Strike

The company was ordered to hold negotiations with the Nactu affiliate within 30 days of the court judgment.

The dispute between the two parties led to a strike which lasted 12 weeks early this year.

FM 27/4/90 (165)

LABOUR LAW FM 27/4/90

Getting there

Proposals released by the National Manpower Commission (NMC), aimed at amending the controversial 1988 Labour Relations Act, go a long way to simplifying the law They also outline some significant changes The NMC has invited public debate and comment on the proposals.

These are independent of the recent draft agreement reached between the employers' body, Saccola and the two trade union federations, Cosatu and Nactu, which has yet to be finalised The acting chairman of the NMC, Frans Barker, explains that this was an interim agreement dealing with specific areas of the Act and will be taken into consideration by the NMC. Saccola and the two union federations, says Barker, have agreed the NMC should continue its investigation, which is aimed at a complete revision of the Act (165)

The NMC proposals "attempt to provide the foundations of an integrated approach" to revising the Act It, therefore, concentrates on its major components· its scope of application, industrial councils, the industrial court, strikes and lockouts, unfair labour practices and employee rights, union registration and the role and composition of the NMC itself

The NMC says some of the functions of the revised Act would be to. promote industrial peace; protect freedom of association, foster collective bargaining; simplify procedures; and address the concept of the duty to bargain.

A significant proposal in the 16-page document released on April 10 is that legislation should be harmonised with labour law in the self-governing and TBVC States. It is also suggested the scope of the Act be extended to include all occupations — including civil servants, farm and domestic workers

It is proposed that farm and domestic workers should be included "in principle" at this stage, but that provision could be made in the Act for its extension (or certain provisions thereof) by proclamation later.

Police and security personnel have not been included

It is also recommended that the NMC be reconstituted and renamed the National Labour Council This would be bi-partisan but include State representation as observers in formulating labour policy.

Other recommendations.

- ☐ Dispute resolution mechanisms to be simplified and disputes on individual issues to be processed in either the Industrial Court (possibly to be renamed the Labour Court), the magistrates' courts or the small claims courts,
- ☐ Scope to be made for bargaining at appropriate levels and that private mediation be made available in addition to conciliation boards and industrial councils,
- ☐ Arbitration to be encouraged through the State subsidising the arbitrator's fee;
- ☐ Strikes to be decriminalised and regulated by unfair labour practice jurisdiction;
- ☐ Court procedures to be simplified with a single appeal court with no further recourse to the Appellate Division replacing the six labour appeal courts,
- ☐ Every employee to have the right of freedom of association,
- ☐ The unfair labour practice code to be freshly defined;
- ☐ Union registration be replaced by a simple certification procedure; and
- ☐ Selective dismissal/re-employment of strikers to be barred unless the strike was not procedural, or made a job redundant, or was not peacefully conducted Fair procedure must be followed before dismissing

Concerning industrial councils, it was proposed that provision be made for the manpower minister to accommodate the needs of small business before signing an agreement

It was also recommended that the existing conciliation boards' time limit should be abolished — but a dispute should still be referred within 180 days, a period which could be extended The board should be given 30 days to settle a dispute

May 21-23 is reserved for oral representation, which will be open to public scrutiny ■

Court victory for municipal union

THE South African Black Municipality and Allied Workers Union is set to significantly boost its membership among council employees in the wake of a decision by the Rand Supreme Court granting the union the right to represent employees at Industrial Council hearings.

In a judgment against the Johannesburg City Council on Friday, Mr Justice PJ Schabort ruled that the dismissal of three employees be referred to the Industrial Council and that Sabmawu be granted the right to assist their members in the hearing.

The case arose from the dismissals of the three in November 1988, after which Sabmawu appealed to the Industrial Council to intervene and settle the dispute.

But the Johannesburg City Council objected to the presence of the union on the grounds that it did not belong to the closed shop, and therefore had no locus standi to approach the Industrial Council.

The proceedings then came to a halt.

However, Friday's judgement has effectively overturned the Johannesburg municipality's argument, thus forcing the council to recognise in an oblique manner the existence of Sabmawu.

General secretary Mr Philip Dhlamini, told Sapa on Saturday that his union would boost its membership substantially.

Employers, unions agree on new LRA

CapeTimes 8/5/90 165

JOHANNESBURG — Employers and worker representatives signed a major agreement yesterday which calls for a number of amendments to the Labour Relations Act which points, it was suggested, to a new climate of negotiation.

Habitual enemies of old, yesterday wise-cracking representatives of the SA Consultative Council on Labour Affairs, the Congress of SA Trade Unions (Cosatu) and the National Council of Trade Unions sat alongside one another to sign the document.

It will be forwarded immediately to Manpower Minister Mr Eli Louw for processing and it is hoped it will be law by the end of this session of Parliament, reporters were told.

As outlined by Cosatu last week, the amendments include:

- Scrapping of the time limits and bureaucratic procedures in relation to the declaration of disputes (other than a 180-day time bar on disputes of right but with expeditious condonation procedures)
- Provisions for proper notice and an opportunity to be heard in the case of interdicts against illegal strikes and lockouts
- Reversion to the unfair labour practice definition of pre-September 1988
- New provisions relating to dismissals and retrenchments in line with the International Labour Organisation conventions
- Provisions for specialist assessors to sit in Labour Appeal Court matters and for this court to hear appeals within 90 days of referral
- A set of basic worker rights (including the right to bargain collectively and the right to strike)

Saccola chairman Mr Anton Roodt, in a brief reference to the details of the agreement, said it represented "a major step towards broadly supported 'rules of the game' "

Mr Roodt said he was sure most of the signatories to the agreement wished it had been signed long ago

"It (the agreement) shows it is possible to reach consensus through discussion," said Mr Roodt, a sentiment confirmed by Cosatu general secretary Mr Jay Naidoo

Although the labour agreement had been signed before the Groote Schuur Minute, said Mr Naidoo with a smile, it had in fact pre-empted that document.

Some of the delay was apparently caused by the position of two Saccola affiliates — Transnet and the National Printing Federation. Transnet has since advised Saccola that it is a willing signatory to the agreement, if only to end the delay

Another Saccola representative, Anglo American director Mr Bobby Godsell, said the National Printing Federation was not party to the agreement.

Mr Roodt said Mr Louw had not indicated whether there would be enough time to process the document in this session of Parliament.

And in another cautionary note, Mr Naidoo said that a deal still had to be negotiated with employers from the agricultural, administration and postal sectors

There was still a long road ahead, he said — Sapa

(ii) (aa) To achieve an operational level which is maximally cost-effective and audience-effective

(bb) The rationalisation of these specific services will result in a cost saving of approximately R4 million per year This saving will be used for the upgrading of the Africa services of Radio RSA Besides this amount the Department of Foreign Affairs will in the current financial year contribute an additional R4,4 million out of its own image-building (communication) budget to the continuation of the remaining external news services of the SABC The Department will therefore have to curtail its own image-building (communication) programmes abroad accordingly

(2) The SABC made a statement in this regard on 9 April 1990 and I responded as follows to questions raised by the hon member on this subject during the debate on my vote in parliament on 26 April 1990

"I believe the honourable member for Johannesburg North was a little unfair to my department today He apparently relied heavily on an article he had read in some magazine or newspaper If I heard him correctly, he stated that the overseas services of *Radio RSA* are on the point of being closed down That is not correct In the 1989/90 financial year 37% of the total image-building budget of my department was spent on these services In 1990/91 their share will increase to 45% Compare this with the 26% of the United States' total image-building budget that is spent on the Voice of America

We have investigated this matter over a period of two years, and it has been found that very few people listen to short wave broadcasts in Northern Europe today These are not my facts and the honourable member can check them In Northern Europe today people listen to and view other media communications

I want to refer the honourable member to an expert finding in the Journal of Broadcasting and Electronic Media, vol 33 No 2, and I quote 'Audience research conducted by other international broadcasting organisations shows that while *Radio RSA* does not appear to have substantial audiences in Western Europe or Northern America, its programmes reach almost as many listeners as do those of the Voice of America and the BBC in parts of the Third World, and it outstrips both of these stations in Eastern Africa and much of Southern Africa ' I hope the honourable member is now satisfied and will help me to give the correct information to the lady who wrote the article "

National Manpower Commission, representation

340 Mr A J LEON asked the Minister of Manpower

(1) Whether any employee organisations and/or trade unions affiliated to (a) Cosatu and/or (b) Nactu are represented on the National Manpower Commission, if so, (i) which specified organisations and/or trade unions are so represented and (ii) when did they join, if not,

(2) whether any such organisations and/or trade unions were invited to serve on the Commission, if not, why not, if so, which organisations and/or trade unions,

(3) whether any organisations and/or trade unions invited to serve on the Commission refused to do so, if so, for what reasons in each case? B830E

The MINISTER OF MANPOWER

(1) (a) Employee organisations and/or trade unions ar not as such represented on the National Manpower Commission Representation on the National Manpower Commission is based on the fact that knowledgeable persons are appointed in an individual capacity, although an association with the most important employers' and employees' organisations is pursued

No individual nominated by Cosatu affiliated trade unions serves on the National Manpower Commission

(i) and (ii) Fall away

(b) Subject to the first section of (a) above, the National Secretary to the National Union of Furniture and Allied Workers of South Africa, which is affiliated to Nactu is appointed in an individual capacity on the National Manpower Commission

(i) The National Secretary of the aforementioned trade union serves in an individual capacity on the National Manpower Commission

(ii) The appointment was made with effect from 1 April 1988

(2) Subject to the first section of (1)(a) above, all registered trade union federations and registered trade unions with more than 15 000 members were invited during December 1987 to nominate individuals for appointment to the fourth National Manpower Commission Thereafter Cosatu and Nactu were asked whether they were interested in nominating persons for appointment on the National Manpower Commission They did not respond to this request Written invitations to nominate individuals for appointment on the National Manpower Commission were sent to the Presidents of Cosatu and Nactu on 21 February 1990 Similar invitations were sent to trade unions afiliated to Cosatu and Nactu on 25 February 1990

(3) Up to 3 May 1990 no formal reaction was received from Cosatu or Nactu One of the Cosatu-affiliated trade unions thus far acknowledged receipt of the invitation while two Nactu affiliated trade unions nominated three persons each for appointment to the National Manpower Commission It is not known why the other organisations did not react

Female educators' salary adjustments

346 Mr A GERBER asked the Minister of National Education †

(1) How many (a) White, (b) Coloured, (c) Indian and (d) Black low-qualified female educators will benefit from the recent announcement that their salaries are to be structurally adjusted as from 1 April 1990,

(2) what will this structual adjustment cost the State for the current financial year? B846E

The MINISTER OF NATIONAL EDUCATION

(1) (a) 1 321

(b) 15 829

(c) 303

(d) 62 403

(2) R184 million

UIF office space in Pretoria

354 Mr P J PAULUS asked the Minister of Manpower †

Whether there is a shortage of office space for the staff of the Unemployment Insurance Fund who are accommodated in the Laboria Building, Pretoria, if so (a) what is the extent of the shortage and (b) what steps have been or are being taken in this regard? B861E

The MINISTER OF MANPOWER

Yes

(a) Approximately *3 839* square meters in additional office space are needed at this stage It is expected that the need for additional office space will soon increase

(b) It is endeavoured to acquire the necessary additional accommodation in consultation with all parties concerned

Awaiting-trial prisoners

372 Mr D J DALLING asked the Minister of Justice

What was the average number of awaiting-trial prisoners in custody on the last day of each month in 1989? B900E

The MINISTER OF JUSTICE

The figures concerning awaiting-trial prisoners incarcerated in South African prisons on the

However, the Admission of Advocates Amendment Bill, 1990, which was introduced in Parliament on 25 April 1990 relaxes the language requirement in respect of Latin required at present by the Act The following minimum standards are laid down in the Bill

(a) Matriculation Latin at the higher level as required by the Joint Matriculation Board, or

(b) a special course in Latin which is prescribed or recognised by a university in the Republic for a *baccalaureus* degree which is not a law degree

This Bill is presently receiving the attention of the Parliamentary Joint Committee on Justice

Legal Aid Board: suspension of legal aid services

339 Mr D J DALLING asked the Minister of Justice

Whether any legal aid services were suspended by the Legal Aid Board in 1989, if so, (a) (i) which services and (ii) for what period and (b) why were these services suspended?

B829E

The MINISTER OF JUSTICE

Yes

(a) (i) The suspensions were applicable to the following matters

1 Criminal and civil appeals

2 Civil matters where the *quantum* of the claim amounted to R2 000 or less

3 Instructions to advocates in the lower courts and senior advocates in the Supreme Court

The Board also had to impose restrictions on legal costs for the duration of 1989 in the following cases

1 The legal costs in respect of divorce cases and related cases were restricted on legal aid tariff to a maximum of R750 if one attorney was involved and R1 000 if two attorneys were involved Provided that if permission was granted for the institution or defence of interlocutory actions, the legal costs thereof could be allowed in addition to that of the main action Provided further that the legal costs for the interlocutory action should not exceed R500 if one attorney was involved and R750 if two attorneys were involved

2 Legal costs in respect of applications or petitions after imposition of the death penalty were restricted on legal aid tariff to a maximum of R500 per application or petition

3 Industrial Court matters were restricted as follows For a consultation if section 43-proceedings were not instituted—the fees as prescribed for a consultation on scale C of the tariff in the Magistrates' Courts Rules, less 20%, if section 43-proceedings were instituted—the fees as prescribed on scale C of the tariff in the Magistrates' Courts Rules, less 20%, to a maximum of R500, if the Legal Aid mandate was extended to include section 46-proceedings—the fees as prescribed in scale C of the tariff in the Magistrates' Courts Rules, less 20%, to a maximum of R250 (The Director of the Legal Aid Board has the power to grant legal aid in deserving cases and to increase and suspend restrictions)

(ii) The restrictions and suspensions were imposed on 1 April 1988 and are still in force (The restrictions in respect of Industrial court matters were imposed on 1 December 1988 and are still in force)

(b) The restrictions and suspensions had to be introduced by the Board in an attempt to stay within the appropriated budget

New group areas proclaimed

342 Mr A J LEON asked the Minister of Planning and Provincial Affairs

(1) (a) How many new (i) White, (ii) Coloured and (iii) Indian group areas were proclaimed in each province in 1989 and (b) what was the extent of these group areas in each case,

(2) (a) how many (i) White, (ii) Coloured and (iii) Indian group areas were re-proclaimed in that year and (b) for which race groups were they re-proclaimed in each case?

B832E

The MINISTER OF PLANNING AND PROVINCIAL AFFAIRS

(1) (a) and (b) See Annexure A

(2) (a) and (b) See Annexure B

Annexure A

Transvaal

Town	*White (ha)*	*Coloured (ha)*	*Indian (ha)*
Pietersburg			8,7
Piet Retief		15	46,8
Kinross		47,45	
Bronkhorstspruit		70	124
	None	132,45	179,5

Summary Transvaal

White None
Coloured 3 areas — 132,4 ha
Indian 3 areas — 179 5 ha

Cape Province

Town	*White (ha)*	*Coloured (ha)*	*Indian (ha)*
Ladismith		1,68	
Macassar		3,3	
Blanco		8	
Elandsbaai		1,1	
George Sandkraal		213	
Idasvallei		11	
Goodwood	2,2		
Cloetesville		33	
Koekenaap		6	
East London			2
Somerset West		55	
Leeu-Gamka		35	
Elliot		0,12	
Kylemoore		69	
Postmasburg		130	
Macassar		37	
Retreat		127	
Heidelberg		1,2	
Op Die Berg		37	
Wellington		18	
Ocean View		0,38	
Kirkwood	130,2	126,4	
Prieska		330,7	
Jansenville		2,5	
	132,4	1 246,38	2

Summary Cape Province

White 2 areas — 132,4 ha
Coloured 22 areas — 1 246,38 ha
Indian 1 area — 2 ha

(b) Permanent Force

	(i)		(ii)	
(aa)		70		13
(bb) Overdose		40	Hanged	2
Drank poison		2	Shot	2
Slashed wrists		12	Gassed	9
Hanged		3		
Shot		2		
Gassed		7		
Ate metal		1		
Ate polish		1		
Jumped out of vehicle		1		
Drank brasso		1		

(c) Citizen Force/Commandos

	(i)		(ii)	
(aa)		12		0
(bb) Overdose		5		
Slashed wrists		6		
Ate metal		1		

Medical 27
Other 12

1 419

Citizen Force/Commando members: deferment

377 Lt-Gen R H D ROGERS asked the Minister of Defence

(1) What percentage of Citizen Force and Commando members called up to attend camps (a) applied for deferment, (b) failed to report for service and (c) requested exemption from rendering service in townships in 1989,

(2) what total number of persons called up for military service in 1989 requested exemption on (a) religious and (b) other specified grounds?

B905E

The MINISTER OF DEFENCE

(1) (a) 37,65%
(b) 8,88%
(c) 0,0113%

(2) (a) 192
(b) Essential Services 1 318
Service in other Forces 15
Occupational Circumstances 59

Inspectorate areas unemployment

379 Mr P H P GASTROW asked the Minister of Manpower

How many Whites, Coloureds and Indians, respectively, were registered as unemployed in each inspectorate area as at 31 December 1989?

B907E

The MINISTER OF MANPOWER

Registered unemployed as at 31 December 1989

Region	Whites	Coloureds	Indians
Natal	2 352	1 484	6 073
North-Eastern Transvaal	1 597	157	56
Eastern Cape	684	896	4
PWV-North	1 218	332	27
PWV-Central	1 311	82	3
PWV-South	2 842	854	203
Central Areas	2 435	1 622	21
Western Cape	2 524	11 303	6

Trade unions: applications for registration

380 Mr P H P GASTROW asked the Minister of Manpower

How many trade unions applied in 1989 for registration in respect of (a) Black employees only, (b) White employees only, (c) Coloured employees only and (d) employees of more than one population group?

B908E

The MINISTER OF MANPOWER

(a) 3
(b) 0
(c) 0
(d) 7

Note These figures are for the period 1 November 1988 until 31 October 1989

Sheltered employment

400 Mrs C H CHARLEWOOD asked the Minister of Manpower

(1) What is the status of persons in sheltered employment regarding (a) minimum wages, (b) pension fund membership, (c) permanent status and (d) housing subsidies,

(2) whether such persons are members of the Public Servants' Association of South Africa, if not, what are the relevant details?

B947E

The MINISTER OF MANPOWER

(1) (a) Wages of sheltered employees are linked to the salary scale of the post class Factotum in the Public Service

(b) Sheltered employees are not members of a pension fund Their disabilities are normally of such a nature that they can in terms of section 3 of the Social Pensions Act, 1973, be eligible for disability grants

(c) Their employment is permanent while they are—

(i) not capable to compete in the open labour market, and

(ii) nevertheless able to be productively employed by the work centres

(d) Sheltered employees do not qualify for housing subsidies

(2) Yes, they may join the Public Servants' Association of South Africa voluntarily

SADF. non-White volunteers

414 Lt-Gen R HD ROGERS asked the Minister of Defence

(1) How many (a) White, (b) Coloured, (c) Indian and (d) Black persons volunteered for national service in the South African Defence Force in 1989,

(2) how many of these volunteers in each category could be accommodated?

B961E

The MINISTER OF DEFENCE

	(a)	(b)	(c)	(d)
(1)	938	6 985	724	3
(2)	274	2 913	182	0

Citizen Force/Commondos: percentage of volunteers

415 Lt-Gen R H D ROGERS asked the Minister of Defence

What percentage of the persons who rendered voluntary service in the (a) Citizen Force and (b) Commandos as at 31 December 1989 was (i) White, (ii) Coloured, (iii) Indian and (iv) Black?

B962E

The MINISTER OF DEFENCE

	(a)	(b)
(i)	76,8%	81,34%
(ii)	23,2%	11,24%
(iii)	0%	2,08%
(iv)	0%	5,34%

Worker militancy to the fore

ST Times 20/5/90

(165)

By Adrian Hersch

POLITICAL and economic expectations of the black workforce have been heightened as a result of President De Klerk's speech on February 2, says Andrew Levy, a labour relations consultant.

Worker demands have been given a major boost by a sense among trade union members that political developments are on their side. Militancy is thus expected to increase, warns Mr Levy

Mr Levy was addressing a labour relations conference organised by Levy, Piron & Associates

Factions

He believes that several factors should be considered in assessing the nature of militancy

The ANC has yet to agree on a political programme

The organisation comprises factions whose economic and political interests do not necessarily coincide Cosatu is a major player, and there are differences of opinion in its camp

Mr Levy says now that legitimate channels for political activities exist, political debates are likely to take place outside the workplace

"Unions will apply their political clout in the political arena"

This could result in a toning down of politically motivated activities in the workplace. Although there will be heightened militancy, most demands should be confined to economic matters

However, political issues that directly affect workers could result in industrial action The protests in the past against the Labour Relations Act illustrate this But the Saccola-employee talks show that the parties are willing to compromise even in cases of severe conflict.

Mr Levy says the view that militancy will increase is bolstered by the fact that far more strikes have been called this year than in the same time last year Increases in the number and length of strikes are expected Strikes will be long, hard and expensive

Credibility

Mr Levy says Cosatu has gained credibility among its members. Significant gains in the workplace have been made, and promised political change has occurred Cosatu's campaigns in favour of a "living wage', for example, will have to be taken seriously

Johan Piron says that change in collective bargaining in the past decade occurred largely through the use of unfair labour practice jurisdiction of the Industrial Court

Although the decisions of the court in themselves do not set a precedent, they have the effect of regulating collective bargaining principles and even the behaviour of management and unions

The Industrial Court has set several values for collective bargaining

Professor Piron, of the University of South Africa, says that if the major cases are examined, fundamental points emerge, including

- Management is obliged to deal with trade unions regardless of whether a structured relationship exists between the parties
- A union has the right to negotiate on behalf of its members even if it does not enjoy majority representation among the workforce However, management is not obliged to deal with inconsequential minorities
- Management is required to negotiate on all employment-related issues including the "traditional areas' of managerial prerogative such as disciplinary rules

Thrust

- The court will evaluate the behaviour of the parties at the bargaining table as well as tactics used in bargaining
- The court requires the collective agreement to be honoured, irrespective of whether the agreement constitutes a contract or an agreement within the strict legal meaning of those terms

Some areas of collective bargaining have not been dealt with by the court Professor Piron predicts that in the next five years developments are likely to occur regarding remedies where breach of collective agreements occur

Indications are that disclosure of financial information pertaining to good faith bargaining, and the degree to which the courts should involve themselves in the cut and thrust of collective bargaining, are also likely to be dealt with.

At another conference, Frans van der Walt, general manager, industrial relations, of Pick 'n Pay, said management had failed to establish an industrial relations strategy to take into account the political aspirations of employees

Management had tried to divorce itself from politics on the shopfloor and this had been a major mistake, said Mr Van der Walt

He spoke at a conference organised by Gillam, Brunquel & Associates

Mr Van der Walt urges employers to get to grips with the conflicting ideologies of the various employee groupings and the aims of the company Every company should have an industrial relations strategy to understand the political perspectives of its employees'

ANDREW LEVY ... long and expensive strikes

Whites-only miners' union in a tight spot

SOWETAN Correspondent

THE all-white Mineworkers Union - and by implication the white labour movement - has been dealt a severe blow in a key Industrial Court judgment.

The court this week upheld the refusal of Anglo American's East Rand Gold and Uranium Company to formally recognise or bargain with the MWU on account of its racial constitution.

Ergo was justified in not wishing to follow "retrogressive" policies which would be "increasingly anachronistic in a new South Africa", held court member Ameen Bulbulia.

Sowetan 25/5/90

Statement

In a statement, Anglo stressed that the ruling did not stop workers from belonging to the MWU, with which it would maintain informal dealings.

The MWU went to court in February, arguing that Ergo was unfairly refusing to bargain in good faith and thwarting freedom of association.

Responding, Ergo held that recognition of the MWU would breach its "non-racial, equal opportunity" policy, offend most employees and amount to a violation of human rights.

Bulbulia found in the first instance that the MWU was insufficiently representative. A refusal to bargain in no way affected workers' right to join the union of their choice, he found.

Recognition of the MWU would harm the firm's relationship with other unions and invite industrial unrest. And by accepting work at Ergo, MWU members had tacitly agreed to abide by its non-racial policy.

Describing the judgment as a "foot in the door", lawyers said it could provide a legal basis for stripping racial unions of existing bargaining rights.

165

Labour showdown

Mr Eli Louw

Cape Times 20/6/90 165

By ANTHONY JOHNSON
Political Correspondent

A MAJOR showdown is looming between trade union giant Cosatu and the government over its refusal to pass legislation this parliamentary session on amendments to the controversial Labour Relations Act.

Cosatu yesterday threated to scupper the talks between the ANC and the government and stage mass industrial action if the government did not abandon its stance

And as a sit-in began at the National Manpower Commission (NMC) offices in Johannesburg, the National Union of Mineworkers warned it would suspend wage negotiations with the Chamber of Mines if the impasse was not resolved soon

At the centre of the controversy is an agreement reached last month between SA's largest employer organisation, Saccola, representing 66 000 employers and four million workers, and Cosatu and Nactu union federations with a paid-up membership of 1,5 million

Manpower Minister Mr Eli Louw said yesterday the cabinet had decided that the Saccola/Cosatu/Nactu (SCN) agreement on amendments to the Labour Relations Act could not become law this session

But he insisted that his "door is still open" and consensus could still be reached

Cosatu said the cabinet's decision to delay incorporating changes to the act until the 1991 session was a "serious error of judgment" which could carry grave consequences for the economy.

"Cosatu reiterates its willingness to meet the State President urgently to explore ways of legislating this agreement and avoiding the possible consequence of industrial unrest and conflict."

Should Mr De Klerk refuse to meet them, "there will be no doubt that confrontation is being sought with the trade union movement"

Should the government refuse to incorporate the SCN agreement this parliamentary session, Cosatu has called for a programme of action including

- An urgent meeting with the ANC to review its continued participation in negotiations with the government.
- A call for a "national mass stayaway"
- Product boycotts of employers who opposed amendments to the Labour Relations Act.
- "Solidarity actions" from post office workers
- Asking ambassadors in South Africa to urge their governments to maintain sanctions
- Withdrawal of Cosatu's contact with the National Manpower Commission, the director-general of the department of manpower and the minister of manpower
- Saccola will also be requested to withdraw from participating in the NMC and certain other statutory bodies.

To page 2

P.T.O

Court dismisses union application against OK

B'Day 28/6/90

DANIEL FELDMAN

THE SA Commercial Catering and Allied Workers' Union's (Saccawu) urgent application to the Industrial Court against OK Bazaars was dismissed yesterday, but Saccawu national organiser Jeremy Daphne said the application had still been "partially successful".

The application was dismissed because the presiding officer was not convinced that irreparable harm could be done to the union if the order sought was not granted, and the urgency of the matter was thus not accepted

However, Daphne pointed out the case's merits were not questioned, which would enable the union to make the same application in terms of Section 43 of the LRA for interim relief

He said the presiding officer had agreed that the union was entitled to appear at the Industrial Court to challenge the fairness of OK's conduct, even though it may have appeared to be in conflict with a Supreme Court order

165

Meeting

Also, Daphne interpreted from the decision that "prima facie union members had a right to remain on OK premises and thus removal from stores may be an unfair labour practice"

OK spokesman Gavin Brown said the judgment in the case stood for itself.

"At this point, we're just turning our minds to the meeting today, and hoping to start the negotiation process which will lead to the end of the strike," he said

Saccawu will meet management this morning in an attempt to settle the wage dispute

The union is still calling for a R160 across-the-board increase, and a minimum monthly wage of R800

During the course of the 25-day strike, 214 people have been arrested and approximately 33 workers dismissed, according to union figures.

More than 7 000 employees are still on strike at 133 OK stores nationwide

1988 — Sapa-AP

CAPE TIMES 28/7/90

Small Labour Courts soon?

SMALL Labour Courts similar to the Small Claims Courts may be introduced soon.

Mr Dawie de Villiers, president of the Industrial Court, said yesterday these Small Labour Courts could play a big role in country areas. — Sapa

Small Labour Court proposed

CAPE TOWN — Small Labour Courts similar to the Small Claims Courts may be introduced to handle certain smaller labour relations cases, SABC radio news reported last week

A Small Labour Court was mooted by Industrial Court president Dawie de Villiers at the UCT Graduate School of Business Association in Cape Town on Friday

De Villiers said these courts could play a big role in country areas once farm labourers were included in the operations of the Industrial Court next year — Sapa

DEALMAKERS

HOTEL OFF-SALES & DISCO. Off-sales with t/o exceeding R3-million The largest on-consumption outlet and most popular disco in the area Negotiate at R6,5-million including land and buildings and the 3 trading operations

CABINET MANUFACTURER. Long established specialist in kitchens and built-in cupboards Excellent reputation, t/o R2,65-million with nett of R325 000 Asking R795 000 including stock

CASH WHOLESALER. Groceries, toiletries and frozen chicken supplier with guaranteed turnover of R8,4-million A cash generator for R850 000

STEAKHOUSE. Popular franchise with seating for 220 Sales exceed R1,6-million Small deposit.

MOTEL ON N2 in the beautiful Garden Route Off-sales, service station and 3 hectares (7½ acres) with space for caravan park T/o exceeds R2,2-million Ne-

NP has three candidates for Randburg by-election

EDYTH BULBRING

PRETORIA — The NP will put up a high-profile candidate to fight for the parliamentary seat left vacant by the resignation this month of DP co-leader Wynand Malan.

NP sources said at the weekend the three forerunners for the NP nomination were Transvaal Provincial Administration MEC for Local Government Olaus van Zyl, President's councillor Glen Babb who lost the election against Malan last year, and Jeugkrag chairman Marthinus van Schalkwyk

The sources said Van Zyl was under pressure from the Randburg NP to accept the nomination He has lived in Randburg for many years and is a former mayor

Van Zyl was reluctant to give up his position in the TPA and become a backbencher in Parliament, sources said

Van Schalkwyk is considered a strong contender for the nomination as he, too, lives in Randburg, but he, like Van Zyl, is not keen to stand

There was a black mark against Babb as he did not live in Randburg despite assurances during the election last year that he would take up residence in the town However, Babb has stated he would be happy to stand if asked by his party

An NP nomination court will meet on August 7 to appoint the candidate

A spokesman for the DP said the closing date for its nominations would be August 3

The candidate would be chosen on August 8, the spokesman said

The CP has said it will also contest the seat

Industrial court interdict 'set dangerous precedent'

MATTHEW CURTIN

AN INDUSTRIAL court interdict prohibiting a planned legal strike by workers at Barlow Rand subsidiary African Telephone Cables (ATC) set a dangerous precedent in labour law, Numsa assistant national organiser Bernie Fanaroff said yesterday.

Yesterday ATC management informed the union of the interdict, which, as it was not an interim order, effectively banned strike action over rights issues at the company

Fanaroff said Numsa members at ATC processed the dispute for a legal strike in protest against the dismissal of four shop stewards during the week.

The dismissals were a clear case of victimisation, he said. Numsa was unlikely to abide by the interdict.

An ATC statement yesterday said Numsa rejected a company offer to settle the dispute through arbitration It considered the decision to strike "unfair".

Cosatu representative Rob Rees said ATC's approach contradicted the Saccola/Cosatu/Nactu labour relations accord — yet to be legislated — which Barlows supported.

Meanwhile in Stellenbosch, negotiations between the National Union of Wine, Spirits and Allied Workers and the SA Wine and Spirits Employers' Association over a wage dispute continue today as 3 800 workers at 72 depots remain on strike

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Barlows strike ruling angers unions

WMail 10/8-12/8/90 (165)

By DREW FORREST

TRADE unionists have reacted with dismay to a "precedent-setting" industrial court judgment which, they say, could have the effect of banning all lawful strikes over dismissals

At a press conference yesterday, Congress of South African Trade Union members linked the ruling, interdicting a threatened strike of 570 workers at the Barlow Rand subsidiary ATC, to Barlows' "hardline industrial relations policies" Cosatu is waging a campaign against Barlows

As the interdict was against a lawful strike, Barlows was accused of using the controversial 1988 amendments to the Labour Relations Act "This flies in the face of the group's stated support for the Saccola agreement," said National Union of Metalworkers' official Bernie Fanaroff

ATC's application follows a strike ballot at the Brits firm over demands for the reinstatement of four Numsa shop-stewards dismissed after a stayaway

According to Numsa's legal officer, Ruth Edmond, ATC argued in court that it had offered arbitration and that a dispute of rights, such as over dismissals, should not be settled by the exercise of power.

Bifawu, SA Eagle dispute to go to industrial court

CONCILIATION board talks aimed at ending a recognition dispute between Nactu's banking union and the SA Eagle insurance company ended in deadlock yesterday, according to a union statement WMail 17/8/-19/8/90

The dispute would now be settled in the industrial court, said Tom Phalama, general secretary of the Banking, Insurance, Finance and Assurance Workers Union (Bifawu) He said the dispute turned on SA Eagle's "unilateral determination of an appropriate bargaining unit and refusal to discuss appropriate bargaining units and representivity" (???) (165)

Also at issue was the company's refusal to agree to wage negotiations covering Bifawu's members

Describing the company's conduct as "clearly obstructive and an unfair labour practice", Phalama said it had told the union that representivity was meaningless in the absence of discussions on the bargaining unit.

Company comment could not be obtained

Ferroform manager admits to perjury

BDay 17/8/90 165

MATTHEW CURTIN

MURRAY and Roberts (M & R) Ferroform human resources manager Francois Swanepoel yesterday admitted to perjury in the Johannesburg industrial court, leading to a postponement of the hearing concerning a mass dismissal from the company's Alberton foundary

Swanepoel said that fearing for his position and under pressure from GM Brian Hansen — no longer with Ferroform — he supported an affadavit sworn by Hansen while knowing parts of it to be untrue.

The case in question concerns the dismissal on September 14 last year of senior Numsa shop steward Sindiso Nelani at the Alberton foundary on charges of incitement and intimidation

Nelani's dismissal was followed by illegal strike action by 240 workers who were dismissed on September 20 His subsequent appeal was turned down

Advocate Hans van der Riet, representing Numsa, yesterday asserted Nelani's denial of the allegations and claimed that he had been "set up" by management.

After Swanepoel's admission of perjury, Advocate Chris Loxton, representing M & R, formally applied for the postponement of the hearing until today to investigate the matter further He offered to tender costs for yesterday's session

President of the court Advocate W F Maritz acceded to his request.

In his examination by counsel yesterday Swanepoel said the involvement of a senior shop steward in a disciplinary hearing was known to be a factor in industrial relations which "might have repercussions" for a company

He said management saw Nelani "as a threat" and on a number of occasions the steward had been called in by Hansen and divisional managers and accused of forcing workers to embark on go-slows

Swanepoel said he had found Nelani guilty of incitement and intimidation and suspended him at the disciplinary hearing on September 14 Nelani and other workers had interpreted this as a dismissal

Inform

Swanepoel said management refused to act on workers' and Numsa local organiser Sam Ntuli's pleas for Nelani's reinstatement pending mediation or arbitration, and described their insistence that he should appeal as a "rigid" stance

Swanepoel gave an account of an attempt by Hansen to inform the workforce of the situation surrounding Nelani's position

He said Hansen began to speak calmly but when workers pressed him for the reasons behind Nelani's dismissal, Hansen resorted to "screaming and shouting" and "foul language".

Swanepoel said he had to "subdue" him, telling him his approach was bad industrial relations practice

The hearing continues today with counsel's examination of Swanepoel.

☐ Attorneys Deneys Reitz are representing M & R and Numsa is represented by attorneys Cheadle, Thompson and Haysom

Kenyan lawyer rearrested

NAIROBI — Kenyan police yesterday arrested prominent Kenyan lawyer and magazine editor Mr Gitobu Imanyara, a leading advocate of multiparty democracy, for the third time in two months, his office said

A spokeswoman for the lawyer, already on bail charged with sedition, said he had been arrested when he went yesterday to report routinely to the police.

"We don't know what the charge is, but this seems to be a different case again," she said

Mr Imanyara, a longstanding advocate of freedom of speech and an end to Kenya's one-party system of government, was first detained in early July as a six-month political debate in the country turned sour — UPI

M & R, Numsa to begin mediation

3/Day 3/9/90

MATTHEW CURTIN

MURRAY & Roberts (M & R) Ferroform management and the National Union of Metalworkers (Numsa) are to begin mediation after the unexpected postponement of their industrial court hearing 10 days ago.

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Numsa legal officer Ruth Edmonds said yesterday mediation would start soon but the hearing was likely to be postponed until November this year.

The industrial court heard the case brought by Numsa against the firm over the alleged unfair dismissal of 240 workers from M & R's Alberton foundry in September 1989.

Counsel for M & R asked for a postponement after their main witness, the foundry's human resources manager Francois Swanepoel, confessed to perjury and admitted he had collaborated in setting up a senior Numsa shop steward who was then dismissed on charges of incitement and intimidation.

Swanepoel said yesterday, despite fearing for his job at M & R after foundry human resources director Jock McDonald warned him never to set foot on company property again, he had not been dismissed.

He was, however, confined to an office at the company's headquarters and had been instructed not to go to his office at the foundry.

M & R group MD Gordon Scott said he knew nothing about the mediation

S

LAC overturns Sasol judgment

(165)
WMail 14/9 - 20/9/90

By DREW FORREST

THE Labour Appeal Court (LAC) has overturned a key Industrial Court judgment reinstating 820 fired strikers at Sasol 1 and awarding them back pay estimated at R3-million.

This emerges from the newspaper of the workers' union, the South African Chemical Workers' Union (Sacwu).

Sasol was harshly criticised by the Industrial Court for its handling of the strike, which climaxed with the firing of 1 300 workers, 820 of whom were not rehired Ruling the strike "legitimate" and substantially in line with statutory procedures, court member Ameen Bulbulia ordered the reinstatement of fired strikers with six months' back pay.

Sasol's appeal against the judgment was upheld in the LAC last month

Court chairman Judge FC Kirk-Cohen ruled that the strike was not lawful, as the union had not complied with statutory strike ballot requirements. He also refused the union leave to appeal

The issue was addressed by the Industrial Court, which found balloting procedures were irrelevant in the light of a Sasol circular warning workers they would be fired even if the strike was lawful.

Sacwu said the LAC judgment "flies in the face" of Wiehahn Commission recommendations that a labour court should decide disputes on the basis of equity.

It said it had applied to the Chief Justice for permission to appeal against the ruling Sasol declined to comment.

Labour trouble brews at Grapnel

TROUBLE is again brewing at an Atlantis silencer company where violent confrontations occurred between workers and police earlier this year.

Management at Grapnel Silencers and the National Union of Metalworkers of South Africa (Numsa) have been locked in conflict since wage negotiations began at the company in May this year.

In July, workers downed tools after the company had refused to budge from its final offer of a 16,5 percent increase for workers with more than a year's service and who earned less than R1 000 a month and 14,5 percent for workers with more than a year's service and who earned more than R1 000.

Several workers were injured after police had fired birdshot at workers involved in a sit-in at the factory. The factory then closed for several days.

After peace was restored negotiations resumed. A deadlock was declared after the workers again rejected the company's offer.

The dispute was heard last week at the Motor Industrial Council. South 13/9 - 19/9/90

At the hearing, the company refused to budge from its offer and demanded that workers sign individual contracts of overtime and agree that they would be dismissed if they took part in an illegal strike. The two parties are to report back to the industrial council later this week.

A Numsa spokesperson said the union was consulting its members but did not see a resolution to the dispute.

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NOTICE 833 OF 1990

ADMINISTRATION: HOUSE OF ASSEMBLY

DEPARTMENT OF AGRICULTURAL DEVELOPMENT

NOTICE OF MEETING OF CREDITORS IN TERMS OF SECTION 22 (1) OF THE AGRICULTURAL CREDIT ACT, 1966

A meeting of the undermentioned applicant and his creditors is hereby convened at the place and date mentioned hereunder for the purpose of enabling creditors to prove their claims against the applicant and of considering a proposal for a compromise by the Agricultural Credit Board

J H. RADEMEYER,

Director Directorate Financial Assistance,
Department of Agricultural Development.

KENNISGEWING 833 VAN 1990

ADMINISTRASIE: VOLKSRAAD

DEPARTEMENT VAN LANDBOU-ONTWIKKELING

KENNISGEWING VAN VERGADERING VAN SKULDEISERS KRAGTENS ARTIKEL 22 (1) VAN DIE WET OP LANDBOUKREDIET, 1966

Hierby word 'n vergadering van ondergenoemde applikant en sy skuldeisers op die plek en datum hieronder genoem, belê, met die doel om skuldeisers in staat te stel om hul vorderings teen die applikant te bewys en 'n skikkingsvoorstel van die Landboukredietraad te oorweeg.

J H. RADEMEYER,

Direkteur. Direktoraat Finansiele Bystand,
Departement van Landbou-ontwikkeling

Application by Aansoek van	Place of meeting Plek van byeenkoms	Date and time Datum en tyd
Hendrik Johannes and/en Elsie Susanna Johanna Hatting, of the farm/van die plaas Wallachije, P O Box 197/Posbus 197, Utrecht, 2980	Magistrate's Office/Kantoor van die Landdros, Utrecht	6 November 1990 at/om 09 00

(5 October 1990)/(5 Oktober 1990)

NOTICE 836 OF 1990

DEPARTMENT OF MANPOWER

MANPOWER TRAINING ACT, 1981

ACCREDITATION OF TRAINING BOARD DAIRY INDUSTRY

It is hereby notified for general information that the Registrar of Manpower Training, in terms of section 12B of the Act, accredited the Training Board for the Dairy Industry on 24 September 1990, in respect of the Dairy Industry, as defined in Government Notice No. 2041 of 31 August 1990, in the Republic of South Africa.

(5 October 1990)

KENNISGEWING 836 VAN 1990

DEPARTEMENT VAN MANNEKRAG

WET OP MANNEKRAGOPLEIDING, 1981

AKKREDITERING VAN OPLEIDINGSRAAD· SUIWELBEDRYF

Hierby word vir algemene kennisname bekendgemaak dat die Registrateur van Mannekragopleiding die Opleidingsraad vir die Suiwelbedryf, kragtens artikel 12B van die Wet, op 24 September 1990 geakkrediteer het ten opsigte van die Suiwelbedryf, soos omskryf in Goewermentskennisgewing No 2041 van 31 Augustus 1990, in die Republiek van Suid-Afrika

(5 Oktober 1990)

NOTICE 837 OF 1990

DEPARTMENT OF MANPOWER

LABOUR RELATIONS ACT, 1956

CANCELLATION OF REGISTRATION OF A TRADE UNION

I, David William James, Industrial Registrar, hereby notify, in terms of section 14 (2) of the Labour Relations Act, 1956, that I have cancelled the registration of the Bakery Employees Industrial Union with effect from 26 September 1990

D. W. JAMES,

Industrial Registrar

(5 October 1990)

KENNISGEWING 837 VAN 1990

DEPARTEMENT VAN MANNEKRAG

WET OP ARBEIDSVERHOUDINGE, 1956

INTREKKING VAN REGISTRASIE VAN 'N VAKVERENIGING

Ek, David William James, Nywerheidsregistrateur, maak hierby kragtens artikel 14 (2) van die Wet op Arbeidsverhoudinge, 1956, bekend dat ek die registrasie van die Bakery Employees Industrial Union met ingang van 26 September 1990 ingetrek het

D W. JAMES,

Nywerheidsregistrateur

(5 Oktober 1990)

NOTICE 838 OF 1990

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DEPARTMENT OF MANPOWER

NATIONAL MANPOWER COMMISSION

INVITATION FOR SUBMISSIONS REGARDING THE LABOUR APPEAL COURT (SECTION 17 OF THE LABOUR RELATIONS ACT)

It is hereby notified that the Minister of Manpower has requested the National Manpower Commission (NMC) to publish, to call for submissions and to make

KENNISGEWING 838 VAN 1990

DEPARTEMENT VAN MANNEKRAG

NASIONALE MANNEKRAGKOMMISSIE

UITNODIGING OM VERTOË VOOR TE LÊ INSAKE DIE ARBEIDSAPPÈLHOF (ARTIKEL 17 VAN DIE WET OP ARBEIDSVERHOUDINGE)

Hiermee word bekendgemaak dat die Minister van Mannekrag die Nasionale Mannekragkommissie (NMK) versoek het om die voorstelle insake die

recommendations on the proposals regarding the Labour Appeal Court as formulated by the Congress of South African Trade Unions (Cosatu), the National Council of Trade Unions (Nactu) and the South African Consultative Committee on Labour Affairs (Saccola) by the end of December 1990

All interested parties and organizations are hereby invited to submit to the NMC written representations regarding the proposals by not later than ***9 November 1990.*** Points of view should be fully substantiated. It is preferable that parties should make proposals on the wording of amendments to the Act. The submissions received, will if necessary, be made available for public information.

Written submissions should be sent to:

The Secretary
(Attention: Miss M. du Plessis)
National Manpower Commission
Private Bag X316
PRETORIA
0001

Telephone number: (012) 310-6272
Telefax number: (012) 320-2059

M. J. K. BLOM,
Secretary.

SCHEDULE

NATIONAL MANPOWER COMMISSION

General explanatory note:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

——— Words underlined with solid line indicate insertions in existing enactments.

Section 17: Labour appeal court

1. Amend s 17A as set out below:

17A. *Establishment of labour appeal court*

(1) There is hereby established a labour appeal court **[which shall consist of the separate divisions with the area of jurisdiction mentioned in the Schedule]** having jurisdiction throughout the Republic of South Africa and consisting of a president and such other members as may from time to time be appointed thereto.

(2) The Minister of Justice may, after consultation with the **[Minister]** the Chief Justice and the National Manpower Commission, by notice in the *Gazette*—

(a) **[determine one or more seats for each division of the labour appeal court]** appoint the president of the labour appeal court from among the judges of the Supreme Court of South Africa;

(b) appoint such other members of the labour appeal court from among the judges of the Supreme Court of South Africa or from legal practitioners with knowledge of labour relations; and

(c) designate one or more places **[in the division in question]** for the sessions of such court.

Arbeidsappèlhof soos geformuleer deur die Congress of South African Trade Unions (Cosatu), die National Council of Trade Unions (Nactu) en die Raadplegende Komitee van Suid-Afrikaanse Werkgewers insake Arbeidsaangeleenthede (SACCOLA) te publiseer, om vertoë in te win en aanbevelings daaroor te doen teen einde Desember 1990.

Alle belanghebbende partye en organisasies word hiermee uitgenooi om voor ***9 November 1990*** skriftelike vertoë rakende die voorstelle aan die NMK voor te lê Standpunte moet volledig gemotiveer word Dit word verkies dat belanghebbende partye voorstelle doen oor die bewoording van wetswysigings wat aanbeveel word Die verkree vertoes sal, indien nodig, vir openbare inligting beskikbaar gestel word.

Skriftelike vertoe met gestuur word aan.

Die Sekretaris
(Vir Aandag Mej M du Plessis)
Nasionale Mannekragkommissie
Privaatsak X316
PRETORIA
0001

Telefoonnommer. (012) 310-6272.
Telefax: (012) 320-2059

M. J. K. BLOM,
Sekretaris.

BYLAE

NASIONALE MANNEKRAGKOMMISSIE

Algemene verduidelikende nota

[ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

——— Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan

Artikel 17: Arbeidsappèlhof

1. Wysig a 17A soos hieronder uiteengesit

17A. *Instelling van arbeidsappèlhof*

(1) Hierby word 'n arbeidsappèlhof ingestel **[wat bestaan uit die onderskeie afdelings met die regsgebied in die Bylae vermeld]** wat dwarsdeur die Republiek van Suid-Afrika regsbevoegdheid het en bestaan uit 'n president en sodanige ander lede as wat van tyd tot tyd aangestel word

(2) Die Minister van Justisie kan, na oorleg met die **[Minister]** Hoofregter en die Nasionale Mannekragkommissie, by kennisgewing in die *Staatskoerant*—

(a) **[een of meer setels vir elke afdeling van die arbeidsappèlhof bepaal]** die president van die arbeidsappèlhof aanstel uit die geledere van die regters van die Hooggeregshof van Suid-Afrika,

(b) sodanige ander lede van die arbeidsappèlhof uit die geledere van die regters van die Hooggeregshof van Suid-Afrika of uit die geledere van regspraktisyns met kennis van arbeidsverhoudinge aanstel, en

(c) een of meer plekke **[in die betrokke afdeling]** vir die sittings van sodanige hof aanwys.

(3) (a) Every labour appeal court in session shall consist of **[a judge of the Supreme Court of South Africa, who is the chairman of the court, and two assessors appointed by the said chairman]** <u>at least 3 members of the labour appeal court</u>.

[(b) An assessor referred to in paragraph (a) shall be a person who, in the opinion of the chairman of the court, has experience of the administration of justice or skill in any matter which may be considered by the court.

(c) An assessor shall, before commencing the functions of his office, take an oath or make an affirmation in writing, which shall be subscribed by him, that he will, on the basis of the evidence put before him, give a true decision in respect of the matters which have to be decided.

(d) Such oath or affirmation shall be taken or made before the chairman of the court in question, who shall at the foot thereof endorse a statement of the fact that it was taken or made before him and of the date on which it was so taken or made and append his signature thereto.

(e) (i) Subject to the provisions of the subparagraph (ii)]

<u>(b)</u> The decision or finding of the majority of the members of the court shall be the decision or finding of the court.

[(ii) Only the chairman of the court shall decide on a question of law or whether or not a matter is a question of law, and for such purpose he shall sit alone.

(f) If an assessor is not in the full-time employment of the State, he shall be entitled to such compensation as the Minister of Justice may determine with the concurrence of the Minister of Finance, in respect of expenses incurred by him in connection with his attendance at sessions of the court and in respect of his services as an assessor.

(4) The Judge President of the Provincial Division of the Supreme Court of South Africa having jurisdiction in the division for which a labour appeal court is established, shall appoint a judge of such division of the Supreme Court as chairman of such labour appeal court for the period or for the hearing of such cases as the Judge President concerned may determine.

(3) (a) Elke arbeidsappèlhof wat sitting het, bestaan uit **['n regter van die Hooggeregshof van Suid-Afrika, wat die voorsitter van die hof is, en twee assessore wat deur gemelde voorsitter aangestel word]** <u>ten minste 3 lede van die arbeidsappèlhof</u>.

[(b) 'n Assessor in paragraaf (a) bedoel, moet 'n persoon wees wat, na die mening van die voorsitter van die hof, ondervinding van die regspleging het of bedrewe is in 'n aangeleentheid wat deur die hof oorweeg mag word.

(c) 'n Assessor moet, voordat hy sy ampswerksaamhede begin uitvoer, 'n eed of 'n plegtige verklaring skriftelik aflê, wat deur hom onderteken moet word, dat hy, op die getuienis wat voor hom geplaas word, 'n ware beslissing sal gee oor die aangeleenthede wat bereg moet word.

(d) So 'n eed of plegtige verklaring moet afgelê word voor die voorsitter van die betrokke hof, wat daaronder 'n verklaring moet endosseer dat dit voor hom afgelê is en van die datum waarop dit aldus afgelê is, en sy handtekening daarop moet aanbring.

(e) (i) Behoudens die bepalings van subparagraaf (ii)]

<u>(b)</u> Die beslissing of bevinding van die meerderheid van die lede van die hof is die beslissing of bevinding van die hof

[(ii) Slegs die voorsitter van die hof beslis oor 'n regsvraag of oor 'n vraag of 'n aangeleentheid 'n regsvraag uitmaak al dan nie, en vir dié doel sit hy alleen.

(f) Indien 'n assessor nie in die heeltydse diens van die Staat is nie, is hy geregtig op die vergoeding wat die Minister van Justisie, met die instemming van die Minister van Finansies, bepaal ten opsigte van die uitgawes wat hy in verband met sy bywoning van hofsittings aangaan en ten opsigte van sy dienste as assessor.

(4) Die Regter-president van die Provinsiale Afdeling van die Hooggeregshof van Suid-Afrika wat regsbevoegdheid het in die afdeling waarvoor 'n arbeidsappèlhof ingestel is, moet 'n regter van daardie afdeling van die Hooggeregshof as voorsitter van daardie arbeidsappèlhof aanwys vir die tydperk of vir die verhoor van die sake wat bedoelde Regter-president bepaal.

(5) (a) **Whenever it is for any reason expedient that a person be appointed to act as a judge of the labour appeal court in addition to the judge or judges apointed in terms of subsection (4), the Minister of Justice may on request of the Minister, and after consultation with the Judge President of the Provincial Division of the Supreme Court of South Africa having jurisdiction in the division for which a labour appeal court has been established, appoint one or more judges of that or of any other division of the Supreme Court to act as chairman of a labour appeal court, for the period determined by the said Minister.**

(b) **The Minister of Justice may, after consultation with the Judge President concerned, designate one or more places in the division in question for the sessions of a court for which the judge referred to in paragraph (a) has been appointed.]**

[(6)]

<u>(4)</u> The registrar of the industrial court appointed in terms of section 17 (1) (d) shall for all purposes be deemed to be the registrar of the labour appeal court.

[(7)]

<u>(5)</u> The Minister of Justice may, after consultation with the **[Minister who shall consult the]** Rules Board referred to in section 17 (22), make rules regulating the conduct of the proceedings of the labour appeal court

[(8) A party to any proceedings before the labour apeal court may appear in person or be represented by a legal practitioner admitted to practise as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), or as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979).]

2. Delete s 17C and substitute with the following:

17C. *Appeal against decision of labour appeal court*

(1) The decision of the labour appeal court shall be final and there shall be no appeal against any decision or order of the labour appeal court.

(5 October 1990)

(5) (a) **Wanneer dit om enige rede raadsaam is dat 'n persoon aangestel moet word om as regter van die arbeidsappèlhof op te tree benewens die regter of regters aangestel ingevolge subartikel (4), kan die Minister van Justisie, op versoek van die Minister en na oorleg met die Regter-president van die Provinsiale Afdeling van die Hooggeregshof van Suid-Afrika wat regsbevoegdheid het in die afdeling ten opsigte waarvan 'n arbeidsappèlhof ingestel is, een of meer regters van daardie of enige ander afdeling van die Hooggeregshof aanstel om as voorsitter van 'n arbeidsappèlhof op te tree vir die tydperk deur gemelde Minister bepaal.**

(b) **Die Minister van Justisie kan, na oorleg met die betrokke Regter-president, een of meer plekke in die betrokke afdeling vir die sittings van 'n hof, waarvoor die regter in paragraaf (a) bedoel aangestel is, aanwys.]**

[(6)]

<u>(4)</u> Die griffier van die nywerheidshof ingevolge artikel 17 (1) (d) aangestel, word vir alle doeleindes geag die griffier van die arbeidsappèlhof te wees

[(7)]

<u>(5)</u> Die Minister van Justisie kan, na oorleg met die **[Minister wat met die]** Reelsraad in artikel 17 (22) bedoel **[oorleg moet pleeg]**, reels met betrekking tot die voer van die verrigtinge van die arbeidsappèlhof maak.

[(8) 'n Party by enige verrigtinge voor die arbeidsappèlhof kan persoonlik verskyn of deur 'n regspraktisyn wat toegelaat is om as 'n advokaat ingevolge die Wet op die Toelating van Advokate, 1964 (Wet No. 74 van 1964), of as 'n prokureur ingevolge die Wet op Prokureurs, 1979 (Wet No. 53 van 1979), te praktiseer, verteenwoordig word.]

2. Skrap a 17C en vervang dit deur die volgende

17C. *Appèl teen beslissing van arbeidsappèlhof*

(1) Die beslissing van die arbeidsappèlhof is finaal en daar is geen appèl teen enige beslissing of bevel van die arbeidsappèlhof nie.

(5 Oktober 1990)

NOTICE 839 OF 1990

CUSTOMS AND EXCISE TARIFF APPLICATIONS.—LIST 36/90

The following applications concerning the Customs and Excise Tariff have been received by the Board of Trade and Industry. Any objections to or comments on these representations must be submitted to the Board of Trade and Industry, Private Bag X753, Pretoria,

KENNISGEWING 839 VAN 1990

DOEANE- EN AKSYNSTARIEFAANSOEKE.—LYS 36/90

Onderstaande aansoeke betreffende die Doeane- en Aksynstarief is deur die Raad van Handel en Nywerheid ontvang. Enige beswaar teen of kommentaar op hierdie vertoe moet binne ses weke na die datum van hierdie kennisgewing aan die Raad van Handel en

Comment sought on Labour court

PRETORIA — National Manpower Commission acting chairman Frans Barker yesterday called for comments regarding certain proposals relating to the Labour Appeal Court and so-called agri-industries, to be gazetted today.

In a statement, Barker said the call followed the Labour Minute of September 14 1990 involving Manpower Minister Eli Louw, Saccola, Cosatu and Nactu.

Among other things, the three organisations' proposals on the Labour Appeal Court suggested that a single labour appeal court with country-wide jurisdiction replace existing divisions of the court.

The organisations also made proposals regarding presiding officers, assessors and appeals against the Court's decisions. Barker asked that comments in this regard be submitted to the National Manpower Commission before November 9.

Saccola, Cosatu and Nactu also proposed that a clause be inserted into the Labour Relations Act to make it applicable to agri-industries — agricultural undertakings of an industrial nature.

Comments in this regard should be submitted before October 26, Barker said. — Sapa.

Judge spikes union's picket

By MARION DUNCAN

ONE of the country's largest trade unions has been barred by a judge from picketing a law firm, heralding a new phase in industrial action that could outlaw secondary picketing.

In a landmark legal judgment handed down in the Rand Supreme Court, Deputy Judge President Justice HCJ Fleming found the right to picket and any other form of free expression "is not absolute It is not unbridled"

When picketing and other styles of "pressurising" were misused, he said, it put at risk not only democracy but also the judicial process It also promoted social and political polarisation

He was ruling in the case of the Johannesburg law firm Deneys Reitz vs the SA Commercial, Catering and Allied Workers' Union, which goes back to the long and bitter wage dispute with the OK Bazaars earlier this year.

Deneys Reitz, the legal representative of the OK, was dragged into the fight when Saccawu passed a resolution at its national congress pledging to "wage a campaign against the attorneys", which it accused of "union-bashing tactics".

Saccawu proposed to stage pickets outside the Sandton head office of Deneys Reitz attorneys

The law firm immediately applied for a rule nisi declaring the resolution illegal and an interdict preventing picketing of its offices — which it won

The union challenged both. It contended the right to picket was indivisible from the right to freedom of expression and supported its standpoint with extracts from various other constitutions

Justice Fleming rejected this. In a 30-page judgment that upheld the rule nisi, he said: "Saccawu has decided on behaviour towards 'isolation' or harassment or some other lesser form of 'pressurising' because the other man believes or thinks or pleads in a way not acceptable to a specific group.

"If the law is ready to regard that reaction as justified (or even as reasonable), there is no hope of true democracy (unless the word is used in a warped sense) or a true substance to the fundamental right to free expression of thought."

Saccawu's resolution, he said, affected "to an impermissible extent" the right and duty of attorneys to practise and to do the best for their clients This he saw as a direct threat to the judicial process

He also discussed the principle of picketing in particular, asking why people were required to take part

"Why not just place unaccompanied placards in the desired position?"

The presence of a "human body" holding the placard, he said, added a new dimension to the issue by introducing an element of intimidation.

"Mere criticisms by Saccawu of (Deneys Reitz's) opinions is lawful However, (Saccawu's) campaign is not comment on opinions but pressure on the man holding the opinions"

Bill is fair reflection of labour accord — Saccola

BDay 15/10/90

ALAN FINE

EMPLOYER federation Saccola has declared the recently published Labour Relations Amendment Bill a fair reflection of the agreements between itself, the unions and government.

The Bill, a culmination of two-and-a-half years of union protests, is to be discussed this week by the Manpower Parliamentary committee as part of the process of passage through Parliament It is expected to become law early next year.

Saccola secretary Frieda Dowie said the Bill, drafted by government legal experts in terms of the tripartite agreement announced on September 20, appeared satisfactory

Union officials could not be reached for comment However, UCT labour law unit director Clive Thompson said an initial reading of the Bill threw up at least one poorly thought out sub-clause, but he had found nothing to be seriously concerned about

Thompson acted for the unions during stages of the dispute He is a member of the National Manpower Commission's legislation committee which drafted a report on which the agreement, and therefore the Bill, is based

The questionable clause to which he referred — Section 4 (a) (iii) — deals with the power of the Industrial Court to grant urgent interdicts against work stoppages, a power arguably covered by another clause

The most important features of the Bill include the reinstatement of the pre-1988 unfair labour practice definition and removing from the Industrial Court the power to interdict lawful strikes and lock-outs

It would also limit the court's ability to grant interdicts without 48 hours notice to the respondent other than under special circumstances and extend the time limits for referring disputes through official channels.

It also aims to delete from the Labour Relations Act the controversial clause which reversed the onus of proof requirement in the case of damages suits brought against unions for losses sustained in unlawful strikes

It would also delete a section of the Act which could be used by uniracial unions to protect their position against non-racial unions.

Out-of-court settlement 'unlikely'

MATTHEW CURTIN

THE chances of an out-of-court settlement between the National Union of Metal Workers (Numsa) and Murray and Roberts (M & R) Foundries over the dismissal of 240 workers in September 1989 were slim, Numsa legal officer Ruth Edmonds said yesterday

Numsa and M & R met for mediation on Tuesday under the auspices of the Independent Mediation Services (Imssa) and Edmonds said the union would make its official response next Tuesday to the company's proposals

The parties began mediation after the sudden postponement in August of an industrial court hearing in which M & R's chief witness confessed to perjury and claimed the company had framed senior shop steward Sindiso Nelani before firing him Nelani's dismissal was the prelude to a strike by Numsa members at the Alberton foundry who were dismissed in turn.

Numsa alleged the dismissals constituted an unfair labour practice.

M & R Industrial human resources director Jock McDonald said yesterday it was inappropriate for him to comment on the progress of the mediation at this point

The company was waiting for a Numsa response once the union had consulted the employees concerned

He said the company "was always hopeful" out-of-court settlements could be achieved

Company witness and human resources manager Francois Swanepoel has been suspended from his position pending the outcome of an internal disciplinary hearing chaired by advocate A Redding last week.

(165)

BDay 19/10/90

More tolerance to stayaways

B Day 1/11/90 (165)

ALAN FINE

TWO recent Industrial Court decisions reflect a more tolerant attitude by the court towards political stayaways, according to an article in the latest edition of Labour Law Briefs (LLB) published by Andrew Levy and Associates

Before this crop of 1990 cases — and a recent arbitrator's award took a similar view — the court usually took the view that political stayaways were illegal, served no purpose, and were contrary to employer interests

Where dismissals of workers were reversed by the court, this was on the grounds that dismissals could be unfair when intimidation or lack of transport prevented people getting to work This could also be the case where an employer departed from a previous policy of not dismissing workers for participating in stayaways

The Industrial Court judgment in Gana and others vs Building Materials Manufacturers, trading as Doorcor, took a significantly different view

In that case, all 158 employees who stayed away from work on June 6 and 7 1988, as part of a protest against the Labour Relations Amendment Act, had been dismissed without disciplinary hearings, although some were later rehired

Before the stayaway the employer had offered food and accommodation to workers if they feared entering and leaving their township during the stayaway

In ordering the employer to pay compensation to the dismissed workers, the court argued that the view that stayaways were political in nature and deserved no protection failed to take into account SA's political realities

It noted black workers were not enfranchised and therefore had to find other means of expression on legislation which directly affected their lives The Act was of immediate concern to workers and their unions in that it was seen to erode hard-earned rights

According to LLB, the court formulated six guidelines to be considered in relation to stayaways

☐ A stayaway about a law related to labour relations and the work environment should not be regarded as an ordinary political protest of no concern to an employer Employers should show appreciation of the dilemma ordinary workers faced in reconciling the conflicting loyalties to employer and union

☐ A national stayaway called by the unions was a valid reason in itself to be absent, even if there was no intimidation or transport problem However, an employer would be entitled to limit this concession to one day because absences of a greater length would be counter-productive

☐ An employer remained obliged to hold a proper disciplinary inquiry before taking action against a stayaway participant Further, a stayaway should be seen as ordinary absenteeism and dealt with accordingly Mass dismissals carried out without hearings would be unfair to individuals and could be seen also as "political retaliatory action"

☐ Employers and employees should negotiate on rules to govern this type of action, for example, the length of stayaways or devising opportunities to make up for lost production

☐ Employers should not use stayaways to "weed out troublemakers or effect a retrenchment

☐ While it was commendable for an employer to seek to protect employees from intimidation this offer should not be held against an employee who refused it

The second case involved the 1989 stayaway on September 5 and 6, which was directed against both the Labour Relations Amendment Act and the general election The case was brought by the NUM against Amcoal Colliery and Industrial Operations It referred to the arguments used in the Doorco case and noted a number of special factors

These included that the employer had previously adopted a more lenient policy towards time-related offences Therefore Amcoal's warning prior to the stayaway that "normal disciplinary measures would be applied could not be expected to carry much weight with the workforce

The arbitrator's award also related to the September 1989 stayaway (The identities of the parties are confidential)

He argued that while willing absence from work without permission was, at face value, an act of misconduct, it should be entirely or partially excused if caused by a political stayaway

In determining the acceptability of a stayaway, factors to consider were whether it was called by the union or workers at large, whether it was a reasonable option in all the circumstances whether it was work-related and whether it was reasonable in nature and duration

If the stayaway was not found to be totally justifiable, disciplinary action could be considered It should be treated as any other form of absenteeism, and consideration should be given to previous similar offences

Also relevant, he argued, was the harm caused to the employer, the nature, duration and frequency of the stayaway, and the nature of the employer's previous sanction in similar circumstances and whether he acted consistently

In this case, the arbitrator concluded that the stayaway was not completely justified, but dismissal was not appropriate

The dismissed employees were therefore reinstated partly retrospectively The reinstatement was subject to a final warning that should they be found guilty of absence without permission due to an unjustified stayaway in the next six months they might be dismissed

LETTERS

MANAGER TO SUE AFTER BEING FIRED

B/Day 6/11/90 MATTHEW CURTIN 165

A FORMER Murray and Roberts (M & R) Foundries manager, who alleged in the industrial court that management had framed a senior shop steward before firing him, plans to bring a R250 000 civil action against the company.

Former human resources manager Francois Swanepoel said yesterday he was summarily dismissed from the company last week on the recommendation of an internal disciplinary inquiry.

He intended bringing a civil suit against the company for alleged unfair dismissal and victimisation, and planned an industrial court action on the grounds that his dismissal was an unfair labour practice.

The industrial court hearing in August concerned a National Union of Metal Workers' (Numsa) claim that 240 workers at M & R's Alberton foundry were unfairly dismissed in September 1989. Swanepoel, the company's chief witness, admitted to perjury and alleged that Numsa shop steward Sindiso Nelani had been "set up" by management. His dismissal had sparked an illegal strike.

Yesterday Swanepoel said the company had denied him the right to appeal against his dismissal, had not given him notice pay and had denied him access to the hearings' records.

M & R Foundries group MD Gordon Scott said yesterday Swanepoel had been summarily dismissed and did not qualify for notice pay.

said

Last year almost one-

R3,1bn, tourism emerges as a R5bn industry, providing

Project 2 000 consists of a team of 12 people whose

identifying areas in the domestic market that require special attention.

Employment prospects still poor in building industry

B Day 13/11/90

GERALD REILLY

PRETORIA — The decline in employment in the building industry is expected to continue until at least the last quarter of next year, says Building Industries' Federation of SA (Bifsa) economist Charles Martin.

He was commenting on the 16% increase in the value of building plans passed in the first eight months of this year

Martin said job losses in the industry were accelerating as the recession deepened.

He estimated that in the past nine months between 8 000 and 10 000 building workers had lost their jobs

Total workforce in the industry is approximately 250 000.

Martin said the increase in the value of building plans passed could not be used as an indication of a projected upturn in the industry.

Past experience had shown at least half the plans would be cancelled.

And if the 12% expected increase in building costs this year was taken into account, it was obvious that current depressed conditions would be unaffected.

Martin said Bifsa expected the industry to hit bottom late in 1991 or early 1992

Violence

However, a bigger allocation in the 1991/92 budget in March for low-cost housing could be significant stimulant.

But a pre-condition would be that the level of unrest and violence in townships was significantly lowered.

Unless this was achieved, the big building companies would hesitate to accept contracts for building homes in the townships, Martin added.

Minister outlines hopes to councils

B Day 13/11/90

(165)

PINETOWN — Manpower Minister Eli Louw yesterday outlined the role he hoped to see industrial councils playing in the future.

He told a meeting of industrial councils that they had built up a responsible and long-standing relationship with industries. They had also promoted discipline and encouraged better planning by employers.

He said councils should endeavour to solve the problem of two-tier bargaining

They could play an important role in promoting a better understanding of the wealth creation process, particularly in the areas of productivity and productivity bargaining, he said

Louw called on councils to investigate how they could promote further economic growth, saying that he would be happy to listen to their suggestions He also asked for councils' input on current Ministers' Council discussions on the Labour Relations Act. — Sapa.

People lose as industrial councils die

BDay 21/11/90 (165)

THE demise of industrial councils in some industries through government's policy of deregulating labour relations is having serious consequences for the pension benefits of workers, says Labour and Economic Research Unit head Taffy Adler in a recent report

Workers no longer covered by industrial council agreements number about 56 367 he says.

"Any industrial council-provided benefit depends on the existence of both an industrial council and an industrial council agreement. "The demise of any council thus puts the retirement benefits of the workers governed by that agreement at risk."

There is a provision in the Labour Relations Act for fund money to be transferred to another fund after liquidation, but in practice the process of attempting to do this has been fraught with disputes by the parties involved — to the detriment of retirement benefits

With the demise of industrial councils, the pension fund becomes a voluntary fund and employers have tended to withdraw, Adler says

This has resulted in a lack of pension provision for vast numbers of workers threatened with destitution

"The legal compulsion on employers to contribute to the funds disappears without the sanction of the industrial council agreement," Adler says

"Employers are no longer required to provide pension benefits for their employees nor are they required to motivate an exemption in terms of equal or better benefits from the main fund, which was run under the authority of the industrial council agreement

"For instance, the number of contributing establishments to the liquor and catering pension fund dropped from 173 in January 1989 to 104 in March 1990"

Are CCs still employees?

ST Times 2/12/90 (165)

FIONA LEPPAN discovers hidden danger in a new form of labour contract

PITFALLS await employers involved in the increasingly popular scheme whereby employees turn themselves into "contractors" — and then sell their services back to their employers

The employees, often styled as "independent contractors", pay themselves through closed corporations (CCs) in the hope of getting tax advantages, but essentially they continue to give the same service as before.

The legality of these schemes has been called into question by numerous tax experts and the Department of Inland Revenue

Now another debate has arisen: are these so-called independent contractors "employees" as defined in the Labour Relations Act 28 of 1956?

Two recent cases in the Industrial Court examine the dilemma

Nelson Shikwambana was a former employee of Quantum Construction (Pty) Ltd

He resigned and took up the company's suggestion that he form his own CC. Mr Shikwambana's position before and after the introduction of the CC remained unchanged except that the CC was paid by the company for services performed by Mr Shikwambana In turn, he was paid in his personal capacity by his CC.

The arrangement between the company and Mr Shikwambana's CC was terminated without notice on February 28 1989 on the grounds that his services were too expensive

Mr Shikwambana believed that his relationship with Quantum Construction had been unfairly terminated, and that his status as an employee had never changed.

The company, however, argued that the applicant was not an employee and did not enjoy that status after the introduction of his own corporate entity

Abuse

The company argued that the separate legal personality of the applicant's CC could not be set aside, more particularly where our civil courts have been reluctant to look behind the corporate personality

In fact, only in the case of fraud or unconscionable conduct has the corporate personality been pierced

It is interesting to note that section 65 of the Close Corporation Act 69 of 1984 empowers a court to lift the corporate veil unless there has been a gross abuse of the juristic personality of the corporation as a separate entity.

The company, however, did not allege any such abuse and the Industrial Court did not take the matter any farther

The court found that no formal contract had been entered into between the applicant's CC and the company

This is an important finding since, in the earlier decision of the Industrial Court in C D Addington vs Foster Wheeler SA (Pty) Ltd, the court found that Mr Addington's CC acted as a labour broker which required Mr Addington to perform work for Foster Wheeler and that he was not an employee of that company

In that particular case there had been a formal agreement entered into between Foster Wheeler and the CC It was said that the written contract provided clear proof of an intention that the CC would provide the services of its member to Foster Wheeler.

Mr Shikwambana's case, however, was distinguishable because there was no evidence of the conclusion of a contract or the provision of services There was merely an arrangement that Mr Shikwambana's salary would be paid to him via his CC

Mr Shikwambana's duties and obligations and his rights to a bonus and continued membership of the pension fund did not change after the introduction of his CC.

The Industrial Court concluded that these factors demonstrated a continuation of the employment relationship, which could not be terminated without good reason and in the absence of a fair procedure. The Industrial Court said in that case "the mere fact that the pay envelope of the applicant was slipped into the pocket of his close-corporation suit does not mean that the man inside the suit can, in labour law, be ignored . . labour law is concerned with equity Equity in this case requires that the corporate veil — in this case a thin one indeed — be brushed aside"

Contract

The case law suggests that a minimum prerequisite for the scheme to be valid is the existence of a cogent written contract entered into between the former employer and the CC, in terms of which the CC provides the services of its member to the former employer

On a close reading of the Shikwambana case, employers would be well advised to take care when dealing with these schemes, for it cannot be assumed that once the CC is introduced the stringent rules of fairness can be discarded in the erroneous belief that the employment relationship has come to an end

- *Fiona Leppan is a labour lawyer with the Johannesburg law firm of Deneys Reitz She has been requested by the Sunday Times to write a series of occasional pieces on labour and the law*

Letters are on Page 25

LABOUR

Recent LAC judgments under fire from journal

WMail 14/12 - 19/12/90

(165)

A respected journal has slammed the Labour Appeal Court for some recent judgments, reports DREW FORREST

'RETROGRESSIVE" developments in labour law — and particularly a series of controversial judgments by the Labour Appeal Court (LAC) — are the subject of a hard-hitting attack in the latest edition of the respected journal *Employment Law*.

Its concerns about the LAC echo those of the labour movement, which demanded the revamping of the court in talks with Saccola and the state The demands were held over when it was pointed out that the Manpower Department does not have the final say manned by Supreme Court judges, the LAC falls under the Department of Justice

It is thought that of a dozen judgments since the LAC's creation in 1988, only one has gone the way of labour

Warning that a "retrogressive breeze" in labour law had become a "stiff wind" threatening the institutionalisation of conflict, *Employment Law* suggests that surging township violence may be the cause "Maybe the judicial officers subconsciously feel the establishment is under threat," it comments.

It also suggests that the "new triumphalism of free-marketeers, invigorated by the collapse of socialism in Eastern Europe", may have contributed.

In an interview, the journal's co-editor, Wits University law professor Martin Brassey, said the LAC's main shortcoming was its lack of industrial relations expertise

"Judges schooled in the common law are applying individualistic conceptions to collective matters," he said.

Other sources complain that although appeals appear to be pending in Natal, no court has been constituted in the province. They add that the LAC has a low status in the judicial hierarchy assessors, intended to give a labour input, were chosen on the basis of convenience rather than expertise

Three judgments of the LAC — Sasol vs Sacwu, Perskor vs Mwasa and Besaans Du Plessis vs Nusaw — are of particular concern

They bear out, according to Brassey, the LAC's *laissez faire* approach to the centrally contentious issues of strike dismissals and bargaining levels

In the Sasol case, an Industrial Court judgment reinstating strikers was struck down because of balloting irregularities, even though this was not the reason for the sackings. "Employers can bullet illegal strikers if the union makes a mess of the ballot; that the boss's motives may be anything but pure matters not a whit," the journal comments

The Perskor ruling essentially found that even legal strikers can be fired, as employers would otherwise be defenceless.

Dismissing this as "atavistic", the journal argues that "temporary reaction", such as lockouts and substitute labour, is the proper response

In Besaans Du Plessis, the court declined to order plant bargaining at a company covered by an industrial council, suggesting that bargaining levels should be set by industrial action. "We think bargaining at the appropriate level should be compelled so that demands can be fully debated before industrial action is contemplated," *Employment Law* argues

Brassey sees the LAC's role as a part of a longer-term reversal of labour law advances in the early Eighties "The court was essentially set up at the insistence of employers, as a moderating influence," he said

Although it had a role, major changes were needed The court should be one of final appeal and staffed by specialist judges, possibly with the assistance of "wingmen" representing capital and labour

"It is crucial to narrow down the field," he said. "What is needed is one or two judges seconded to the court as their primary job."

Industrial Court faces 'stayaway' problems

SUSAN RUSSELL

THE Industrial Court is caught up in a complex tangle of political sympathy and industrial responsibility in reviewing the dismissal of workers involved in political stayaways, says Natal University lecturer D Grant

Writing in a recent issue of the Industrial Law Journal, Grant said political stayaways had become a popular and effective tool for disenfranchised South Africans to convey their dissatisfaction with state policies and to bring political demands to the fore

"The need to find new forms of political expression has not left the industrial arena untouched and in the recent past the workplace has become a crucial outlet for political protest.

"Apart from the economic costs, political stayaways may frustrate employers and lead to worsening relations between the employer and participating employees"

Grant said that while expressing sympathy for the plight of the disenfranchised, the court had at times disapproved of this form of political protest, but had shown also a reluctance to condone the dismissal of workers caught up in political unrest.

He referred to a number of Industrial Court decisions where the court had taken into consideration workers' fears for their own safety in deciding whether or not to take part in a stayaway.

"This approach recognises that the stayaway is not an act of deliberate absenteeism on the part of the individual employee," Grant said

"The stayaway is a collective action over which the individual employee has very little control.

"Employees who wish to work, or do not support the call for the stayaway, may be prevented from doing so by tension in the township in which they live and the possibility of intimidation."

Most employers, he said, had learned to accept the inevitability of political stayaways and had introduced a number of strategies to deal with them.

These included the principle of no work, no pay; the buying of days where an employee had to work on specified days to compensate for days absent, and recognition of established stayaways, such as June 16, as paid holidays.

Dismissal, Grant said, was the most drastic response to political stayaways

The court, in exercising its discretionary power to grant reinstatement, had to take into account all relevant factors

These factors included the length of service of the employee and his/her employment prospects

Grant said that the courts, when first faced with the dismissal of participants in stayaways, had tended to evade the substantive question of the legitimacy or legality of the stayaway and based their decisions on procedural aspects or mitigating factors.

"Political stayaways will remain a feature of SA labour relations in this period of political uncertainty and unrest," he said

Recent industrial court decisions had recognised that the political aspects of employees' lives could not be disregarded

"The ultimate solution has to be a political one," said Grant.

: "Go, I wish you well, keep warm and well-fed",
about his physical needs ... what good is that?'
James 2

Stayaways: Court in crossfire

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LABOUR DEPT 1991

Labour peace should be a joint effort, says Eli Louw

By LINDA GALLOWAY Argus 29/1/91
Staff Reporter

INDUSTRIAL councils have an important role to play in a future South Africa, as long as they focus on their role as equal representatives of union and management, says Minister of Manpower Mr Eli Louw.

He was speaking at the conclusion of the fourth meeting between the Department of Manpower and industrial councils in various regions

Of 22 industrial councils in the Western Cape, 21 were represented at yesterday's meeting

Mr Louw said labour peace could not be legislated, but had to be worked out with equal participation by workers and management

Industrial council agreements should include clauses on intimidation, violence and temporary labour which were morally binding on both parties, he said.

Mr Louw said the demand for inflation-related increases was not "such a problem" and in times of high inflation employers should not hold back on increases but should increase productivity.

It was not pay rises which increased inflation but reduced productivity, the money supply, the cost of energy, competition, taxation and whether earners were saving or spending their income.

Mr Louw said there was no doubt of the consequences of prolonged unemployment of large numbers of people on mental, social and racial tension and on attitudes to work and society as a whole.

The government could only create an economic framework and climate favourable for job creation and it was primarily the function of the private sector to create employment opportunities

Domestic worker probe given guarded welcome

By SHARON SOROUR
Labour Reporter

Argus 1/2/91

THE government's investigation into extending legal protection to domestic workers has been welcomed by the Congress of South African Trade Unions.

Cosatu and its affiliate, the South African Domestic Workers' Union (Sadwu), said in a joint statement that the investigation was the first step towards full worker rights for domestic workers

"The struggle for a Labour Relations Act (LRA) to cover all workers is at last having an effect in government circles," the statement said

Warning

This follows a National Manpower Commission report published in last week's Government Gazette on investigations into the possible extension of legal protection to domestic workers

But Cosatu and Sadwu warned that they would "strongly oppose" any attempts to block or "water down" extension of labour legislation to domestic workers by either employers or the government

The two groups took part in the commission's technical sub-committee on domestic workers but stressed that not all views expressed in the report represented those of domestic workers or Cosatu

"Many of the suggestions tabled would leave domestic workers again at the bottom of the labour pile," the statement said

"Domestic workers are a severely disadvantaged grouping with virtually no legal protection Thousands of domestic workers remain unorganised and provide cheap labour for their employers"

Domestic workers, with farm workers, were the most exploited and unprotected sector of the South African labour force, the statement said

Cosatu and Sadwu said the extension of the LRA and other acts to domestic workers would offer them

- A mechanism to resolve disputes in a fair way
- Protection from arbitrary and unfair dismissal through the industrial court
- Basic minimum conditions of service regarding working hours, overtime and leave, as well as providing some social security in the event of unemployment, pregnancy or injury at work

Sound labour relations 'vital' to SA's prosperity

B/Day 12/2/91.

BILLY PADDOCK

CAPE TOWN — Labour relations and negotiations had to be handled very carefully as they were vital to SA's prosperity, Manpower Minister Eli Louw said yesterday during the debate on the Labour Relations Amendment Bill.

Louw said an efficient and effective labour force was SA's greatest asset.

However, labour peace could not be enshrined in legislation and had to be worked for with patience and flexibility on both sides, he said.

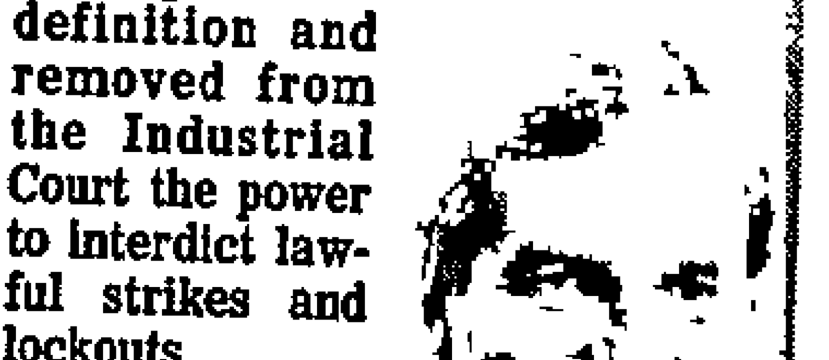
The proposed amendments showed this was the case.

They were the result of two years of negotiations which proved conflict was handled best through discussion.

He also said anyone who argued for sanctions and made threats to scare off investors either had no knowledge of the working of the economy, or was insensitive to the lot of the poor and the jobless.

He said the proposed amendments were an attempt by employers, employees and the state to promote understanding and responsibility

TANIA LEVY reports the most important features of the Bill, published in May last year, included the reinstatement of the pre-1988 unfair labour practice definition and removed from the Industrial Court the power to interdict lawful strikes and lockouts.



● LOUW

The Bill also limited the Industrial Court's ability to grant interdicts within 48 hours' notice to the respondent except in special circumstances.

It extended the time limits for referring disputes through official channels

The Bill aimed to delete from the Labour Relations Act a controversial clause which reversed the onus of proof required in the case of damage suits brought against unions for losses from unlawful strikes

Sapa reports that Peter Gastrow (DP Durban Central) said during the debate the Bill represented a healthy balance between the interests of employers and employees.

"This shows what interim administration is all about," he said during the debate.

There had been talk of pressure being exerted on the standing committee by Saccola, Cosatu and Nactu. It would be naive to have ignored the power bases of such large organisations

"The contents of this Bill are not a first prize for either of the unions, but signify a compromise from all sides. That is also what legislation should be about"

Jacobus Botha (CP Wonderboom) said during the debate SA would enter a period of unprecedented industrial unrest if the Bill was passed.

This was what the two union federations wanted, he said.

The stipulation in the draft legislation that the first 48 hours of an illegal strike would be regarded as legal clearly laid the basis for the mass action which the ANC/PAC alliance was advocating, he said.

Arrie Paulus (CP Carletonville) said consensus could not be reached if one side threatened the other.

He said trade unions had used threats of refusal to negotiate unless their demands were met during National Manpower Commission sittings.

B/Day 12/2/91

Angola tipped as trading partner

BILLY PADDOCK

CAPE TOWN — Trade with Angola was starting to take place and in the future Luanda would be SA's best partner in Africa, Foreign Affairs director-general Neil van Heerden said yesterday

In an interview he said Angola was a very rich country but it was "not a bread basket", so trade would be beneficial to both SA and Angola.

Various business initiatives between the two had been started in the past few years which had paved the way for a warming of relations, a business source said.

One of the primary advantages for SA was Angola's rich oil fields

Van Heerden said he envisaged the normalisation of trade with Angola in the next two years, but first there had to be a ceasefire and the peace process had to be on track.

He said a ceasefire would open all sorts of channels and therefore SA had a strong vested interest in helping it reach fruition

Last Friday Van Heerden met Angolan President Jose Eduardo dos Santos in Luanda, where they discussed Angola's allegations at the Joint Commission talks that SA had started to resupply Unita with military hardware.

He said he told Dos Santos SA was not doing so, but pointed out many other countries were supplying aid to Unita, most notably the US.

LABOUR

NMC's unfair labour practice code seen as 'substantial improvement'

WMail 15/2 - 21/2/91 (165)

By DREW FORREST

A DRAFT unfair labour practice (ULP) code produced by the National Manpower Commission has thrown into stark relief the gulf between the NMC and the Manpower Department in their approach to labour law.

Lawyers see the code, leaked to *The Weekly Mail*, as a "substantial improvement" on the department's proposed codification, published in the *Government Gazette* last December.

The NMC proposals have still to be discussed at a commission meeting on March 12, to be attended by the Congress of SA Trade Unions for the first time as a full member, but insiders say they are likely to approximate closely to the NMC's final recommendations to the government.

This week's tabling of the Labour Relations Amendment Bill — which scraps the 1988 ULP definition — has moved the code issue to centre stage.

The NMC believes a ULP schedule should not be binding, but must be admissible as evidence and taken into account by an industrial court where relevant.

It is understood Manpower Minister Eli Louw is pressing hard for a code, and Cosatu is to decide policy this week.

"We are not necessarily opposed to the idea," said Cosatu's Marcel Golding, "but labour's assent is crucial. Any attempt to impose a code will fail."

While the NMC's proposals were "fair, but need tightening up", those of the department were "absolutely unacceptable", he said.

The key difference between the two, according to labour lawyer Graham Damant, is that the NMC does not seek to limit industrial action, "addressing much of the criticism directed against the (1988) definition".

The department's proposals, which aim to curb sympathy strikes, product boycotts and "roll-over" strike action, were seen by some lawyers as a rear-guard bid to subvert the Saccola Accord. (See *WM* Jan 18-24)

Commenting on the NMC draft, Damant said it:

- Went further than the 1988 Act's provisions on freedom of association, by declaring unfair the payment of better wages to non-union members in a bargaining unit.
- Underscored any form of discrimination as unfair, and in line with overseas developments, provided for equal pay for equal work by men and women. Discrimination against job applicants was not, however, covered.
- Set out detailed requirements for dismissal inquiries and retrenchments, a "welcome improvement on the existing definition".
- Provided that an employer should, on request, bargain with a "sufficiently representative" union. Damant said the Industrial Court was likely to interpret this as allowing minority unionism, which would draw union flak.

Other features are a proposal that employers should "generally" not selectively rehire strikers and should use "fair and objective" criteria when compelled to do so, and a ban on unilateral changes in employment conditions.

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(2) yes, (a) the only formal request for notifiability has come from the community health group of the Medical Association of South Africa and (b) this group is of the opinion that AIDS should be made notifiable

†Dr W J SNYMAN Mr Speaker, arising out of the hon the Minister's reply, I wish to ask him whether the Government, owing to the seriousness of this threat, intends making a negative HIV-test a prerequisite for any immigrant or person who applies for permanent citizenship

†The MINISTER Mr Speaker, once again I do not want to venture into my colleague's field who, owing to circumstances relating to Parliament, has not been able to attend

†Mr J H VAN DER MERWE You do not know!

†The MINISTER I do not know and therefore I request that this matter again be placed on the Question Paper so that the hon members can be furnished with a reply

SADF: alternative service

*3 Mr L FUCHS asked the Minister of Defence

Whether some form of alternative service (a) exists and/or (b) is envisaged for persons refusing to serve in the South African Defence Force, if so, what is the nature of such alternative service? B147E

The DEPUTY MINISTER OF DEFENCE

(a) Yes A member can do community service after having been classified as a Religious Objector by the Board for Religious Objection

(b) No other form of alternative service is envisaged

†Mr J H VAN DER MERWE Mr Speaker, arising from the hon the Deputy Minister's reply, I would like to know whether any legislation is envisaged to amend the existing legislation regarding the evasion of national service

†The DEPUTY MINISTER Mr Speaker, the reply to that is an unequivocal no

†Mr J H VAN DER MERWE That is a good reply

†Dr W J SNYMAN Mr Speaker, further arising from the hon the Deputy Minister's reply, may we ask him whether the Government will leave the national service system unchanged in the future?

†The DEPUTY MINISTER Mr Speaker, several statements in this connection have recently and in the past week been made by the hon the Minister, and the reply to that is again no

Mr R V CARLISLE Mr Speaker, further arising out of the hon the Deputy Minister's reply, does he not accept that there will be inevitable changes with the scrapping of the Population Registration Act? Secondly, does he intend to deracialise compulsory military service?

†The DEPUTY MINISTER Mr Speaker, I want to say to the hon member that national service, as it presently exists for the specific race group, is of course irreconcilable with a new constitutional dispensation, and it is the Government's full intention that the national service system will remain as it is at present, because in this transitional period, in this period in which we will discuss and negotiate the formation of a new South Africa, we will also address these matters and all matters resulting from the scrapping of the Population Registration Act will naturally also be addressed when the time comes

Business interrupted in accordance with Rule 180C (3) of the Standing Rules of Parliament

Trade unions: legislation

*4 Mr L FUCHS asked the Minister of Manpower

(1) Whether it is envisaged to introduce legislation to make trade unions, vicariously liable for the acts of their members, if not, why not, if so, when,

(2) whether it is envisaged that the rules of the Industrial Court will be amended so as to allow costs orders to be given in certain circumstances, if not, why not, if so, when? B148E

The MINISTER OF MANPOWER

(1) The Labour Relations Act, 1956, as part of the consolidation process, is at present being investigated in its entirety which specifically includes trade unions, employers' organisations, strikes and lock-outs Future amendments to the Act will be considered on the grounds of the investigation and recommendations

(2) The Labour Relations Act, 1956, at present provides in section 17(12)(a) for the granting of costs orders according to "the requirements of the law and fairness" in the case of urgent interim applications for legal aid as well as in the case of section 46(9) determinations The Act also provides in section 43(4)(c) for the granting of a costs order in the case of a section 43 (status quo) application, but it may only be granted by the Court "on the ground of unreasonableness or frivolity on the part of a party" In terms of section 17(22)(c)(vi) of the Act the Rules Board may make rules "as to the taxation of bills of costs" only

Withholding tax on interest

*5 Mr J J WALSH asked the Minister of Finance

(1) Whether he is considering the introduction of a withholding tax on interest, if so, (a) how will such a tax be applied and (b) when is it to be introduced,

(2) whether he will make a statement on the matter? B161E

The MINISTER OF FINANCE

(1) (a) and (b)

As mentioned in the Budget Review of last year, the real return on interest-bearing investments is very low or even negative, and the existing taxation of interest discourages saving It was considered that a withholding tax, imposed on interest received by individuals, would have made a positive contribution to the encouragement of savings, but that the implementation of such a system could only be accomplished after several obstacles had been investigated and eliminated It was envisaged that the tax would be a final tax, at a low rate, deductible at source and payable to Inland Revenue

(2) As mentioned during the introduction, on 19 February, of the Part Appropriation Bill, 1991, the Committee regarding the Advancement of Equal Competition for Funds in Financial Markets (the Jacobs Committee) gave serious consideration to this matter Their investigation brought to light numerous problem areas, of which the most crucial is the reclassification of other income and the practice of so-called arbitrage, for which solutions have not yet been found It has, therefore, been decided not to proceed with the implementation of such a tax at this stage

Leprosy

*6 Dr F H PAUW asked the Minister of National Health †

(1) What is the latest information on the incidence of the various forms of leprosy among the population groups in the Republic,

(2) whether her Department regards leprosy as a highly contagious or deadly disease,

(3) (a) what is her Department's standpoint on the (i) notifiability and (ii) isolation of cases of this disease and (b) what is the motivation for the removal of lepers from their social environment? B172E

The MINISTER OF NATIONAL HEALTH

(1) Notified cases of leprosy in the Republic of South Africa by population group, 1990 (as on 11 February 1991) are as follows

Asian	0
Black	31
Coloured	1
White	0

No information regarding the various *forms* of leprosy is available,

(2) no,

(3) (a) (i) leprosy is a notifiable disease and

(ii) patients are not isolated and

(b) leprosy patients' are referred to Westfort Hospital in Pretoria for confirmation of the diagnosis and stabilising of the treatment As a rule patients are then referred back to their place of origin for continuation

Workers resist registering for security board

W/Mail 1/3-7/3/91 (165)

Security workers are again at odds with their employers about new regulations governing the industry **DREW FORREST** reports

WORKERS and employers in the security industry are once more on a collision course over the controversial Security Officers Act

Countrywide protest by the Transport and General Workers Union (TGWU) is looming, and the union says some workers have threatened to strike

Last year, regulations requiring the industry's 80 000 workers to register with the Security Officers' Board, set up under the Act, were held over until April 1 this year after marches and protests by TGWU members.

A key objection was the cost of registering in a low-paid industry — R35, followed by a R70 annual fee Workers are also refusing to be fingerprinted, another requirement.

Employers and government argue that statutory regulation is vital in a sector teeming with "fly-by-night" firms

As April 1 draws near, the TGWU charges that many employers are trying to force workers to register, warning that a failure to do so could mean dismissal or prosecution.

Registration is a condition for security jobs, and unregistered workers face a R1 000 fine or imprisonment

In crisis talks last week, the union told the South African National Security Employers Association (Sansea) that while it agreed unscrupulous employers needed regulating, it wanted the entire Act scrapped and that its members would not comply with the April 1 deadline

It also asked Sansea to "take a position" on police harassment of those resisting registration — one company, it claims, has already let police on its premises to warn workers. Refusing to defy the Act, Sansea urged unionists to register pending talks on problems in the Act.

TGWU alleges Sansea agreed last year not to enforce the legislation until the dispute was settled Sansea comment could not be obtained.

TGWU spokesman Kally Forrest said the union had written to Law and Order Minister Adriaan Vlok calling for urgent talks, and that if he or Sansea failed to respond, nationwide protest action would be mounted on March 1

Stressing that the union wanted the industry regulated by an industrial council, she added "The Act is a fundamental violation of human rights. In no other industry is registration required for employment."

The union would also enlist the support of political, community and other labour organisations for its campaign

Boycott to protest against firings

■ Community organisations in Zamdela, Sasolburg, have called a consumer boycott of white businesses to pressurise Sasol One and Natref into rehiring 867 SA Chemical Workers' Union members fired in 1987 after a wage strike. (165)

An Industrial Court order reinstating the workers with back pay was struck down in a controversial Labour Appeal Court decision, and the Appellate Division later upheld the LAC's denial of leave to appeal.

A statement by the support committee said the boycott aimed to "expose the bias and unfairness of the judicial system, which tends to favour employers". WMail 1/3-7/3/91

Reports from Weekly Mail staff

Cosatu proposes changes to NMC

W/Mail 1/3-7/3/91 (1689) (165)

By DREW FORREST

COSATU has dropped its first hints about demands for a restructured National Manpower Commission, which it joined in a watershed move last year.

In its latest *Campaigns Bulletin,* Cosatu lists proposals for changes to the NMC These will be debated at its campaigns conference this weekend, and demands will be relayed to Manpower Minister Eli Louw, who has asked for comments by April

Cosatu conditionally joined NMC subcommittees on farm and domestic labour last year and is to sit as a full member for the first time next month

In the bulletin, Cosatu proposes a two-phase revamp of the NMC under the present government and under democratic rule In the short term the NMC should be more than an advisory body, and should have "the power to block or delay laws, or insist that laws go to parliament"

It proposes equal representation for employers and unions, and fewer state officials on the NMC Membership should be proportional — "Saccola should have more seats than Nafcoc and Cosatu more seats than Nactu" It also suggests Cosatu representatives should be mandated by worker-controlled structures

Cosatu sees a more far-reaching role for the NMC in a future South Africa, suggesting that it intervene in the economy to create jobs, prevent low wages and ensure that employers allocate funds for training and housing

NMC LRA committee member Clive Thompson said this week he believed the NMC should become a "mini-industrial parliament It should not have the final say on legislation, but we need a political convention whereby parliament would usually follow the NMC's lead "

Backing the call for proportional representation, he said Louw's discretion to appoint members should be "closely circumscribed" by negotiated rules Appointments to the industrial and labour appeal courts should be on the NMC's advice

Thompson also suggested that a hefty slice of state money for social upliftment should go to the NMC, where labour and business could negotiate on its use for training and job creation.

Funds for the training of the jobless and manpower development, currently under the National Training Board, could fall under NMC control, he said.

● The campaigns conference will also discuss the living wage campaign, "phase two" of the LRA campaign, the constituent assembly campaign and worker rights in a democratic constitution

FM 8/3/91 (165)

INDUSTRIAL COURT

SPARKS FLY

FM 8/3/91 (165)

Serious allegations that the electrical installations in the SABC's TV centres at Auckland Park do not comply with engineering designs have surfaced in an Industrial Court (IC) hearing This follows the dismissal of a senior SABC engineer, Luis Teixeira The court has made an interim judgment ordering the reinstatement of Teixeira

Teixeira was dismissed last year after two disciplinary inquiries He had been charged with failure to carry out reasonable and lawful instructions, offensive and insulting conduct, insubordination, and threats of violence against Neel Smuts, Deputy Director-General (technology)

But the court found that Teixeira's conduct in no single case was sufficient to warrant dismissal The court also said it was impossible to decide who was telling the truth with regard to Teixeira's alleged threats "to harm or kill Smuts"

Teixeira said that in April 1988, under Smuts's instruction, he had investigated the TV broadcasting centre The centre consists of the old TV centre, the new "TV 14" facilities project and the central technical facilities

"During the course of this work, I discovered enormous problems in the electrical installation in the TV news block," said Teixeira "It was apparent to me that the responsibility for the state of affairs rested squarely on the electrical engineering consultants and on other senior SABC officials responsible for the new TV 14 facility project."

Teixeira said that after he had made several presentations of his interim findings, he was taken off the project

No report submitted

In his affidavit to the court, Smuts stated that the electrical work was designed and installed under the supervision of independent consulting engineers "It is therefore denied that any responsibility was to evolve on to officials of the SABC," said Smuts "The precise nature of the problems that were experienced with the installation is not known because he (Teixeira) has, until now, failed to submit any report. It is this persistent refusal of his to submit a report on his investigation which ultimately led to his dismissal."

Smuts denied that Teixeira submitted any interim findings which addressed the subject of the investigations "He did, however, point out some localised problems which were attended to and (he) furthermore made allegations of so-called 'irregularities' which he failed to substantiate in any report despite being invited to "

Smuts further said that Teixeira compiled a manual on the electrical installations which "was so voluminous that it could not possibly serve as a report on his investigations. In September 1988, he was instructed to start with the compilation of his formal report He failed to do so, stating that the necessary resources were not allocated to finalise the report "

Smuts said that, despite the extension of time allocated to him, Teixeira had failed to submit the project description in accordance with instructions within the prescribed period "This resulted in the second inquiry "

In his defence, Teixeira told the court that the task given to him was years of work and impossible for one person "To complete the manual which I have started on could take three to six months But I needed clear and precise instructions "

On January 17 the Industrial Court found that the SABC must reinstate Teixeira without prejudice to his previous conditions of employment Teixeira now has to apply for an extension of this order every month until a full hearing is set

A SABC spokesman told the *FM* this week that it will only comment after the full hearing

Eddie Botha

'Restructure manpower commission'

By Waghied Misbach

South 14/3 - 20/3/91

THE Congress of South African Trade Unions (Cosatu) called for the restructuring of the National Manpower Commission (NMC) at a conference at the University of the Witwatersrand at the weekend

Campaigns coordinator Ms Lisa Seftel said Cosatu wanted the NMC to be more than an advisory body, but to have powers to prevent or compel debate in parliament on labour issues

Ministers should not have the power to appoint people on the NMC

Parties represented on the board should have that power, Seftel said

She said Cosatu wanted proportional representation on the NMC, which presently consisted of the state, employer bodies and unions.

In a statement released by Cosatu this week, there was broad consensus that:

- Cosatu needs to enter the NMC in a more permanent form,
- The main groups should be the unions and the employers, and
- The NMC should be seen as a negotiating forum

The conference also agreed to have further discussions on the participation of the state in the NMC, according to the statement

In the long term, however, Seftel said Cosatu wanted to see "much more radical changes" in the NMC

Beside broadening the powers of the body, the focus of the NMC should be on employment issues

A major issue of the Cosatu campaigns this year will be job security and creation in conjunction with its "Living Wage" campaign

Cosatu has estimated that 150 000 jobs would be lost this year

The conference rejected proposals by the "Living Wage" committee to quantify the living wage amount

Seftel said there was no unity in the federation on the issue

The trade union federation has called on its members to support the African National Congress' signature campaign for a constituent assembly and interim government

Seftel said Cosatu members had already started collecting signatures

Other campaigns which Cosatu has given emphasis are the broadening of the Labour Relations Act to farm, domestic and public sector workers and the drawing up of a workers charter

765

Union protests against exclusion from court

Biday 15/4/91

VERA VON LIERES

THE Cosatu-affiliated Paper, Printing, Wood and Allied Workers' Union (Ppwawu) yesterday embarked on lunch-time demonstrations countrywide against its exclusion from the industrial council

A Ppwawu official, who declined to be named, said that, nationwide, several thousand workers protested against a refusal by the Industrial Council for the Furniture Manufacturing Industry to incorporate Ppwawu into any of its regional councils

The spokesman said yesterday's demonstrations had been planned at furniture industries countrywide

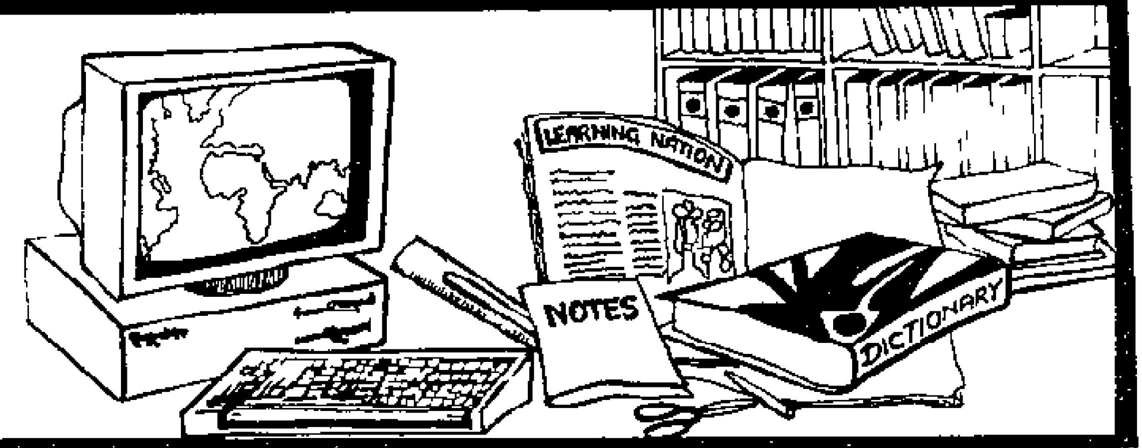
The protests would culminate in a national march on Saturday

A spokesman for Parker Knoll in Industria, Johannesburg, confirmed there had been lunch-time demonstrations involving about 150 Ppwawu members

However, she said, it was likely that Ppwawu would be accepted into the council this year

NSA 165

RESOURCES



Workers' Rights - unfair dismissals

New Nation (Learning Nation) 16/4-25/4/91 · (165)

In this series of articles we will look at labour laws affecting workers at the workplace When we talk of laws we mean written or unwritten laws Written laws are made in the apartheid parliament Unwritten laws arise out of customs or practices recognised by the courts An example of an unwritten law is the crime of murder; this crime is not described in any legislation of parliament Most of the laws made by the present racist parliament were made to oppress us Do you know of any laws which are oppressive?

Labour Relations Act

There are many labour laws affecting us as workers. Labour laws are the laws that affect us at the work place Most of us who are organised in COSATU and NACTU are probably aware of the Labour Relations Act (LRA) Maybe you are one of the workers who participated in the stayaway for the repeal of the amendments to the LRA during June 1988. In this article I want to concentrate on the laws relating to dismissals One of the worst things that could happen to us as workers is to be dismissed The LRA says that before an employer can dismiss a worker the dismissal must be fair. If a dismissal is unfair then the dismissal is an unfair labour practice The important question is when is a dismissal unfair ?

Here is an example of an unfair labour practice:
Zodwa works at Expensive Supermarkets as a cashier Her supervisor tells her to clean the area around the till. Zodwa tells her supervisor that she is refusing to clean the area around the till because that work is not part of her job description The supervisor then call Zodwa a lazy black Zodwa then slaps the supervisor and calls her a white racist The supervisor calls the manager who approaches Zodwa and tells her that she is dismissed and should take her bag and go immediately If you were a judge how would you decide whether this dismissal is unfair or fair ?

Requirements For a Fair Dismissal

Good Reason
The question to be asked is whether there was a good reason for Zodwa's dismissal One person might say that there was a good reason for Zodwa's to be dismissed because it was wrong for her to slap her supervisor. Another person might say that Zodwa should not have been dismissed because her supervisor was wrong to have told her to clean the area around the till when that was not part of her job Furthermore, Zodwa only slapped the supervisor after the supervisor had aggravated the situation by making a racist remark

In the above example the basis for the dismissal is as a result of misconduct Other examples of misconduct are theft, absenteeism and intimidation To be dismissed the misconduct must be serious

Fair Procedure
The second question is· was Zodwa given a chance to give her side of the story? It is clear that the manager only listened to the supervisor's story. This was clearly unfair towards Zodwa The law says that before a worker is dismissed, she/he must be given a hearing. Another name for a hearing is a disciplinary enquiry A hearing is like a court case At court there is normally a judge who hears the case At the disciplinary enquiry this judge is called a presiding officer At court each party has the right to present his case.

Using Zodwa's case as an example, the following are the requirements for a fair disciplinary enquiry

1. Reasonable Notice
Before Zodwa is called to a disciplinary enquiry she must be given reasonable notice of the enquiry. It would be unfair if the manager told Zodwa to come to an enquiry and he only gave her an hour's notice This notice is important as Zodwa must have the opportunity to prepare her case

2. The Charge Must be Stated in the Notice
Zodwa must know what misconduct she is charged of The manager might think that the misconduct is assault, but if he does not say this Zodwa may think that the misconduct is refusal to obey a lawful instruction (refusing to clean the area around the till) and one may prepare for the wrong charge

3. Particulars of the Disciplinary Enquiry
The notice must also state the time and date of the disciplinary enquiry so that Zodwa can know when she must be prepared and have her witnesses and representative present

4. Representative of Her Choice
Zodwa must have the right to elect a representative of her choice to represent her at the enquiry In most trade unions workers have shop stewards who will represent them at a disciplinary enquiry If you do not have a shop steward you can ask any of your co-workers to represent you

5. Right to an Interpreter
Zodwa must have the right to speak in her home language and to have English or Afrikaans interpreted in her own language.

6. Witnesses
Zodwa must have the right to call witnesses who will give evidence in her favour If the till packer saw the incident and heard the supervisor make the racist remark, she could give evidence

7. Right to Cross Examination
The company will also have the right to call witnesses who will give evidence against Zodwa Zodwa and her representative have the right to ask these witnesses questions This is called cross examination

8. Unbiased Presiding Officer
The presiding officer is the person who will hear the case and decide whether Zodwa should be dismissed or not This presiding officer must not be personally involved in the case He must be neutral

9. Mitigating Factors
Before the presiding officer takes decision he must take mitigating factors into account Examples of mitigating factors are Zodwa's years of service at the company, her past disciplinary record and her personal circumstances eg does she have children to support, will she find another job

10. Right of Appeal
If the presiding officer takes the decision to dismiss Zodwa, she should have the right to appeal against her dismissal to a superior manager, eg the regional manager.

Industrial Court

If Zodwa's appeal was unsuccessful, she has the right to take her dismissal case to the Industrial Court At the Industrial court a presiding officer will decide whether Zodwa's dismissal was fair or unfair If the presiding officer decides that her dismissal was unfair, he could order her reinstatement to her job and she could receive some money As there are certain legal procedures that have to be followed before a case is heard in the Industrial Court, Zodwa will need legal assistance If Zodwa was a member of a trade union, she could report her dismissal to the union who would take her case to the Industrial Court.

If she was not a member of a union she could instruct an attorney to assist her As she would need money to pay the attorney she might not be able to instruct an attorney There are certain organisations that might assist her.

1 Legal Resources Centre	*2 Industrial Aid Society*	*3 Legal Aid Bureau*
P.O. Box 9495 Johannesburg 2000 Tel No: 833-2170	Second Floor, Metro Centre 266 Bree Street Johannesburg 2001 Tel No: 299315/7	York House Rissik Street Johannesburg Tel No: 8348561

Strike Action

The workers at the company may be so upset about Zodwa's dismissal, that they could go on strike and demand the reinstatement of Zodwa.

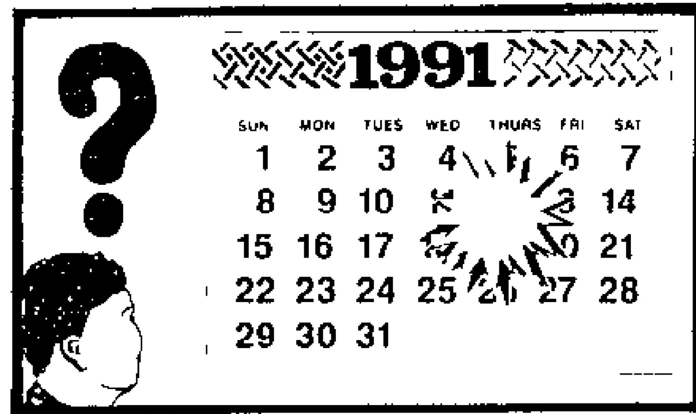
Other Reasons for Dismissal
A worker could also be dismissed because of incapacity
An example of incapacity is the following·

Thabo is a switchboard operator and he loses his hearing. He therefore does not have the capacity to work as a switchboard operator. Does his employer have the right to dismiss him? Would this dismissal be fair? What do you think?

An exercise that you could do during your lunch hour is to enact the incident surrounding Zodwa's dismissal You could also enact her disciplinary enquiry

Next week we will learn about the law relating to retrenchments.

CURRENT ISSUES



Why is the ANC talking to the government?

New Nation (Learning Nation) 19/4 - 25/4/91.

The duty of any liberation movement is to seek freedom by the shortest possible route. In the case of South Africa most people have been ruled by force and experienced oppression and exploitation for three and a half centruries Obviously and quite correctly they are not willing to be patient and wait for freedom at some unknown time

At any particular moment we need to analyse the various forces at work and assess how best we can take our struggle forward. What methods of struggle we use are determined by the strengths and weaknesses and the possiblities of winning various other groupings to our side.

Until recently the ANC's perspective with regard to the ending of apartheid and creating a democratic state was that this would occur through the combination of political and military action, leading to an armed seizure of power.

This had not always been our perspective. From its foundation in 1912, in fact, the ANC had tried to achieve political freedom through peaceful means, deputations to London and to government ministers, peaceful protests and so on. Over time it became clear that these forms of political activity were not having much effect and the liberation movement embarked on more militant forms of action.

The formation of the ANC Youth League was instrumental in the 1940s in taking the ANC along a more militant path This found expression in the development of the ANC into a mass movement in the 1950s, particularly through the defiance campaign in 1952 and the Congress of the People Campaign which created the Freedom Charter in 1955.

All the time, the Congress alliance headed by the ANC sought to engage the government discussions to relieve the disabilities of the people. But this was in vain and the Sharpville massacre, followed by the banning of the ANC and PAC in 1960, showed that peasceful and lawful activity was no longer possible

The ANC never entered armed struggle as a military organsiation, but as an organisation with particular political goals it wanted to achieve by the swiftest possible route. For a time the armed dimension was a significant element, and Umkonto we Sizwe scored massive blows against the apartheid targets

But the ANC has always preferred a peaceful route to freedom. It is our people who have been the prime victims of violence and it is in our interests and that of the country as a whole to end military conflict That is why when the possibility of a negotiated settlement emerged in the late 1980s we grasped it and set about embarking on an initiative to ensure that any negotiations would result in the same goals as we sought from our previous methods of struggle, including armed action.

This article was written by Raymond Suttner who is the head of the department of political education in the African National Congress. We would like you to feel free to reply to what the ANC have to say about negotiations. Perhaps you disagree or have some questions to ask the ANC leadership. Read this article with other people, discuss it and send your point of view or questions to Learning Nation, P.O.Box 11350 Johannesburg. We will pass them on the the ANC and publish the replies, together with your questions or points of view later on in this series.

This point is important When you negotiate you are not negotiating for something different from what you seek through armed action. Our goals remain the transfer of power to the people and the creation of a nonracial, nonsexist democratic South Africa.

But why did negotiations come on the agenda? This was not some act of magic nor some sudden realisation on the part of the Nationalist Party that talk was better that guns It was a combination of the crisis of apartheid and the fearless and massive resistance of our people that forced the government to realise that they had to talk to the ANC.

In brief, the apartheid regime was losing its support to both the right and left Increasing numbers of whites were coming to doubt the morality of apartheid The economy was stagnating with little prospect of investment that would make it possible to grow. Repression was not quelling popular resistance at home and the military suffered defeat in Angola

The period of the 1980s saw waves of semi-insurrectionary mass action throughout the country bringing puppet structures to a standstill, and paralysing apartheid.

Naturally the government wanting to talk did not mean that they shared our goals That is why it is essential that we continue to maintain pressure on every front to ensure that the outcome at the table is dictated by the power of the people on the ground

While we recognised that the prospect of a negotiated settlement was there, others less sympathetic to our goals were also considering this question The Thatcher government, in particular was preparing an initiative that would have sidelined the ANC

It is always better in politics to be the initiator of a process, since that way others have to respond to what you suggest, and you provide the framework for debate To ensure that we made the running, that instead of us having to respond to an initiative started by the imperialists, we developed our own plan for peace - the Harare Declaration, and this document adopted by the OAU, the Non-Aligned movement and with slight modifications the United Nations, became the internationally accepted peace process (The Harare Declaration will be examined in the next article in this series in conjunction with the Constituent Assembly)

Before we go any further it needs to be acknowledged that many people find the idea of talks with the government distasteful and even suspect Some of our 'radical' opponents suggest that talks or negotiations mean selling out

Any contact with the government must be taken with great care. This is especially so when it is likely that they might want to trap us in some plan to help maintain white domination We do not avoid any contact because of such danger

If we see contact creating possiblities of advancing our goals in a substantial way, it is our duty while taking adequate steps to avoid the dangers, to engage the government And the ANC has used this contact to start and we have reason to believe, complete the freeing of political prisoners and ensure the return of exiles None of these processes are complete, but contact with the government is a necessary element in its achievement.

The ANC believes that negotiations do not substitute for any other form of struggle We persue negotiations together with other forms of struggle in order to provide the maximum pressure towards the dismantling of apartheid.

We hope that there can now be a peaceful route to freedom but we believe that the efforts at the negotiating table have to be coupled with mass struggles on every front to ensure that the government recognises that we will settle for nothing less than total freedom

The way we persue negotiations is also a reflection of the mass character of our struggle We want the people to be involved at every phase of the struggle Their power must be felt at the negotiating table They must have their demands heard in the streets and factories, on the land and in the schools The ANC signature campaign for a Constituent Assembly and Interim Governemnt gives expression to this intention - to have the people's voice decisive That voice must guide our negotiators and convince the government that negotiations will not mean a softening of our demands, but rather the way in which our legitimate demands are realised.

New look labour court in focus

EDWIN CAMERON

BY 1988, government and business had had enough. The Industrial Court, in their eyes, had become altogether too sympathetic to worker interests It had to be curbed, and a Labour Appeal Court (LAC), presided over by a Supreme Court judge, was to be the principal instrument for their purpose If a judge was the overseer of labour law, they felt, good commercial commonsense would return to labour relations

Government, now intent on reconciliation, seems to be ruing its actions. There seems to be regret, too, in the ranks of enlightened employers, whose concerns are now more with labour concord than confrontation. But many employers still endorse the amendments and mightily applaud the performance of the LAC, which are seen as restoring the prerogatives that were rightfully theirs.

That the LAC should please them is understandable. After a mere two years, its tally reads roughly like this: Bosses 13, Workers 2. In its short history the LAC has drastically altered labour practice in SA. Its judgments have done grievous bodily harm to the jurisprudence the Industrial Court painstakingly established on the right to strike, unfair dismissal and the rules of employer/union power play (for example overtime bans, benefits for strikers and non-strikers; bargaining levels).

Anti-union and anti-worker decisions are by no means the only source of complaint. Appeal procedures are mercilessly long — in many cases they add a year or more to the dispute resolution process And a ruling by the LAC may be followed by a further appeal to the Appellate Division in Bloemfontein — another two years down the line

The selection of judges for the LAC, and their selection of the assessors who sit with them, have also become sullied by controversy On occasion judges have presided who seem to believe their own notions of right and wrong will be sufficient to dispose of the case, little realising how thoroughly those notions are infected by the individualism of the common law and how much can be gained from past Industrial Court decisions and international norms

Frequently, too, both assessors in a case have been well-known employer advocates We know they discharge their various roles with probity and conscientiousness; but the ambiguousness of their position, coupled with the apparent preconceptions of the judges they sit with, do little to reassure workers of the impartiality of the proceedings

Almost everyone accepts that there should be an appeal from the rulings of the Industrial Court The concern, therefore, is not about the principle but about its application in practice. It is, moreover, shared by Saccola — the employer body with whom the unions have been holding talks over the amendments — which has agreed that the LAC will have to be changed.

The debate now taking place among employer and union deal brokers and influential figures in government and the judiciary is about how to set up an LAC that enjoys maximum legitimacy on all sides.

A consensus seems to be emerging that the LAC must be divorced from the Supreme Court but enjoy equal status, and that the judges staffing it must have the ability and expertise to make an appropriate contribution to the development of a responsive labour law

Also tentatively emerging is agreement that:

☐ Judges must be handpicked for their knowledge of labour law and their sensitivity to its claims,

☐ The LAC cannot consist only of judges nor only of lawyers. There should be additional members drawn equally from two panels — one employer-nominated, one union-nominated. These "wingpersons" may or may not be lawyers Experience in other countries has shown that wingpersons play a pivotal role in helping judges understand labour issues. It also shows that they can be independent-minded; wingpersons frequently make a decision adverse to the side which nominated them,

☐ Wingpersons should have the power to outvote the professional judges on factual and legal questions,

☐ There should be flexibility on how many judges and wingpersons are required to sit in any specific appeal, depending on the complexity of the case, and

☐ Procedures should be expedited and the number of appeals limited The double appeal system is cumbersome and serves no one's interests

More than the details of these common thoughts, what is remarkable is that consensus about their broad outline has emerged at all The fractious animosity of three years back seems to have been supplanted — at least for the moment — with a more realistic appreciation of the fact that economic life is a common enterprise indispensable to all, and that simple coexistence requires that deals between the major players be struck.

Does that sound familiar? Perhaps. In the constitutional arena some consider that events over the last year evidence the same prudent and reasonable insights But the stakes in both spheres are high since failure means calamity for all Perhaps the labour consensus — including, modestly enough, such details of judicial hierarchy and structure as the parties seem to have agreed on — can encourage further concord along the way

☐ **This is an edited version of an article in the latest edition of Employment Law, of which Cameron is co-editor.**

Changes in LAC urged

WMail 19/4 - 25/4/91

By DREW FORREST

THE National Manpower Commission has finalised a set of recommendations for changes to the labour appeal system which meets key union objections to the existing Labour Appeal Court (LAC).

Sources say the proposals have been handed to Manpower Minister Eli Louw and will also be canvassed with the Justice Department.

The NMC calls for an end to appeals from the LAC to the Appellate Division, coupled with some mechanism to resolve contradictory rulings between the two.

It proposes that the Minister of Justice consult both the NMC and the Manpower Minister on appointments to the court and recommends assessors to assist judges, to be drawn from employer-union lists.

Sources said there was disagreement in the NMC over whether assessors should be able to decide on more than issues of fact. Cosatu believed they should be experienced in labour matters, and able to decide on issues of fairness as well.

It is also understood the NMC has submitted its recommendations on small business. A special subcommittee was appointed to look at ways in which small business development can be spurred by relaxing labour laws and industrial agreements.

Sources say the recommendations largely call for changes of a technical nature aimed at relieving the administrative burden of small firms.

However they also embodied the vital principle that all changes affecting workers must be negotiated with them or their representative organisations.

Labour 'at forefront of reform'

By SHARON SOROUR
Labour Reporter

MANPOWER

LABOUR is at the forefront of reform in South Africa and will continue to lead the way, with the country's labour system on the brink of gaining acceptance in the international labour fraternity.

Minister of Manpower Mr Eli Louw said in an interview with The Argus that apart from a few outstanding issues, like extending protective legislation to farmworkers, domestic workers and certain state employees, the system was close to reaching a standard "that can be defended anywhere in the world".

South Africa's labour system moved a step closer to international standards when the Labour Relations Amendment Act of 1991 was signed on April 10.

"We proved with the agreement that it was possible to come together, find sufficient common ground and, in the end, reach consensus."

The Act brought to a close more than two years of intense negotiations between the government, trade union federations Cosatu and Nactu and employer body Saccola on proposed 1988 amendments to the much-criticised Labour Relations Act of 1956.

It has been hailed as a victory for the tri-partite negotiating team and will come into effect on May 1.

Earlier Mr Louw said the Act was regarded as an honourable attempt to bring employers, employees and the State closer to promote a climate of mutual appreciation.

The Labour Relations Amendment Act paved the way for greater labour peace in the future, creating a broader industrial democracy in developing the labour system.

"If you consult the parties for whom the legislation is being drawn up before it reaches the Statute Book, and consensus can be reached, it will of course bring greater peace in the labour arena when it is passed or becomes law."

Mr Louw said protective legislation for farmworkers would be introduced in parliament before July, but whether the bill would be passed depended on parliamentary process.

The legislation incorporates farmworkers into the Basic Conditions of Employment Act and the Unemployment Insurance Act.

Mr Louw said he believed labour peace could never be guaranteed in South Africa because there were "too many players in the field and too many external influences in the industrial arena that could lead to disharmony".

"But I am satisfied that since the major players are talking to one another, and to the government, there is undoubtedly a better atmosphere to develop labour harmony," he said.

The government's role in promoting labour peace was to take a "more neutral stance" between employers and the labour movement.

"Government must provide a framework conducive to labour peace in which the parties can find one another. The government must try to remain impartial to the greatest extent — and that is another aim of the department."

South Africa had resumed international labour ties after making contact with the International Labour Organisation last year, after three decades.

"The government recently approved a request for the ILO to visit South Africa on a fact-finding visit to investigate a complaint lodged by Cosatu against the Labour Relations Act.

"The complaint, submitted in 1988 related to two sections of the Act which allegedly contravened ILO conventions. But the Labour Relations Amendment Act effectively deletes the offending provisions," he said.

A visit by ILO experts would improve international liaison on labour matters, he said.

Mr Eli Louw "system close to a standard that can be defended anywhere in the world"

ARGUS 2/1/91

A 'new era' dawns for militant black trade unions

The historic Labour Relations Amendment Act has ushered in a new era for militant black trade unions which are now following a more participative and co-operative approach to industrial relations. But a harmonious labour environment is not in the offing, argues industrial sociologist and labour expert Dr Duncan Innes

By SHARON SOROUR
Labour Reporter

ECONOMY

INDUSTRIAL action has cost more man days over the past five years than during the preceding 75, but trade unions have not only had a destructive impact on the economy, they have played a key role in redistributing wealth to black workers, says industrial sociologist Dr Duncan Innes

In the Innes Labour Brief he said the impact of unions on the economy during the past year had been "significant", with more man days being lost because of strikes in 1990 than in any year since 1987

He said "No doubt some may wish to interpret this as evidence that unions have played a purely destructive role in the economic life of the country

"However, if union actions have damaged the economy, they have also brought considerable financial benefits to black workers, thereby playing a key role in redistributing wealth to important sections of the workforce."

But this period had not been without its costs to the workforce employment had shrunk significantly in the formal sector while 1,4 million new work-seekers had entered the labour market.

Many commentators argued that there was a direct relation between rising wages, improved working conditions and benefits for workers — which placed too big a financial burden on companies — and falling levels of employment.

He said "Simply put, the argument is that rising wages place too big a financial burden on companies, which are then forced to retrench but this certainly cannot be viewed as the only cause of rising unemployment."

The economic stagnation could be blamed on recessionary conditions of the past decade, sanctions, high taxation, rising government expenditure — rather than wage increases.

Trade unions functioned best in an expanding economic environment where there was a demand for labour, and not in a situation of falling employment.

"Clearly the continuation, and even intensification, of adversarial conflict in management-union relations can only make an already bad situation much worse — not only for business, but for trade unions as well."

Dr Innes said it was possible, however, that 1990 had ushered in a more constructive era in the relationship between employers and unions

Referring to the historic Labour Relations Amendment Act (LRAA) — which was negotiated between employers, trade union federations and the state — he said 1990 represented the dawning of a new era for black unions as they were beginning to position themselves to influence future state and corporate policies from within

"A further by-product of the LRAA agreement was the black unions' decision to join the state's National Manpower Commission (NMC) This was an extremely important development, representing a complete break with previous black union strategy of boycotting state institutions.

"The age in which employers participated in state structures without black union participation is over," he said.

Unions would also move to increase their influence over the Industrial Court as well as over government welfare, unemployment insurance and training schemes

Referring to employer-union relationships in the new South Africa, Dr Innes said the gap between the main players was large with Cosatu remaining committed to socialist principles while the business community was "wedded to the free market doctine of privatisation and deregulation"

"Clearly, both sides have very little in common with one another and believe fervently in the destruction of the opposing systems

"These are the two poles of the debate but there is an important constituency within both camps who share a common belief in the need for a mixed economy in South Africa, at least for the immediate future"

However, even within these ranks there are differences with unionists favouring a mix in which the state sector dominated the private sector while employers favoured the reverse.

"But let there be no mistake of a new thinking is emerging within the unions in terms of which a more participative and co operative approach may evolve, this does not mean that the hard bargaining and adversarial approach of the previous phase will magically disappear

"On the contrary, unions will seek to gain through participation many of the de mands they sought to win by adversarial bargaining"

Dr Innes said employers should answer this approach with "trade-offs" where issues could be traded off against one another

"For example, unions will undoubtedly demand from employers recognition of their right to participate in enterprise and industry decision making. Employers have the right to demand from unions that agreed procedures should be respected and adhered to," he said.

But the new strategy of participation did not mean that unions were likely to ease up on mass action in the immediate future.

"Unions will continue to use mass action both as an external pressure on those they are negotiating with and in response to ANC campaign calls"

The ideal of an harmonious, non politicised industrial relations environment was "certainly not in the offing"

"The next few years, in which a basis for more constructive co-operation may be established, will not be immune from conflict."

'Urgent need' to ease courts' load

(165)

GERALD REILLY

PRETORIA — SA was in desperate need of a dispute-resolution mechanism to lighten the heavy burden of the courts, labour expert Nic Wiehahn said last night.

Wiehahn has been appointed chairman of the Resolution Board — an organisation established to address the need for alternative dispute-resolution procedures for a wide range of issues

These include matters ranging from collective and individual disputes to community, civil, environmental and marital disputes.

Wiehahn said mechanisms were urgently needed to meet society's and the individual's growing need to resolve conflict in times of rapid economic, environmental, social and political change. B/Day 16/5/91

The Resolution Board, he said, was a neutral and independent body offering parties the use of various dispute-resolving procedures, including mediation, conciliation and counselling.

It also offered a wide range of neutral mediators, arbitrators, conciliators and counsellors drawn from more than 40 panellists.

Wiehahn said the board would be dedicated to solving conflicts and would provide expeditious, cost-effective and professional services to parties in southern Africa

Set wages cripple small business

JEAN LE MAY

Weekend Argus Reporter

SEVERAL small business owners have reacted to a report in the June 29 issue of Weekend Argus about problems with industrial councils.

All complained that industrial councils had refused them exemption from wage scales and other conditions of employment laid down in agreements negotiated between employers and trade unions.

One woman, who asked not to be named, said she owned a small factory which did work for the big clothing manufacturers.

"It is unfair that I should have to pay the negotiated wage to workers in training," she said.

"Many are not interested in the job — only in the money. Absenteeism is a terrible problem — some workers feel they can afford to take a day off whenever they feel like it. I have to pay others overtime to do their work."

Last week's report told how Mr Abraham Adamson, owner of a motor spares and repair shop in Athlone, had been refused exemption by the National Industrial Council for the Motor Industry (NIMIC) in spite of his application being supported by the Small Business Development Corporation.

Mr Adamson now stands to lose his business — and his seven employees their jobs.

The National Union of Metalworkers (Numsa), one of the employees' unions which is represented on NIMIC, complained this week that trade union comment was not included in the Weekend Argus report.

In fact such comment was obtained but was omitted for reasons of space.

The comment was from Mr Nosey Pieterse, Western Cape secretary of Cosatu (to which Numsa is affiliated) who said: "Our position in principle is that all our workers must be covered, with no exemptions. We've fought hard for these rights and it is unfair if employers get exemptions, because these will leave workers open to abuse and exploitation."

Asked whether this attitude also applied to the informal sector, which has created many thousands of jobs, Mr Pieterse said: "We have not resolved the issue of exemptions yet. We are still studying changes in the Labour Relations Act."

Numsa's comment, through its organising secretary Mr Benny Fanaroff, was: "We are obviously unhappy that people are losing jobs but we don't believe that the informal sector can solve the unemployment problem.

"Our research has shown that wage concessions to small business and in rural areas resulted in very few jobs being created.

"Over a five-year period where companies in rural areas were given concessions by the Electrical Industry Industrial Council a total of 250 jobs was created while more than 60 000 jobs in the industry were lost over the same period in the urban areas."

Lancaster House in London.

Fired law firm trio take court action

Sowetan 17/7/91

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By MONK NKOMO

THREE former employees of a Pretoria firm of black attorneys who were allegedly unfairly dismissed last month have turned to the Industrial Court.

They want the court to force their employers to reinstate them

The three, who allege they were unfairly dismissed by Matlala Attorneys, are Miss Julia Khoza, a switchboard operator, Mrs Maria Nhlapo, a cleaner, and Miss Johanna Makgatholela, a typist.

They have given detailed accounts of how they were dismissed. The contents cannot be published as the matter is *sub judice*

Attorney Mr Cyril Morolo yesterday confirmed that he had already filed an application in the Industrial Court seeking an order declaring the dismissal of his clients illegal.

He said they would also seek an order declaring that their dismissal constituted an unfair labour practice

The application filed in the Industrial Court requested an order directing Matlala Attorneys to reinstate the applicants "on terms and conditions not less favourable to them than those prevailing prior to their dismissal".

Matlala Attorneys could not be reached for comment yesterday as their offices were damaged by fire recently.

Morolo said they would seek an order directing the respondents to comply with the contract of employment between them and the three applicants as well as the payment of legal costs

Members back union in unfair dismissals claim

SHARON SOROUR
Labour Reporter

ARG 18/7/91

MEMBERS of the Construction and Allied Workers' Union have protested against claims that the union unfairly dismissed three people who applied for jobs as organisers

About 30 workers gathered outside the Department of Manpower offices to support the union yesterday

The protest coincided with a conciliation board hearing on an application by three workers who were dismissed by the union after a three-month probation period, said union spokesman Mr Leonard Ramatlakene

He said the applicants had cited the union, a Cosatu affiliate, for dismissing them unfairly

In a statement, the union accused the three applicants of undermining union structures by going to the conciliation board and a "racist court"

The placard-bearing supporters accused the applicants of taking the union to a "racist court" which could not "solve their problems"

A placard read "We do not expect progressive people to take other progressive organs to courts of the regime" and "Racist courts cannot solve your problems — go to democratic formations"

The job applications of the three workers, two from Cape Town and one from George, were turned down in January They then declared a dispute with the union and appealed for reinstatement on the grounds of alleged unfair labour practices

Mr Ramatlakene said they were not hired because they were not suitable for the organiser positions

Union shop steward Mr Fred Gona, who attended the conciliation board, said the applicants had reserved their right to approach the Industrial Court for relief

● The outcome of the conciliation board is not yet known

Union accused of unfair dismissals

South 18/7-24/7/91 (165)

By Thoraya Pandy

THE Construction and Allied Workers Union (Cawu) has been accused of unfairly dismissing two workers.

Mr Melisizwe Zihlangu and Mr Monde Ncayo were employed on probation for three months by the union last year After the probation period, the union assessed work done by them and their conduct as organisers of the union

"Workers felt that they did not service the union efficiently and were involved in trying to sow division in the union. At some of the factories, they attempted to get workers to move out of Cawu," said one of its organisers, Mr Lulu Mqikena

The dismissed men are now planning Industrial Court action against the union

The union held talks with lawyers representing Zihlangu and Ncayo on Wednesday but could not reach agreement

"The dismissal was fair in all respects We cannot understand why they still want to pursue the matter"

One of the lawyers representing the men, Mr Bob von Witt, said the matter would be referred to the Industrial Court for determination

Court curbs Numsa actions

Sowetan 21/8/91

AN ELANDSFONTEIN company has won an interdict against the National Union of Metalworkers of South Africa preventing its members from promoting strikes or work stoppages

More than 400 Numsa members employed by Brollo Africa, a steel piping manufacturer, crowded into a courtroom of the Industrial Court in Pretoria yesterday to hear the outcome of an action brought by their employers

The workers had been bussed into the city to listen to a dispute between Brollo Africa and Numsa over wage negotiations

A representative of Brollo Africa said the company was successful in obtaining an interdict

He said the company had sought the interdict after Numsa members had engaged in 15 work stoppages since early July

"The company had no alternative but to approach the Industrial Court for relief after all other avenues had been exhausted," the spokesman said

A representative of the Kempton Park branch of Numsa, Mr Mongezi Maphuthi, said the workers were demanding a minimum wage of R6 an hour and an increase of R2 an hour.

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The company this year asked Numsa to submit its wage demands to management for the first time, Maphuthi said. - *Sowetan Correspondent*

LABOUR LAW

Important shift

The Labour Appeal Court recently overturned Industrial Court (IC) rulings on three litigious workplace issues — selective re-employment, insubordination and petty theft The judgments, which appear to strengthen the hand of employers, bring greater clarity and set precedents on these matters

Previous understanding of the law on re-employing dismissed workers has been thrown into disarray, say lawyers Webber Shepstone Findlay This follows the case of Borg-Warner SA v National Automobile & Allied Workers Union (now known as Numsa), before the Eastern Cape Division of the Labour Appeal Court

The brief background is that, in terms of a rehiring agreement with the union, the company had undertaken "to consider" retrenched workers for re-employment "as and when the need arises " It was common cause that the company breached the agreement and the union alleged that this was an unfair labour practice In defence, the company held that the IC did not have jurisdiction The IC rejected this and ordered it to comply with the agreement

The company pursued its argument at the Labour Appeal Court, maintaining that the dispute did not concern an "employment relationship because the employees concerned were no longer employees "

Justice Erasmus upheld the company's argument on these grounds

☐ An ex-employee is not an employee in terms of the Labour Relations Act, except where he would have been employed but for the unfair practice being complained of — if, say, the retrenchment itself had allegedly been unfair,

☐ There is no common-law basis for an "extended" or "continued employment relationship " An employment relationship can, therefore, exist only in the context of the employment contract,

☐ There is no clear provision in the Act compelling an employer, where all or part of the workforce has been dismissed, to rehire all if it rehires one;

☐ The many IC decisions that selective rehiring can be unfair are wrong and the IC's assumption of such jurisdiction has no visible support in the Act, and

☐ The part of the definition of unfair labour practice dealing with the creation or promotion of labour unrest refers to more than "unhappiness" being created by some act of the employer.

Thus, provided the termination of employment itself is not unfair, the decision holds that it would not be unfair to re-employ dismissed workers selectively Employers who wish to re-employ selectively, however, should do so with extreme caution in view of the many decisions to the contrary, the lawyers advise

Clarity over insubordination/insolence and dismissals emerged from the recent Labour Appeal Court judgment (Transvaal Division) in Humphries and Jewell vs Federal Council of Retail & Allied Workers Union, Dave Ramokoka and Elias Mfopa Here the IC had earlier ordered the reinstatement of Mfopa, who had been dismissed for insubordination

Humphries had stated that he noticed Mfopa walking around company premises with his hands in his pockets and his collar turned up, which he regarded as insolent and disrespectful He ordered Mfopa to wear the duty-issue dustcoat and return to work Mfopa allegedly put on the coat, turned up the collar, placed his hands in the pockets, looked at Humphries insolently and walked away An infuriated Humphries next day called Mfopa aside and told him he was being dismissed The latter's silence was taken as acceptance He was paid three weeks' wages and dismissed

The Labour Appeal Court decided "A disregard by an employee of his employer's authority, especially in the presence of other employees, amounts to insubordination and it cannot be expected that an employer should tolerate such conduct " In these circumstances, the relationship of trust and mutual confidence could not continue and the court considered it improper to order reinstatement

It also said that the IC had not borne in mind that the conduct of Mfopu was clearly a wilful challenge to Humphries' authority and that it occurred in the presence of other employees who watched to see the outcome

Because the company admitted that the dismissal was *procedurally* unfair, it was ordered to pay Mfopa four weeks' wages

According to Webber Shepstone Findlay, the Appeal Court's condemnation of Mfopa's conduct as insubordination removes artificial distinctions between that and insolence, which is how the IC had described Mfopa's conduct

The third case deals with petty theft and dismissal

Is it unfair to dismiss an employee for the unauthorised possession of goods worth R45? This was raised in the case of Commercial Catering & Allied Workers' Union and Miriam Miyela vs Central News Agency

The IC did not fault the finding of guilt at a disciplinary inquiry, but found mitigating factors These were that the employee was an elderly widow with five children at school to support, her clean record of service, and the value of the goods taken The lower court found the dismissal unfair, but said the employment relationship had broken down It did not, therefore, order reinstatement but awarded six months' salary

Justice De Klerk at the Appeal Court found that the "mitigating circumstances" were not raised in affidavits nor evidence and that the IC had, therefore, erred in saying these facts weren't properly considered It was a basic and tacit term of employment that an employee would not steal from the employer Even if the mitigating circumstances were taken into account, the dismissal as fair and proper could not be questioned

The court did not find it necessary to distinguish between theft and "trivial pilfering" — which suggests there is no difference, observe the lawyers The decision appears, therefore, to reject the "propensity to steal" argument, which places emphasis on the value of the stolen goods

It is recommended that employers must carefully examine the circumstances of each case, including the amount, before deciding on an appropriate sanction Mechanical application of this case would be unwise ■

LABOUR

Sparks fly in petrol dispute

W/Mail 23/8 - 29/8/91

Wages, job security and centralised bargaining are at the heart of the petrol industry strike

By FERIAL HAFFAJEE

FUELLED by interdicts, sleep-ins, pickets and the introductionof replacement labour, the strike which has disrupted the petroleum industry for the past two weeks went into negotiations yesterday

Nationally 1 000 BP, Caltex and Total workers are out on strike Central demands are a 21to 25 percent across-the-board increase, job security and centralised bargaining in the sector

Caltex and BP are offering 13,2 percent increases across-the-board, which amounts to R200 at the bottom of the scale In addition, BP is also offering a 16,6 percent rise to its lowest-paid workers which will take their wages to R1 445 a month

On Monday, workers were locked out of depots in Johannesburg and Durban And on Tuesday, an interdict was slapped on workers at BP's Cape Town terminal

BP's management alleged interference with the company's operations Workers were preventing the loading of vehicles and no bulk delivery vehicles were able to leave BP's premises, said the company

BP believes this type of action could "disrupt essential services and flights and cause considerable public harm"

These claims contradict statements this week by the National Energy Council, which said the strike was not disrupting the supply of petrol

BP workers in Johannesburg and East London have also been threatened with interdicts after bringing depots to a standstill

A union representative warned that strike-breaking drivers posed a hazard to the public because drivers in the sector underwent special training. He pointed out that transporting petrol was dangerous Investigations are being made into allegations that replacement drivers were mixing diesel and petroleum at the depots

The Congress of South African Trade Unions' call for centralised bargaining seeks to set industry-wide minimums and fair standards. It also allows unions and employers to make use of their most skilled negotiators and sets wages for the industry, thus preventing wage cuts, say unionists.

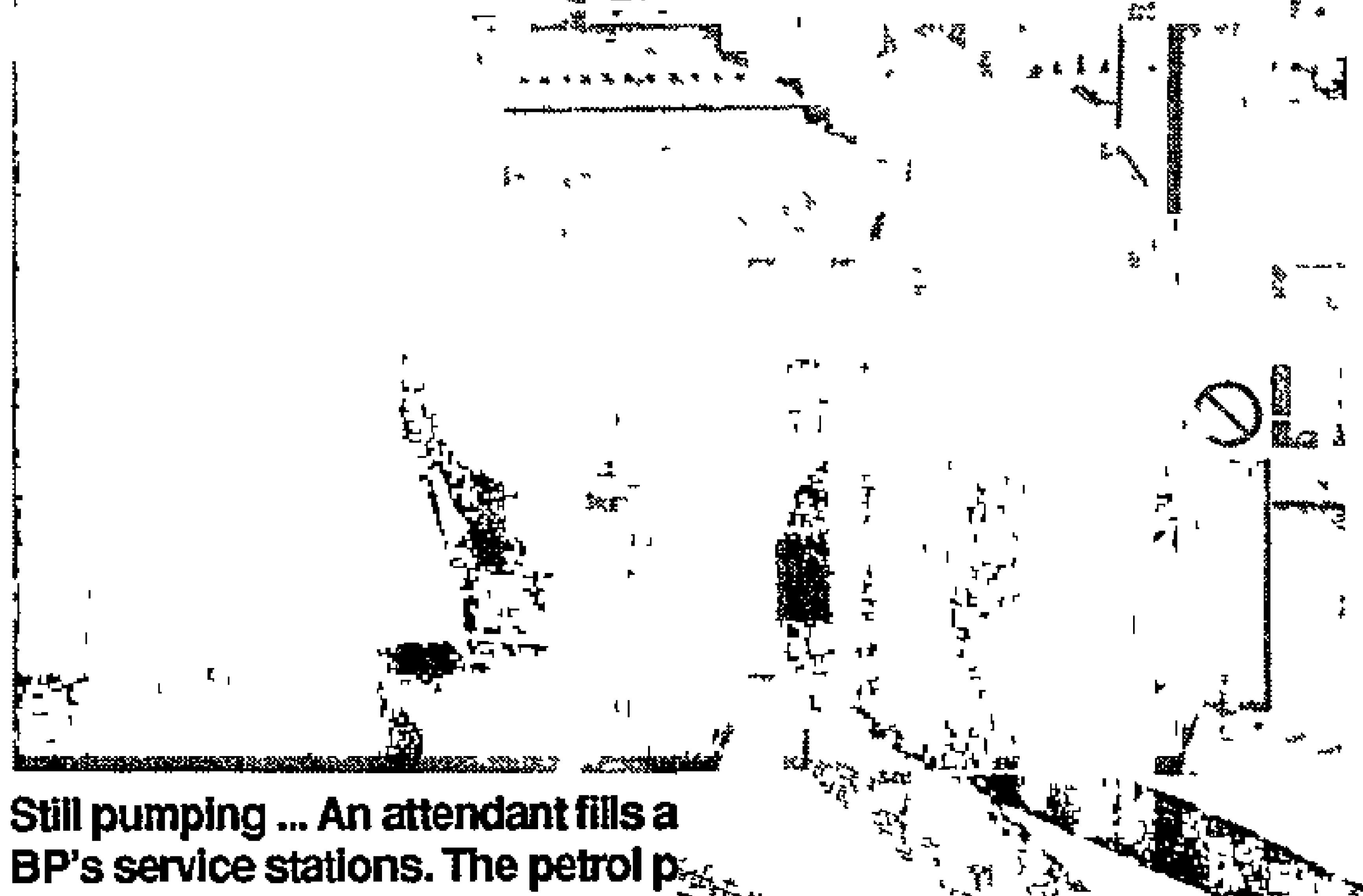
But Caltex said in a statement this week that it "is not prepared to sacrifice its independence and flexibility to negotiate what is in the best interests of its employees and the company"

Both BP and Total have signalled their willingness to discuss centralised bargaining

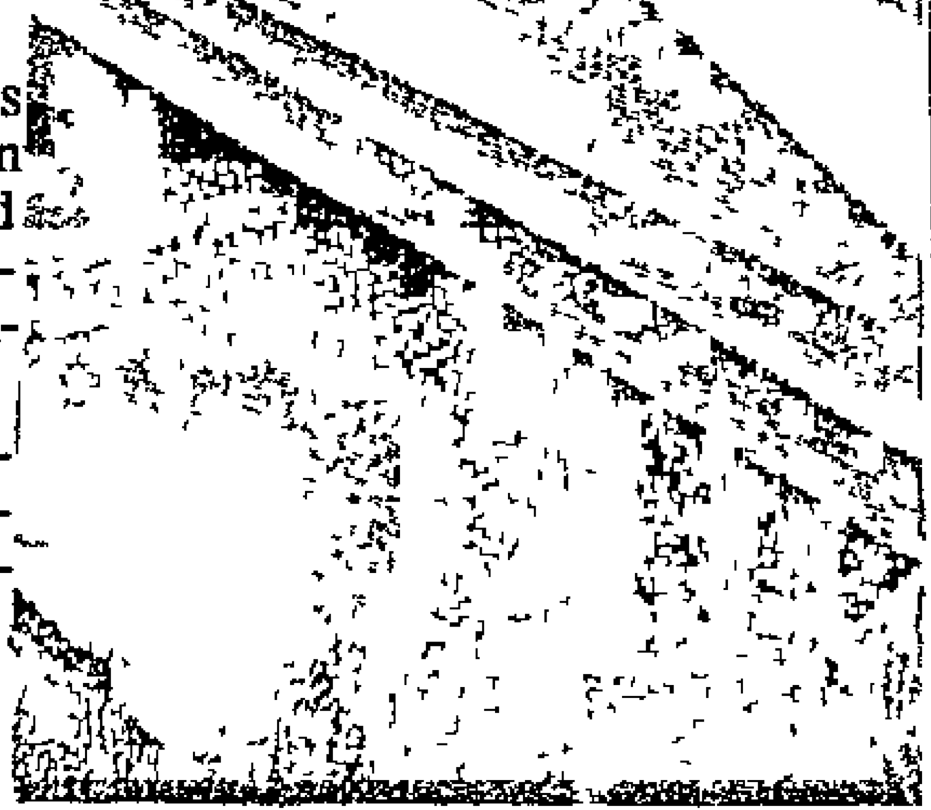
Chemical Workers' Industrial Union (CWIU) representative Martin Jansen says the union's campaign for job security dovetails with Cosatu's campaign. In addition to a moratorium on retrenchments, the union is seeking guarantees against contracting

Jansen says the petroleum sector is prone to contracting — which results in a decline in working conditions and wage cuts Contracting starts with catering and cleaning workers and eventually affects drivers

The CWIU campaign also targets deregulation of the industry The union believes that with the lifting of trade em-



Still pumping ... An attendant fills a BP's service stations. The petrol p



Cosatu warns of mass action

Sowetan 12/9/91 (165)

By IKE MOTSAPI

THE 12-month "honeymoon" between Cosatu and the Government appears to be over.

Relations between the two have become strained in recent months because of labour issues

Cosatu yesterday threatened to pull out of the negotiations and may encourage its affiliates to engage in national strikes

The central executive committee of Cosatu will meet on September 27 to decide on what action to take

Cosatu's Press officer, Mr Neil Coleman, said the Government had agreed to speak to Cosatu on its terms "in order to ease the pressure piled on it by us"

"We have no option but to resort to mass action or pull out of the talks," assistant general secretary Mr Sam Shilowa added

Cosatu said "the spirit of the Laboria Minute is being flagrantly ignored"

Shilowa said "On Friday this week it will be a year since Cosatu signed the Laboria Minute with Nactu, Saccola and the State

"Cosatu is becoming increasingly dissatisfied with the pace at which the Minute is being implemented

"The Minister of Manpower, Mr Eli Louw, refused to accede to most of Cosatu's demands."

These are that

The Laboria Minute committed the Government to grant rights to farm workers While the Basic Conditions of Employment Act and Unemployment Insurance Fund Act will most likely be passed in the next parliamentary session, the Minister refused to commit himself on the LRA and Wage Act;

The Government refused to commit itself on granting domestic workers rights under the Wage Act, LRA, Workmen's Compensation and UIF,

In negotiations with the Commission for Administration the Government had agreed to produce draft legislation to cover public sector workers; and that

Cosatu had agreed to talks on the restructuring of the National Manpower Commission on condition this was done in such a way major players were properly represented The Government had reneged

"There is growing concern in that the State and employers are reneging on their agreement," Shilowa added

Industrial council for Transnet

W Mail 13/9-19/9/91

By DREW FORREST

TRANSNET and 13 unions — including the militant South African Railway and Harbour Workers' Union (Sarhwu) — are poised to establish a giant industrial council which would set minimum wages and conditions for 150 000 Transnet employees

Sources indicate that the agreement setting up the council could be signed today — ironically in the same week that the rail sector seemed to be lurching towards a national strike.

If agreement is reached, the council would begin operating from October 6, the day the Sats Conditions of Service Act lapses and Transnet falls under the Labour Relations Act for the first time.

It follows seven months of negotiations on a new bargaining dispensation between management, unions on the Transnet Labour Council, Sarhwu and its "moderate" rival, the Black Trade Union (Blatu).

Details of the structure of the proposed council could not be ascertained this week, but it would have to accommodate an enormously wide range of jobs and skill levels, from South African Airways pilots and engineers to unskilled railway gangers.

South Africa's third-largest industrial council, it would replace the labour council and is expected to draw in both Blatu and Sarhwu, who are not council members and negotiate with management in separate forums

Sources said the key obstacle in negotiations on the council was the enormous diversity of unions in Transnet, from the Congress of South African Trade Unions-affiliated Sarhwu to the all-white Spoorbond.

Industrial council for Transnet

By DREW FORREST

TRANSNET and 13 trade unions last week signed a pioneering deal setting up an industrial council covering 150 000 Transnet employees.

The country's third largest council, it will begin operating on October 6, when Transnet falls for the first time under the Labour Relations Act.

All unions organising in the corporation, from the far rightwing, all-white Transnet Union of South Africa to the Congress of South African Trade Unions' militant South African Railway and Harbour Workers' Union (Sarhwi), will be party to it.

The council will therefore replace the present Labour Council and parallel bargaining forums for Sarwhu and its "moderate" rival, the Black Trade Union.

W/Mail 20/9 - 26/9/91

The council is a unique compromise between centralised and decentralised bargaining. It is understood that in addition to the central forum, there will be six committees — called "chambers" — catering for Transnet's various divisions. Spoornet (rail), Portnet (harbours), Autonet (road transport), South African Airways, technical staff and a general chamber for specialist employees such as medical aid staff.

The idea is that workers common to more than one division, such as general workers, will have their wages and conditions set by the council, while those specific to one division, such as pilots or train-drivers, will be covered by the relevant chamber.

It is understood that all the unions formed a common platform in the seven-month negotiations.

Deregulation threat to industrial councils

THE South African economic deregulation process could adversely affect the pensions role performed by many industrial councils, says a leading insurer.

Fedlife Industrial Pensions (FIP) division GM Dick Otto says deregulation could weaken the present council pension system.

"Deregulation will result in a weakening of the negotiating forum between the employer organisations and trade unions that make up industrial councils, with the possible consequence of retirement funds even being ignored to the employees' detriment."

He says industrial councils probably provide the only viable system for making adequate provision for an itinerant work-force.

Fedlife's concern stems from having done business with more than 30 industrial councils over the past 50 years and because it makes monthly payments to well over 10 000 pensioners.

"If the present system is weakened it may be difficult to ensure provision of adequate pensions for future pensioners," he says.

B/Day 16/10/91. 165

Contract cleaners to have national industrial council

By FERIAL HAFFAJEE

EMPLOYERS and unionists have pledged themselves to the creation of a national Contract Cleaning Industrial Council by the end of the year, as a consequence of the four-week strike by cleaners in Natal schools.

The strike, which involved up to 8 000 cleaners at 100 Indian schools, The University of Durban-Westville and the University of Natal, ended on Monday.

Jane Barrett, Transport and General Workers' Union (TGWU) co-ordinator for the security and cleaning sectors, said negotiations between the union and the National Contract Cleaners Association (NCCA) started on Thursday.

The union would resubmit its industrial council proposals next week and registration of the council was expected to follow soon afterwards.

The strike disrupted third-quarter exams in Durban last month. Mountains of rubbish, blocked toilets and filthy classrooms prevented pupils from attending school

It was sparked when employers pulled out of negotiations with the union after the submission of wage demands, blaming the fact that an agreement to launch an industrial council had not been implemented.

Barrett claimed employers had reneged on an agreement with the union, in terms of which substantive demands on wages and working conditions would be negotiated prior to the council's establishment.

But she acknowledged that the union bore some responsibility for the delay in registering the council. "There was a problem with verification of membership," she said.

In Natal, the union won an undertaking from the NCCA that an interim negotiating forum would be set up to negotiate wages before the council was registered. The council will ratify any agreement clinched in this.

The settlement also makes provision for the reinstatement of all dismissed workers.

Employer charges that some strikers committed criminal offences will go to mediation if it cannot be settled in talks with the TGWU.

Barrett said the drive for an industrial council to regulate the industry arose in part from the tough working conditions of cleaners.

Workers' plea for support

165

Sowetan 31/10/91

By MATHATHA TSEDU

SEVENTY-SIX members of the Steel and Engineering Workers Union of South Africa in Pietersburg who have been on work stoppage since October 1989 have appealed for public support.

The workers, employed by NTY company, say they were fired when they complained about constant dismissals at the plant. The co-owner of the company is Transvaal Administrator Mr Danie Hough

Reinstated

One of the workers, Mr Phineas Mmethi, who was fired before the rest of the group, was reinstated following an industrial court ruling and later killed at the firm, where only white scab labourers have been employed since the 76 were dismissed.

Six whites are to appear in the Pietersburg Regional Court in conection with Mmethi's death

In a letter circulated in Pietersburg this week, the workers appealed to the public to support their struggle They also ask for material and any other kind of support.

The dismissal case is to come before the industrial court in Pretoria on February 25

LABOUR BRIEFS

Industrial council plan hits snags

165

■Negotiations for a national industrial council in the contract cleaning industry have hit unexpected snags, following a major revolt by the Transvaal region of the National Contract Cleaners Association (NCCA). W/Mail 1/11-7/11/91.

The Transport and General Workers' Union said this week that the NCCA's Transvaal region had rejected the recent agreement settling the five-week cleaners' strike in Natal schools, arguing that the Natal region had not been mandated to agree to national pay talks before the registration of an industrial council.

One of the largest members, Prestige Cleaning Services, had resigned from the NCCA in protest — rendering the organisation unrepresentative in the Transvaal and possibly the Cape. This posed severe problems both for national pay negotiations and for the registration of a national council, the union said.

LABOUR

This won't lure the unions back

W/mail 15/11 - 21/11/91. (165)

The response to proposals on restructuring of the National Manpower Commission falls short of Cosatu's demands for the advisory body And Manpower Minister Eli Louw's abrupt removal won't help either By DREW FORREST

THE government's preliminary response on the reshaping of the National Manpower Commission is unlikely to lure the Congress of South African Trade Unions back into the NMC fold

Union sources indicated this week that further negotiations would be vital to bringing the sides closer together, but that the state was unlikely to concede more ground

Eli Louw's abrupt departure from the Manpower portfolio — suggesting the ascendancy of hawks in the cabinet — made further concessions to the labour movement even more unlikely, they said

"The cabinet's in a froth about the whole interim government drive and the challenge to its authority,' said one unionist "With Louw out of the way, they're not likely to further strengthen the NMC at the expense of the state "

Cosatu and the National Council of Trade Unions were due to meet Louw again next Tuesday to discuss the NMC and other issues, but the talks have been cancelled

In the light of these talks, Cosatu was to have reviewed its withdrawal from the NMC at a central executive committee meeting at the end of the month

Although the federation's shock withdrawal from the advisory body was partly aimed at forcing the state into a macro-economic negotiating forum, Cosatu has indicated it will rejoin the NMC if it is revamped to its satisfaction

Louw's reaction to NMC proposals for its own restructuring — relayed to Cosatu, the National Council of Trade Unions and employer representatives in Pretoria last week — in some important ways follow the NMC

The minister agreed that the NMC should be more representative of organised labour and business and that its recommendations should as far as possible reflect consensus — implying the need for negotiation

He also agreed to appoint and recall members according to the wishes of their constituencies

However in four respects his views fell short of Cosatu demands

● He rejected the principle of proportional representation on grounds that other interest groups — for example, small business and unorganised workers — need to be catered for

Eli Louw ... Ousted

Accepting the need for some independent members, the NMC had proposed 10 employer, 10 worker and five independent delegates Louw suggests an equal three-way division

● He rejected an NMC proposal that the state as an employer should sit on the commission, stressing that this would pre-empt current negotiations for a new public service labour statute He also emphasised that as civil servants did not fall under the Labour Relations Act, he had no jurisdiction over them

Instead, Louw suggested "interaction" between NMC technical committees and the Commission for Administration, which would "in no way bind the state"

● Louw laid heavy emphasis on the advisory character of the NMC, which should not be able to bind him or the government

Cosatu favours a tighter arrangement, proposing a "minute" to regulate the relationship between the commission and the minister

The NMC also recommended that the commission have direct access to parliament on new law — an idea rejected by Louw as "pre-empting constitutional arrangements"

● Louw accepted that the Manpower Department should "interact" with the NMC to advise and inform Cosatu wants much more extensive departmental involvement to ensure what Cosatu negotiator Geoff Schreiner calls "a single process of negotiation and consultation"

Cosatu was furious earlier this year when hard-bargained NMC compromises on the extension of the Basic Conditions of Employment Act to farmworkers were largely overriden or ignored in a Bill subsequently drafted by the department

FM 15/11/91 (165)

LABOUR LAW (165)

Moving closer again

FM 15/11/91

Government's acceptance in principle that the Labour Relations Act and Wage Act should be extended to agriculture has been welcomed (with slight reservations) by Cosatu and slammed by the conservative Free State Agricultural Union

Announcing the Cabinet's endorsement of basic labour rights for farm workers, Manpower Minister Eli Louw said that this would take place only after the "widest possible consultation and consensus-seeking to accommodate the special circumstances of agriculture as far as possible "

Amendment Bills will be put through parliament as soon as possible and further comment will be invited before final Bills are presented

The proposal to extend the two Acts to farm workers was submitted by the National Manpower Commission (NMC) It recommends there should be provision in the Labour Relations Act for no-strike agreements — a kind of seasonal peace obligation during harvest time — and that such agreements should be enforceable Louw accepts this

He also believes that dispute settlement machinery should provide for more informal, simplified procedures to ease conciliation — though this would to some extent depend on what the parties prefer A simpler, cheaper alternative to the Industrial Court will have to be introduced The idea of a special court seems acceptable, says Louw

The NMC also recommends that a code of fair and unfair labour practices should be drafted and given legal effect

The Minister thinks it "reasonable" that the Wage Act could be extended to farming with the proviso (backed by the majority on the NMC) that its application should be delayed for 24 months after approval by parliament

Even then, this does not mean that a wage determination will apply to agriculture "It seems advisable to give the industry a fair opportunity to negotiate its own conditions of employment," says Louw This explains the need for the 24-month delay Any wage determination has to be handled with great care because of the effect it could have on farmers' ability to continue in business and on jobs These are the ostensible reasons for the Free State farmers' objections

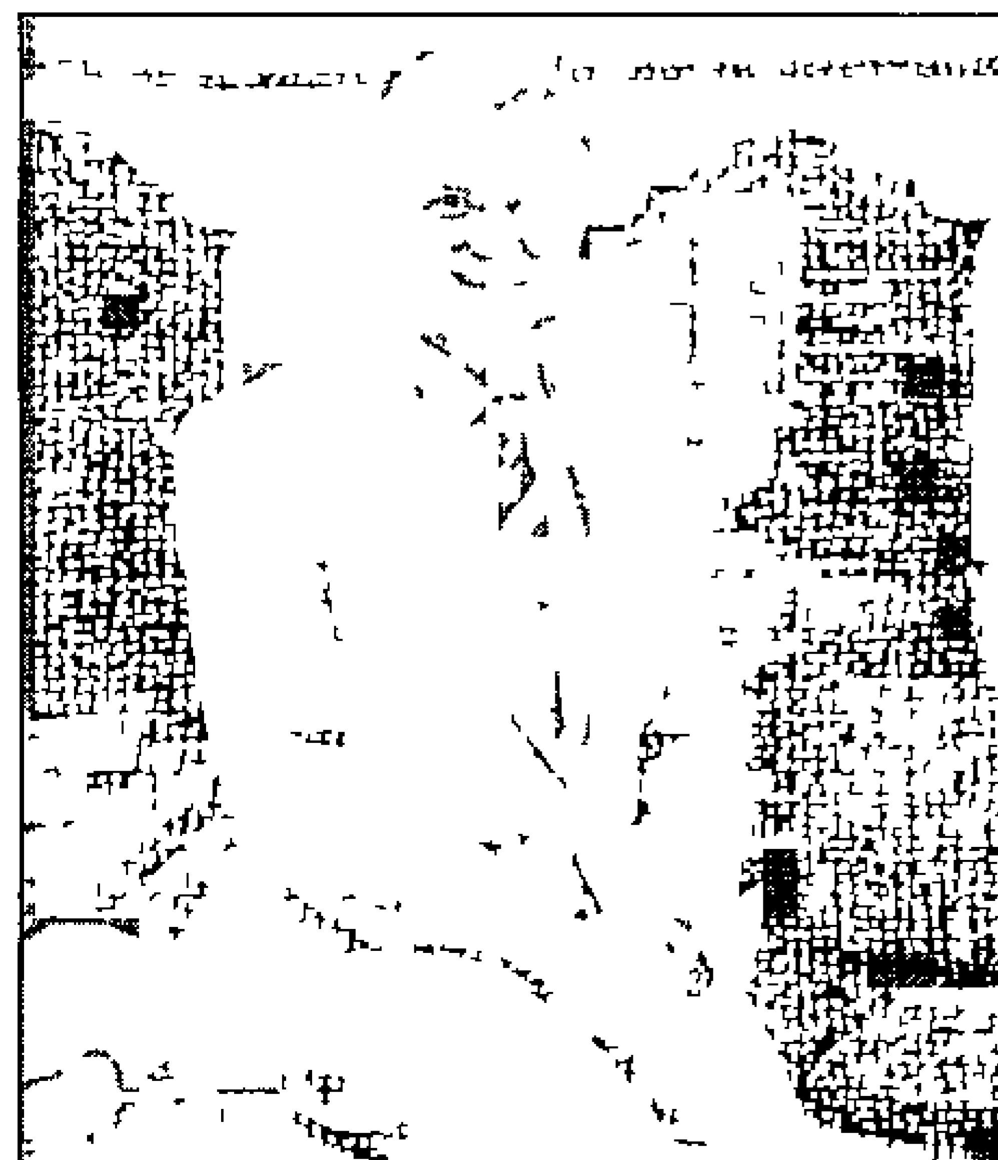
Cosatu and Nactu attended last Friday's meeting "in an observer capacity" to hear Louw's provisional views on farm workers' rights as well as the restructuring of the NMC — the issue on which Cosatu last month withdrew from it

While welcoming Cabinet's in-principle decision on farm labour, Cosatu says the Minister's refusal to make any commitment to introduce draft legislation in the next session of parliament is at odds with government's commitment to "prioritise" labour law for agricultural, domestic and State employees in terms of the Laboria Minute signed last year

The further consultation Louw speaks of also suggested more delays and makes nonsense of the very long and broad consultation already done via the NMC and Manpower Department, says Cosatu

The union federations also "believe that the Minister's statement on the restructuring of the NMC offers a glimmer of hope that an acceptable dispensation can be reached "

However, certain key issues have yet to be negotiated and resolved, say Cosatu and Nactu These include agreement on a formula for representation which will ensure that the NMC can be an effective negotiating forum, ensuring a single process of negotiation and consultation which includes the Department of Manpower "within the ambit of the NMC," and inclusion of public sector employers and workers in the NMC to ensure balance



Manpower's Louw *won't be bound by NMC negotiations*

Louw — whom the unions say is "not likely to act in the same unilateral way as his colleague, Finance Minister Barend du Plessis, especially given the conflict that resulted from his handling of the VAT crisis" — accepts the NMC's majority recommendation that it should be a consensus-seeking body But it "should remain advisory " This implies, says Louw, "that there could be negotiation regarding labour policy within the NMC to attain such consensus It should be understood, however, that such negotiation cannot bind me or government "

The unions are to meet Minister Louw for further discussion on Tuesday Then they will "evaluate their current positions in relation to the NMC on the basis of the Minister's response " ■

Tight-rope balance

S Times (Buss) 17/11/91

By ADRIAN HERSCH

LABOUR law proposals on the closed-shop agreement — membership of a trade union becomes a conditon of employment — are akin to a tight-rope act

The National Manpower Commission's draft for a consolidated Labour Relations Act offers a delicately balanced freedom of association and "freedom of dissociation" mix

It is proposed that all workers belong to a particular trade union if two-thirds, voting by secret ballot, are in favour

But the agreement can be terminated if more than 50% of workers — again voting by secret ballot — are against it

To hold the ballot, 10% of workers would have to petition the Industrial Registrar

Several closed-shop agreements are in operation and have been negotiated through industrial councils

The moderate Trade Union Council of SA (Tucsa), now defunct, comprised many unions involved in these agreements

Cosatu unions, often vying for membership with their Tucsa counterparts, saw the closed-shop as an obstacle.

But matters have changed

Cosatu's 186 000 member SA Clothing and Textile Workers Union (Sactwu) endorsed the closed-shop principle at its congress this year

Two former Tucsa affiliates, now part of Sactwu, had closed-shop agreements with industrial councils in the Cape and Natal

Sactwu has kept the closed-shop agreements going

surely have to consider very seriously before jumping into bed with rival groups whose own records are, in the main, best not spoken about ■

MANPOWER (165)

Missing you, Eli

Did the vacancy caused by the death of Speaker Louis le Grange give Cabinet hardliners a chance to get Eli Louw away from Manpower? FM 22/11/91

That's roughly the theory over at Cosatu, where the view is that Louw was shafted as Manpower Minister by a securocrat clique said to be led by Finance Minister Barend du Plessis The reason why Louw was moved, the argument goes, is that he was just a little too flexible and "understood how the negotiation process should proceed with integrity"

CONT →

(165)

Specifically, says one unionist, Louw was favourably disposed to the idea of an economic forum — or, at least, open to discussion about it

This, the Cosatu argument continues, cannot be said of acting Manpower Minister Kobie Coetsee (also the Minister of Justice) Coetsee, though not seen as part of the so-called Du Plessis camp, nevertheless strongly opposes any inroads into government sovereignty, as would be implied by an economic policy forum that includes the unions

Louw would probably find all that amusing After all, it would have been a rather elaborate and circuitous way of getting rid of a man when there are other ways of doing it

Regarding Du Plessis' alleged role as a securocratic hardliner, it is worth recalling (notes DP leader Zach de Beer) that in the NP leadership contest two years ago, Du Plessis was regarded as the verligte against the "verkrampte" F W de Klerk

So much for conspiracy theories As Minister of Manpower, Louw was by general consent, flexible, imaginative and a good negotiator He was the first Manpower Minister to reach a tripartite accord — the Laboria Minute — that included organised labour, business and government

An aide says that Louw laid down certain guiding principles in the department which received wide acceptance He "had the confidence of certain trade unionists up to a point" and though links with Cosatu had been frozen for a while (over the pace of restructuring the National Manpower Commission), there were signs that relations were on the mend

Was Louw too accommodating to labour? It's a fair question, replies the aide — adding, however, that this is "a strange time to have moved him"

The man most likely to succeed Louw at Manpower is apparently the nominated MP, Danie Schutte, who has been appointed Deputy Minister of Manpower following Louw's move — and is already Deputy at Justice as well as Education & Training

With Schutte holding so many positions, it seems that talent in the Nat caucus is rather thin on the ground ■

Eli Louw . *an odd time to be moved from Manpower*

Num wins appeal against Ergo case

Sowetan 28/11/91 (165)

THE National Union of Mine Workers has succeeded in its appeal to the Appeal Court in Bloemfontein against a decision of the Labour Appeal Court in favour of East Rand Gold and Uranium Company

The Labour Appeal Court had held that the practice of Ergo to refuse to implement agreed wage increases retrospectively to those employees who embarked on a legal strike in furtherance of the 1987 wage dispute did not constitute an unfair labour practice.

The Labour Appeal Court overturned a decision of the Industrial Court which had found that Ergo's failure to implement the wage increases retrospective to June 1 1987 to the employees on a legal strike constituted an unfair labour practice

The Industrial Court had ordered Ergo to pay such employees an amount equivalent to the wages foregone over the period, in relation to the wages of the workers who did not strike and who received their increases

Yesterday Mr Justice Goldstone found, on a balance of probabilities, that the impasse between the union and Ergo was not the direct result of bad faith bargaining by NUM

In that regard the offer by NUM to go to arbitration and the concession made by Mr LJ Gatherer, manager of manpower at Ergo, in relation thereto were crucial.

Mr Justice Goldstone said the conclusion to the opposite effect reached by Mr Justice de Klerk, in the Labour Appeal Court, therefore could not be upheld

Mr Justice Botha, Mr Justice Smalberger, Mr Justice Milne and Mr Justice Preiss (acting judge of appeal) concurred

Counsel for Ergo had submitted that their client's conduct was in no way destructive of collective bargaining, since that had ceased on impasse.

The strike was part of that process and no less a meeting of August 16, 1987 called by Ergo Then there were further successful negotiations at the beginning of September 1987, which led to the agreement of September 9, 1987

He said that, in finding that Ergo committed an unfair labour practice by negotiating directly with its employees, he did not wish to be understood as condoning the conduct of NUM during the negotiations - *Sapa*

involved in about eight other assassinations as a member of a hit squad.

He was granted a stay of execution and subsequently gave evidence to the Harms commission of inquiry into certain alleged murders. In his ... long, and on so many occasions, that little if any credence can be attached to his most recent version of what happened on the day of the murder. There is nothing in the record or in any subsequent document to support ... Currin said.

ANC spokesman Gill Marcus said: "We have called for a moratorium on executions. That a person who has exposed hit squads should hang is a poor reflection of what is happening in the country."

Allied sued

VERA VON LIERES

AN Industrial Court case brought against Allied Group Ltd/Absa by a former senior employee was yesterday postponed to January 14 in the Johannesburg Magistrate's Court.

Former senior manager (investment) P J S Ronan alleges Allied Group Ltd/Absa contravened sections of the Basic Conditions of Employment Act of 1983.

Ronan claims the company breached its agreement with him by terminating his employment contract without written notice and not paying him a minimum of 12 months' wages.

BDay 29/11/91

Pretoria goes to township's rescue

BDay 29/11/91

THEO RAWANA

THE cash-strapped township of Atteridgeville, plagued by problems in supplying and maintaining services to its 11 500 households, is to get wide-ranging assistance from the Pretoria City Council.

Atteridgeville administrator Martiens Nel, whose council owes Pretoria about R9m for electricity and other services, said yesterday the assistance was not financial, but involved supply and maintenance of services.

Nel had asked the council for urgent discussions on co-operation with Attridgeville. He had said its problems were compounded by inability to perform administrative, technical and financial functions.

Pretoria decided this week that its transport department, which had evaluated Atteridgeville's refuse trucks, would help repair essential vehicles, consider hiring vehicles to the township and provide driver training to five officials.

Stationery and cleaning equipment will also be provided. The sports and recreation department will advise on maintenance and management of sports and recreation areas and provide training for workers.

Pretoria will run the local electrical sub-station and train electricity personnel.

Pretoria town clerk R N Redelinguijs had recommended to his council that a working group be set up to investigate how to help, starting with the possibility of doing administrative and accounting duties on an agency basis.

Nel said yesterday about 25% of the township's households were defaulting on payments. "By Wednesday morning we had cut off electricity supply to about 300 of these households."

LABOUR DEPARTMENT.

1992

role in Ghost — the highest grossing film of 1990 In addition, she has won several Golden Globe awards

Sexual harassment ruling expected soon

B/Day 3/1/92 (165)

SUSAN RUSSELL

IT WILL not be long before the Industrial Court is asked to rule on whether or not sexual harassment in the workplace is an unfair labour practice, a Natal academic has suggested.

Writing in a recent issue of the Industrial Law Journal, University of Natal economics and management lecturer Lisa Dancaster says the 1988 amendments to the Labour Relations Act expressly include sexual discrimination as an unfair labour practice.

The Labour Relations Amendment Act of 1991 reintroduced a broad definition of the unfair labour practice

But Dancaster says: "There is no doubt that the court will continue to regard sexual discrimination as an unfair labour practice." She says the Act has not yet been used in a sexual harassment case.

She believes there is no reason why, in keeping with English and American law, sexual harassment should not be recognised as an unfair labour practice.

A recent survey has found that 76% of career women in SA have experienced sexual harassment at work. Most will resign rather than "make a fuss", she says.

The Industrial Court in this country has dealt with two cases of alleged sexual harassment.

In both, the plaintiff was a male employee seeking reinstatement on the grounds that he had been unfairly dismissed for sexually harassing a co-worker.

Dancaster says a victim of sexual harassment can seek legal redress either in terms of the criminal law or a civil action.

However, damages that could be recovered might not fully compensate the victim for lost employment, promotion opportunities or some other less tangible assets "This relief may, however, be claimable in terms of the unfair labour practice," she says

Dancaster says the breadth of the court's unfair labour practice jurisdiction means it can find that sexual harassment fits the definition without needing to rule that it amounts to sexual discrimination.

BYLAE

I Korting-item	II Tariefpos	Korting-kode	T S	Beskrywing	III Mate van Korting	Annota-sies
410 05				Deur kortingitem 410 05 te skrap		

Opmerking —Die voorsiening vir 'n korting op reg op wyn of drinkbare spiritus vir distilleringsdoeleindes word ingetrek

SCHEDULE

I Rebate Item	II Tariff Heading	Rebate Code	C D	Description	III Extent of Rebate	Annota-tions
410 05				By the deletion of rebate item 410 05		

Note —The provision for a rebate of duty on wine or potable spirits for distillation purposes is withdrawn

DEPARTEMENT VAN JUSTISIE

No. R. 161 **10 Januarie 1992**

REELS KRAGTENS ARTIKEL 17A (7) VAN DIE WET OP ARBEIDSVERHOUDINGE, 1956 (WET No 28 VAN 1956), MET BETREKKING TOT DIE VOER VAN VERRIGTINGE IN DIE ARBEIDSAPPÈLHOF

Die Minister van Justisie het kragtens artikel 17A (7) van die Wet op Arbeidsverhoudinge, 1956 (Wet No 28 van 1956), na oorleg met die Minister van Mannekrag, wat oorleg gepleeg het met die Reelsraad wat by artikel 17 (22) van genoemde Wet ingestel is, die reels in die Bylae gemaak

BYLAE

REELS MET BETREKKING TOT DIE VOER VAN VERRIGTINGE IN DIE ARBEIDSAPPELHOF

Woordomskrywing

1 In hierdie reels het 'n woord of uitdrukking waaraan 'n betekenis in die Wet of die reels uitgevaardig kragtens artikel 43 van die Wet op die Hooggeregshof, 1959 (Wet No 59 van 1959), gelees met artikel 6 (3) van die Wet op die Reëlsraad vir Geregshowe, 1985 (Wet No 107 van 1985), geheg word, die betekenis aldus daaraan geheg, en tensy uit die samehang anders blyk, beteken—

"appèl" 'n appel bedoel in artikel 17 (21A) van die Wet,

"dag" 'n hofdag,

"die Wet" die Wet op Arbeidsverhoudinge, 1956 (Wet No 28 van 1956),

"griffier", met betrekking tot die arbeidsappelhof, die griffier bedoel in artikel 17A (6) van die Wet

Appèlle

2 (1) 'n Appèl moet binne 40 dae na die datum van aantekening daarvan voortgesit word, by ontstentenis waarvan die appèl by verstryking van genoemde tydperk verval, in welke geval 'n respondent die reg het om 'n bevel vir sy verkwiste koste te vra

(2) Die voortsetting van 'n appèl bring *ipso facto* die voortsetting van 'n aangetekende teenappel teweeg

(3) (a) Indien 'n teenappèl aangeteken is en die appel verval, verval die teenappel ook, tensy 'n datum vir die aanhoring daarvan binne 20 dae na die datum van verval van die appel by die griffier aangevra word

DEPARTMENT OF JUSTICE

No. R. 161 (165) **10 January 1992**

RULES IN TERMS OF SECTION 17A (7) OF THE LABOUR RELATIONS ACT, 1956 (ACT No 28 OF 1956), REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE LABOUR APPEAL COURT

The Minister of Justice has, under section 17A (7) of the Labour Relations Act, 1956 (Act No 28 of 1956), after consultation with the Minister of Manpower, who consulted the Rules Board established by section 17 (22) of the said Act, made the rules in the Schedule

SCHEDULE

RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE LABOUR APPEAL COURT

Definitions

1 In these rules a word or expression to which a meaning has been assigned in the Act or the rules promulgated under section 43 of the Supreme Court Act, 1959 (Act No 59 of 1959), read with section 6 (3) of the Rules Board for Courts of Law Act, 1985 (Act No 107 of 1985), shall bear the meaning so assigned to it and unless the context otherwise indicates—

"appeal" means an appeal referred to in section 17 (21A) of the Act,

"day" means a court day,

"registrar", with reference to the labour appeal court, means the registrar referred to in section 17A (6) of the Act,

"the Act" means the Labour Relations Act, 1956 (Act No 28 of 1956)

Appeals

2 (1) An appeal shall be prosecuted within 40 days after the date of noting thereof, failing which the appeal shall lapse after the expiry of the said period, in which event a respondent shall have the right to apply for an order for his wasted costs

(2) The prosecution of an appeal shall *ipso facto* operate as the prosecution of any cross-appeal which has been noted

(3) (a) If a cross-appeal has been noted and the appeal lapses, the cross-appeal shall also lapse, unless application for a date of hearing thereof is made to the registrar within 20 days after the date of the lapsing of the appeal

(b) Die hof waarna geappelleer word, kan op aansoek van die appellant of teenappellant en by aanvoering van goeie gronde 'n appel of teenappel wat verval het, terugplaas

(4) (a) 'n Appellant moet binne 30 dae na aantekening van appèl 'n kennisgewing aflewer waarin sy volledige woon- en posadres en die adres van sy prokureur, indien hy verteenwoordig word, vervat is en waarin hy die griffier versoek om 'n datum van aanhoring van die appèl te bepaal

(b) By ontstentenis van 'n in paragraaf (a) bedoelde aanvraag kan die respondent te eniger tyd voor verstryking van die in subreel (1) bedoelde tydperk op dergelike wyse 'n datum van aanhoring van appèl aanvra

(c) By ontvangs van 'n in paragraaf (a) of (b) bedoelde aanvraag deur die griffier word die appel by die toepassing van hierdie reels geag behoorlik voortgesit te wees

(d) 'n Aanvraag by die griffier soos in paragraaf (a) of (b) bedoel, moet van drie afskrifte van die betrokke oorkonde vergesel gaan

(5) (a) 'n Party wat 'n appel wil teenstaan, moet binne 15 dae na die datum van aflewering van die in subreel (4) (a) of (b) bedoelde aanvraag die griffier en die ander partye van 'n kennisgewing voorsien wat 'n adres bevat waar so 'n party enige dokument betreffende die appèl of 'n afskrif daarvan sal aanvaar Met dien verstande dat indien 'n party in gebreke bly om so 'n adres aldus te voorsien, dit nie nodig sal wees om so 'n dokument of 'n afskrif daarvan aan so 'n party te verskaf nie, tensy die arbeidsappelhof anders beveel

(b) Die aansoeker moet binne 10 dae na verstryking van die in paragraaf (a) bedoelde tydperk 'n afskrif van die oorkonde aan alle partye wat aan die bepalings van paragraaf (a) voldoen het, verskaf

(c) Enige dokument betreffende die appèl, of 'n afskrif daarvan, wat ingevolge hierdie reels verskaf moet word aan 'n party wat aan die bepalings van paragraaf (a) voldoen het, moet na die in paragraaf (a) bedoelde adres gestuur word

(6) (a) By ontvangs van 'n in subreel (4) bedoelde aanvraag moet die griffier in oorleg met die betrokke Regter-president 'n datum van aanhoring van die appel bepaal, welke datum minstens 40 dae na die datum van ontvangs van so 'n aanvraag moet wees, tensy alle partye by die appel skriftelik tot 'n vroeer datum toestem Met dien verstande dat die griffier nie stappe doen om 'n datum van aanhoring te bepaal alvorens daar na sy oordeel voldoen is aan die bepalings van subreel (8), gelees met subreels (4) (d) en (9) (a) en (b) (i) en (ii), nie

(b) Die griffier moet die betrokke aansoeker om 'n datum onverwyld, na bepaling van 'n datum van aanhoring van die appel, skriftelik kennis van die datum gee

(c) Die aansoeker moet onverwyld na ontvangs van 'n in paragraaf (b) bedoelde kennisgewing 'n kennisgewing van terrolleplasing aan die griffier en aan die partye wat aan die bepalings van subreel (5) (a) voldoen het, verskaf

(7) 'n Terrolleplasing van 'n appel bring *ipso facto* die terrolleplasing van 'n teenappel teweeg, en omgekeerd

(b) The court to which the appeal is made may, on application of the appellant or cross-appellant, and upon good cause shown, reinstate an appeal or cross-appeal which has lapsed

(4) (a) An appellant shall, within 30 days after noting an appeal, deliver a notice in which his full residential and postal address and the address of his attorney, if he is represented, are contained and in which he requests the registrar to determine a date for the hearing of the appeal

(b) In the absence of a request referred to in paragraph (a) the respondent may, at any time before the expiry of the period referred to in subrule (1), request in a like manner the determination of a date for the hearing of the appeal

(c) Upon receipt by the registrar of a request referred to in paragraph (a) or (b) the appeal shall, for the purposes of these rules, be deemed to have been duly prosecuted

(d) A request to the registrar referred to in paragraph (a) or (b) shall be accompanied by three copies of the record concerned

(5) (a) A party who wishes to oppose an appeal shall, within 15 days after the date of delivery of the request referred to in subrule (4) (a) or (b), provide the registrar and the other parties with a notice which contains an address at which such party will accept any document concerning the appeal or a copy thereof Provided that if a party fails to so provide such an address it shall not be necessary to furnish any such document or a copy thereof to such party unless the labour appeal court orders otherwise

(b) The applicant shall, within 10 days after expiry of the period referred to in paragraph (a), furnish a copy of the record to all parties who have complied with the provisions of paragraph (a)

(c) Any document concerning the appeal, or a copy thereof, which in terms of these rules shall be furnished to a party who has complied with the provisions of paragraph (a) shall be forwarded to the address referred to in paragraph (a)

(6) (a) Upon receipt of a request referred to in subrule (4) the registrar shall, in consultation with the Judge President concerned, determine a date for the hearing of the appeal, which date shall be at least 40 days after the date of receipt of such request, unless all parties to the appeal consent in writing to an earlier date Provided that the registrar shall not take steps to determine a date of hearing until in his opinion the provisions of subrule (8) read with subrules (4) (d) and (9) (a) and (b) (i) and (ii) have been complied with

(b) The registrar shall forthwith, after determining a date for the hearing of the appeal, give the applicant for a date concerned written notice of that date

(c) The applicant, after receipt of a notice referred to in paragraph (b), shall forthwith furnish the registrar and the parties who have complied with the provisions of subrule (5) (a) with a notice of set-down

(7) A notice of set-down of an appeal shall *ipso facto* operate as a set-down of any cross-appeal, and *vice versa*

(8) (a) Die in subreel (4) (d) bedoelde oorkonde, wat van 'n inhoudsopgawe voorsien moet wees, moet 'n juiste en volledige weergawe van die pleitstukke en die getuienis en van alle dokumente wat vir die beregting van die appel nodig is, bevat

(b) Elke afskrif van die oorkonde moet—

(i) duidelik met dubbele spasiëring op A4-standaard papier getik of gedruk wees,

(ii) gepagineer wees en elke tiende reel op elke bladsy moet genommer wees, en

(iii) as juis gesertifiseer wees deur die prokureur of party wat dit indien, of deur die persoon wat die oorkonde voorberei het

(9) (a) Behalwe vir sover dit die meriete van die appèl raak, word afskrifte van getuiedagvaardigings, kennisgewings van verhoor, toestemmings tot uitstel, opgawes van dokumente, kennisgewings om bloot te lê of insae toe te laat en ander dokumente van formele aard uit afskrifte van die oorkonde weggelaat, maar 'n lys van sodanige dokumente moet bygevoeg word

(b) (i) Met die skriftelike instemming van al die partye by die appel kan enige bewysstuk of ander gedeelte van die oorkonde wat nie op die geskilpunt op appèl betrekking het nie, uit afskrifte van die oorkonde weggelaat word

(ii) Indien 'n bewysstuk of ander gedeelte van 'n oorkonde aldus uit 'n afskrif daarvan weggelaat word, moet bedoelde skriftelike instemming die onvolledige afskrifte van die oorkonde wat by die griffier ingedien word, vergesel

(iii) Ondanks die bepalings van subparagrawe (i) en (ii) kan die hof wat die appèl aanhoor, te eniger tyd die oorspronklike volledige oorkonde aanvra en kennis neem van alles wat daarin voorkom.

(10) (a) 'n Appellant moet minstens 15 dae voor die datum van aanhoring van 'n appèl 'n bondige opgawe van die hoofpunte wat hy op appel wil aanvoer, tesame met 'n lys van die bronne wat ter stawing van elke punt aangehaal sal word, aan die griffier en alle partye wat aan die bepalings van subreel (5) (a) voldoen het, verskaf Met dien verstande dat twee addisionele afskrifte van die opgawe en lys in die geval van die griffier verskaf moet word

(b) 'n Respondent moet minstens 10 dae voor die datum van aanhoring van 'n appèl 'n dergelike opgawe en lys van bronne aan die griffier, die appellant en al die ander partye wat aan die bepalings van subreel (5) (a) voldoen het, verskaf Met dien verstande dat twee addisionele afskrifte van die opgawe en lys in die geval van die griffier verskaf moet word.

Dringende appèlle

3. Ondanks die bepalings van hierdie reels en ongeag die datums bepaal vir die aflewering van die stukke in reel 2 (10) bedoel, kan die Regter-president van die Provinsiale Afdeling van die Hooggeregshof wat regsbevoegdheid het in die afdeling waarvoor 'n arbeidsappelhof ingestel is of 'n regter wat in die algemeen of vir 'n bepaalde geval deur sodanige Regter-president vir die betrokke doel aangewys is, op aansoek van 'n party wat by 'n appèl betrokke is en na aanhoor van die ander betrokke partye, gelas dat 'n voogenome appel as 'n dringende aangeleentheid behandel word en beveel dat dit afgehandel word op die tyd en wyse wat hy goeddink

(8) (a) The record referred to in subrule (4) (d), which shall be provided with an index, shall contain a correct and complete reproduction of the pleadings and the evidence, and of all documents necessary for the hearing of the appeal

(b) Every copy of the record—

(i) shall be clearly typed or printed in double spacing on A4 standard paper;

(ii) shall be paginated and every tenth line on each page shall be numbered, and

(iii) shall be certified as correct by the attorney or party lodging the same or by the person who prepared the record.

(9) (a) Save in so far as it affects the merits of the appeal, copies of subpoenas, notices of trial, consents to postponements, schedules of documents, notices to produce or to permit inspection and other documents of a formal nature shall be omitted from copies of the record, but a list of such documents shall be included in the record

(b) (i) With the written consent of all the parties to the appeal any exhibit or other portion of the record which does not relate to the question at issue in an appeal may be omitted from copies of the record.

(ii) If an exhibit or other portion of a record is so omitted from a copy thereof the said written consent shall accompany the incomplete copies of the record which is lodged with the registrar

(iii) Notwithstanding the provisions of subparagraphs (1) and (ii) the court hearing the appeal may at any time request the original complete record and take cognizance of everything appearing therein

(10) (a) An appellant shall, not less than 15 days before the date on which an appeal is heard, furnish the registrar and all parties who have complied with the provisions of subrule (5) (a) with a concise statement of the main points which he intends to argue on appeal, together with a list of the authorities to be cited in support of each point· Provided that two additional copies of the statement and list shall be furnished in the case of the registrar

(b) A respondent shall, not less than 10 days before the date on which the appeal is heard, furnish the registrar, the appellant and all the other parties who have complied with the provisions of subrule (5) (a) with a similar statement and list of authorities Provided that two additional copies of the statement and list shall be furnished in the case of the registrar

Urgent appeals

3 Notwithstanding the provisions of these rules and regardless of the dates for the delivery of the documents referred to in rule 2 (10), the Judge President of the Provincial Division of the Supreme Court having jurisdiction in the division for which a labour appeal court was established or a judge who has, for the purpose concerned, been appointed either generally or in a particular case by such Judge President may, upon application from a party to the appeal and after hearing the other parties to the appeal, direct that a proposed appeal be dealt with as an urgent matter and order that it be disposed of at such time and in such manner as he may deem fit

Algemene bepaling

4 Vir sover hierdie reels nie in verband met 'n appèl vir 'n besondere aangeleentheid voorsiening maak nie, is die reels uitgevaardig kragtens artikel 43 van die Wet op die Hooggeregshof, 1959 (Wet No 59 van 1959), gelees met artikel 6 (3) van die Wet op die Reelsraad vir Geregshowe, 1985 (Wet No 107 van 1985), behoudens die ander bepalings van hierdie reels en die bepalings van die Wet, *mutatis mutandis* op die aangeleentheid van toepassing

Inwerkingtreding

5 Hierdie reels tree op 17 Januarie 1992 in werking

General provision (165)

4 In so far as these rules do not, in connection with an appeal, make provision for any specific matter, the rules promulgated in terms of section 43 of the Supreme Court Act, 1959 (Act No 59 of 1959), read with section 6 (3) of the Rules Board for Courts of Law Act, 1985 (Act No 107 of 1985), shall, subject to the other provisions of these rules and the provisions of the Act, be *mutatis mutandis* applicable

Coming into operation

5 These rules shall come into operation on 17 January 1992.

DEPARTEMENT VAN LANDBOU

No. R. 244 **10 Januarie 1992**

BEMARKINGSWET, 1968 (WET No 59 VAN 1968)

AARTAPPELSKEMA HEFFING EN SPESIALE HEFFING WYSIGING

Ek, André Isak van Niekerk, Minister van Landbou, maak hierby ingevolge artikel 79 van die Bemarkingswet, 1968 (Wet No 59 van 1968), bekend dat—

(a) die Aartappelraad bedoel in artikel 6 van die Aartappelskema gepubliseer by Goewermentskennisgewing No R. 2400 van 25 November 1988, soos gewysig, kragtens artikel 27 van genoemde Skema die Bylae by Goewermentskennisgewing No R 120 van 27 Januarie 1989, soos gewysig, verder gewysig het in die mate in die Bylae hierby uiteengesit, en

(b) genoemde wysiging deur my goedgekeur is en op die datum van publikasie hiervan in werking tree

A. I. VAN NIEKERK,
Minister van Landbou

BYLAE

Die Bylae by Goewermentskennisgewing No R 120 van 27 Januarie 1989, soos gewysig by Goewermentskennisgewings Nos R 851 van 28 April 1989, R 155 van 26 Januarie 1990, R 3015 van 28 Desember 1990 en R 3178 van 27 Desember 1991, word hierby verder gewysig deur klousule 3 deur die volgende klousule te vervang

"Bedrag van heffing en spesiale heffing

3 Die bedrag van die heffing en spesiale heffing in klousule 2 bedoel, is onderskeidelik 8,3c (BTW ingesluit) per 10 kg-aartappels en 1,7c (BTW ingesluit) per 10 kg-aartappels "

DEPARTMENT OF AGRICULTURE

No. R. 244 **10 January 1992**

MARKETING ACT, 1968 (ACT No 59 OF 1968)

POTATO SCHEME LEVY AND SPECIAL LEVY AMENDMENT

I, André Isak van Niekerk, Minister of Agriculture, hereby make known in terms of section 79 of the Marketing Act, 1968 (Act No 59 of 1968), that—

(a) the Potato Board referred to in section 6 of the Potato Scheme published by Government Notice No. R 2400 of 25 November 1988, as amended, has under section 27 of the said Scheme further amended the Schedule to Government Notice No R 120 of 27 January 1989, as amended, to the extent set out in the Schedule hereto, and

(b) the said amendment has been approved by me and shall come into operation on the date of publication hereof.

A. I. VAN NIEKERK,
Minister of Agriculture

SCHEDULE

The Schedule to Government Notice No R 120 of 27 January 1989, as amended by Government Notices Nos R 851 of 28 April 1989, R 155 of 26 January 1990, R 3015 of 28 December 1990 and R 3178 of 27 December 1991, is hereby further amended by the substitution for clause 3 of the following clause

"Amount of levy and special levy

3. The amount of the levy and special levy referred to in clause 2 shall be 8,3c (VAT included) per 10 kg of potatoes and 1,7c (VAT included) per 10 kg of potatoes respectively."

DEPARTEMENT VAN MANNEKRAG

No. R. 167 **10 Januarie 1992**

WET OP ARBEIDSVERHOUDINGE, 1956

ELEKTROTEGNIESE NYWERHEID, OOS-LONDEN HERNUWING VAN HOOFOOREENKOMS

Ek, Donald Charles Moody, Direkteur· Arbeidsverhoudinge, behoorlik daartoe gemagtig deur die Minister van Mannekrag, verklaar hierby, kragtens artikel 48 (4) (a) (ii) van die Wet op Arbeidsverhoudinge, 1956, dat die bepalings van Goewermentskennisgewings R 1749 van 17 Augustus 1984, R 1363 van 21

DEPARTMENT OF MANPOWER

No. R. 167 **10 January 1992**

LABOUR RELATIONS ACT, 1956

ELECTRICAL INDUSTRY, EAST LONDON· RENEWAL OF MAIN AGREEMENT

I, Donald Charles Moody, Director Labour Relations, duly authorised thereto by the Minister of Manpower, hereby, in terms of section 48 (4) (a) (ii) of the Labour Relations Act, 1956, declare the provisions of

BRANDMERKE OORGEDRA • BRANDS TRANSFERRED

Brandmerke Brands	Oorgedra van (naam van vorige eienaar) Transferred from (name of previous owner)	Oorgedra na (naam van nuwe eienaar) Transferred to (name of new owner)	Adres van persoon aan wie oorgedra Address of person to whom transferred	Datum van oordrag Date of transfer
VQS	Stopforth, J L	Van Zyl, G J N	Hooikraal, Posbus 795, Ellisras, 0555	1991-11-12
ƎTJ	Thuynsma, J C	Pretorius, J	Posbus 343, Bronkhorstspruit, 1020	1991-11-14

(17 Januarie 1992)/(17 January 1992)

KENNISGEWING 33 VAN 1992

DEPARTEMENT VAN HANDEL EN NYWERHEID

Hiermee word kennis gegee dat die volgende promesse uitgereik deur die Departement van Handel en Nywerheid aan **Brixton Wholesale Meat Supply (Pty) Ltd** soos hieronder uiteengesit, verlore geraak het

Promesse uitgereik aan Brixton Wholesale Meat Supply (Pty) Ltd

Promesse No	Uitreikingsdatum	Vervaldatum	Sigwaarde (R)
3535	89-02-03	91-02-02	80 760

Na datum van publikasie word bogenoemde promesse as gekanselleer beskou Indien die promesse gevind sou word, moet dit asseblief aan die Departement van Handel en Nywerheid, Privaatsak X84, Pretoria, 0001, teruggestuur word

(17 Januarie 1992)

NOTICE 33 OF 1992

DEPARTMENT OF TRADE AND INDUSTRY

Notice is hereby given that the following promissory note issued by the Department of Trade and Industry to **Brixton Wholesale Meat Supply (Pty) Ltd** as set hereunder, has been mislaid

Promissory note issued to Brixton Wholesale Meat Supply (Pty) Ltd

Promissory Note No	Date of issue	Due date	Face value (R)
3535	89-02-03	91-02-02	80 760

The above-mentioned promissory note will after the date of publication be regarded as cancelled Should the promissory note be retrieved, it must please be returned to the Department of Trade and Industry, Private Bag X84, Pretoria, 0001

(17 January 1992)

KENNISGEWING 34 VAN 1992

DEPARTEMENT VAN MANNEKRAG

WET OP ARBEIDSVERHOUDINGE, 1956

VERWYSING VIR VASSTELLING INGEVOLGE ARTIKEL 76

Hierby word ingevolge artikel 76 (5) van die Wet op Arbeidsverhoudinge, 1956, bekendgemaak dat die werkgewer Entumeni Sugar Milling CC, van Ntumeni, Natal, kragtens artikel 76 (3) gelees met artikel 76 (1) van gemelde Wet die volgende vrae vir vasstelling na die Nywerheidshof verwys het

(a) Of die werkgewer Dudley Brian Harborth betrokke is of was by 'n boerderybedrywigheid in die landdrosdistrik Eshowe, en

(b) of bogenoemde bedrywigheid van plaasbestuurder en van adviseur vir ander plaasboere onder 'n plaasbedrywigheid ressorteer of geressorteer het

Belanghebbendes word hierby versoek om skriftelike vertoe in verband met die saak by die Nywerheidshof in te dien Sodanige vertoe, in drievoud, moet binne drie weke na die datum van publikasie hiervan by die Griffier, Nywerheidshof, Privaat Sak X54312, Durban, 4000, ingedien word

J. H. KRUGER,
Griffier

(17 Januarie 1992)

NOTICE 34 OF 1992

DEPARTMENT OF MANPOWER

LABOUR RELATIONS ACT, 1956

REFERENCE FOR DETERMINATION IN TERMS OF SECTION 76

It is hereby, in terms of section 76 (5) of the Labour Relations Act, 1956, notified that the employer Entumeni Sugar Milling CC, of Ntumeni, Natal, has, in terms of section 76 (3) read with section 76 (1) of the said Act, referred the following questions to the Industrial Court for determination

(a) Whether the employee, Dudley Brian Harborth, is or was engaged in a farming operation within the Magisterial District of Eshowe, and

(b) whether the above-mentioned activity of being a farm manager and an adviser to other farmers falls or fell within a farming operation,

Interested parties are hereby invited to submit written representations to the Industrial Court in regard to the matter Such representations must be lodged with the Registrar, Industrial Court, Private Bag X54312, Durban, 4000, in triplicate within three weeks of the date of publication hereof

J. H. KRUGER,
Registrar

(17 January 1992)

S/Day 28/1/92

(165)

Ruling 'hits business'

THE Industrial Court ruling that a retail company cannot sell or close any of its shops before properly consulting a union will make it difficult to run a business, Checkers MD Sergio Martinengo says.

He was reacting to the court's ruling on Friday in which it held that Checkers should "properly consult" the SA Catering, Commercial and Allied Workers' Union before selling or closing any of its supermarkets

Saccawu brought an urgent application last Thursday to prevent Checkers from retrenching 34 union members.

Union wins ruling against store

THE Industrial Court ruling that a company cannot sell any of its shops before consulting with the union will make it difficult to run a business, says Checkers managing director Mr Sergio Martinengo.

Martinengo was reacting to the court ruling last Friday that Checkers should consult properly with the SA Catering, Commercial and Allied Workers' Union before selling or closing any of its shops

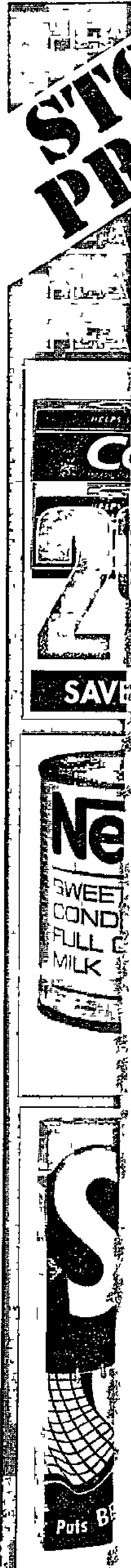
Saccawu brought an urgent application last Thursday to prevent the company from retrenching 34 union members

In a statement yesterday the union charged that Checkers had announced that three of its branches, in Roodepoort, Bethlehem and Fleurdal, would be closed or sold

Martinengo said only the Roodepoort store had been sold, but that the Bethlehem and Fleurdal branches were still operating There were plans, however, to close them

He denied the union claim that Checkers planned to close or sell 100 of its 169 stores, and said a total of only 12 stores would be affected

He said some of the workers affected by the closure had been absorbed into other branches of the group, but that those who could not be placed had not been retrenched - *Sapa*



LABOUR LAW (165) FM 31/1/92

Not up their street

When should a company tell the union that a change of ownership which could affect the employment relationship is in the offing? Furthermore, what exactly is meant by "full and proper consulation"?

These are key questions for business following the Industrial Court ruling last week that Checkers must "properly consult" the SA Commercial, Catering and Allied Workers' Union (Saccawu) before it can sell or shut down any of its stores

It is established in labour law that, where jobs are at stake and there is knowledge of this, the company has a duty to "consult" the union in question It is part of good-faith bargaining, though it might seem an infringement of a fundamental right in common law — that is, the right to dispose of one's property as one sees fit.

One problem with last week's finding by Mohammed Bulbulia, a permanent member of the Industrial Court, is that he gave no reasons with it, these were expected to be delivered later this week. The ruling was made in terms of section 17 of the Labour Relations Amendment Act, which provides for urgent interim relief, pending a fuller hearing under section 43, which can take up to four months

In Checkers' case, that could mean having to keep paying more than 30 workers who are sitting at home, since the (closed) Roodepoort store in question was due to be taken over by new owners at the end of January

The union sought an urgent application last weekend to prevent, it said, 34 members being laid off at the end of this month A union spokesman apparently explained that when Pepkor took control of Checkers, it had told the union that members' working conditions would not change

That, though, seems less relevant than the question of when, precisely, the union was informed that the company might close one (or more) of its stores

A source close to Checkers — which is outraged by the court's decision — says that the union was notified, late December, that the company was closing the Roodepoort store and had started relocating employees The union, over four meetings, refused to cooperate While those consultations were underway, the company sold the store because the lease was up for renewal The union was informed of this, says the source, adding that, from Checkers' point of view, it complied with guidelines on retrenchment.

The implications of the ruling as it stands, says the source, are enormous — especially in the highly competitive retail trade For example, the duty to consult could well affect business if competitors know that a store

continued

FM 31/1/92

is due to be closed Such sensitive commercial negotiations cannot be carried on in a public manner, he says

Meanwhile, the company's lawyers have asked urgently to be given the reasons for this unprecedented ruling, with a view to taking it on review at the Labour Appeal Court Checkers is also trying to find alternative jobs for the 34 employees — 26 of their colleagues had already been placed elsewhere (165)

The interesting point at issue, which should emerge when the court gives its reasons, is the question of when the union should be informed of a change of ownership, says Pat Stone, of Andrew Levy & Associates This is because of the implications it could hold for ownership changes in liquidations or mergers, for example, when secrecy may be important to safeguard the transaction ■

KENNISGEWING 91 VAN 1992

DEPARTEMENT VAN MANNEKRAG

WET OP ARBEIDSVERHOUDINGE, 1956

VERWYSING VIR VASSTELLING INGEVOLGE ARTIKEL 76

Hierby word ingevolge artikel 76 (5) van die Wet op Arbeidsverhoudinge, 1956, bekendgemaak dat die werkgewer Entumeni Sugar Milling CC, van Ntumeni, Natal, kragtens artikel 76 (3) gelees met artikel 76 (1) van gemelde Wet die volgende vrae vir vasstelling na die Nywerheidshof verwys het.

(a) Of die werknemer Dudley Brain Harborth betrokke is of was by 'n boerderybedrywigheid in die landdrosdistrik Eshowe, en

(b) of die bedrywigheid van plaasbestuurder en van adviseur vir ander plaasboere onder 'n plaasbedrywigheid ressorteer of geressorteer het

Belanghebbendes word hierby versoek om skriftelike vertoe in verband met die saak by die Nywerheidshof in te dien Sodanige vertoe, in drievoud, moet binne drie weke na die datum van publikasie hiervan by die Griffier, Nywerheidshof, Privaat Sak X54312, Durban, 4000, ingedien word

J. H. KRUGER,

Griffier.

(31 Januarie 1992)

KENNISGEWING 92 VAN 1992

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT VOLDOEN AAN PARAGRAAF (a) VAN GOEWERMENTSKENNISGEWING No R 936 VAN 24 APRIL 1991 EN DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GENOEMDE GOEWERMENTSKENNISGEWING VERSTREK HET

Die Direkteur-generaal Justisie maak hierby vir algemene inligting, in die Bylae hiervan, bekend die name van persone—

(a) wat lede van die African National Congress is, of wat, in die geval van persone wat nie sodanige lede is nie, die beginsels van vreedsame oplossings en ontwikkeling ooreenkomstig paragraaf (a) van Goewermentskennisgewing No. R. 936 van 24 April 1991 onderskryf het, en

(b) wat die inligting bedoel in paragraaf (b) van genoemde Goewermentskennisgewing volledig verstrek het,

vir sover sodanige onderskrywing en inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing aan elke sodanige persoon ten opsigte van enige handeling bedoel in paragraaf (c) van genoemde Goewermentskennisgewing. 'n Lys van die spesifieke handelinge ten opsigte waarvan vrywaring deur elke sodanige persoon verwerf is, is vir inspeksie beskikbaar in die Kantoor van die Direkteur-generaal Justisie

NOTICE 91 OF 1992

DEPARTMENT OF MANPOWER

LABOUR RELATIONS ACT, 1956

REFERENCE FOR DETERMINATION IN TERMS OF SECTION 76

It is hereby, in terms of section 76 (5) of the Labour Relations Act, 1956, notified that the employer, Entumeni Sugar Milling CC, of Ntumeni, Natal, has, in terms of section 76 (3) read with section 76 (1) of the said Act, referred the following questions to the Industrial Court for determination:

(a) Whether the employee, Dudley Brain Harborth, is or was engaged in a farming operation within the Magisterial District of Eshowe; and

(b) whether the activity of being a farm manager and an adviser to other farmers falls or fell within a farming operation.

Interested parties are hereby invited to submit written representations to the Industrial Court in regard to the matter Such representations must be lodged with the Registrar, Industrial Court, Private Bag X54312, Durban, 4000, in triplicate within three weeks of the date of publication hereof.

J. H. KRUGER,

Registrar

(31 January 1992)

NOTICE 92 OF 1992

DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO HAVE COMPLIED WITH PARAGRAPH (a) OF GOVERNMENT NOTICE No R 936 OF 24 APRIL 1991 AND WHO HAVE FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF THE SAID GOVERNMENT NOTICE

The Director-General Justice hereby makes known for general information, in the Schedule hereto, the names of persons—

(a) who are members of the African National Congress, or who, in the case of persons who are not such members, in terms of paragraph (a) of Government Notice No. R. 936 of 24 April 1991 subscribed to the principles of peaceful solutions and development, and

(b) who have furnished the information referred to in paragraph (b) of the said Government Notice in full,

in so far as such subscription and information relate to the granting of indemnity in terms of the said Government Notice to each such person in respect of any act referred to in paragraph (c) of the said Government Notice A list of the specific acts in respect of which indemnity has been acquired by each such person is available for inspection at the Office of the Director-General Justice

LABOUR

Checkers in landmark ruling

By FERIAL HAFFAJEE

A LANDMARK judgment in the Industrial Court compels Checkers to negotiate all store closures with the South African Commercial Catering and Allied Workers' Union.

It seems the ruling, which was made last week after Saccawu launched an urgent application to prevent Checkers from retrenching 34 workers, arose from a misunderstanding.

Saccawu says Checkers undertook not to retrench any workers after it was bought out by Pepkor in November last year. Checkers managing director Sergio Martinengo says the workers were going to be retrenched due to rationalisation measures long before the buy-out.

"According to our recognition and retrenchment agreements with the union, everything was done properly," he adds.

Checkers is likely to seek an urgent review of the judgment and still plans to close 12 stores.

The takeover of Checkers has been dogged by controversy since its inception.

When the announcement of the buy-out was made public last November, workers at some stores picketed against retrenchments, there were reports of some wildcat strikes and the union threatened legal action.

Scurried negotiations won a promise from the company that "there would not be a change in the working conditions of Saccawu members".

Yet, according to the union, workers at one of the stores threatened with closure were issued with notice that their contracts would expire on January 25.

Saccawu's legal officer, Rosaling Nyman, says: "The implication of the judgment is that a company cannot sell a store during or even before consultations with the union".

The ruling comes at a time of mass closures and retrenchments and will have serious ramifications for industry generally.

It also comes at a time when Checkers needs it least as it battles to keep its head above water. Last year, the company lost R8,3-million and about 40 of its stores are in the red, while 10 of its warehouses are unprofitable.

Pact workers won't give an inch

EMPLOYEES of the Performing Arts Council of the Transvaal (Pact), unfairly dismissed in 1990, this week refused to be evicted from the houses which have been repossessed because they cannnot pay their bonds.

Thirty-five of the 300 unfairly dismissed workers have had their Mamelodi houses repossessed by Saambou and other financial institutions.

The banks agreed not to repossess the houses, or transfer them out of the names of the owners, pending the outcome of the workers' Industrial Court case against Pact.

In September last year the Industrial Court found the workers had been unfairly dismissed and ordered Pact to reinstate them and give them six months back-pay

The workers, members of the Paper, Printing, Wood and Allied Workers Union, thought the threat to their houses was over They intended to start repaying their bonds and negotiate with the banks about the arrears

Their hopes were dashed when Pact decided to take the Industrial Court decision on appeal

Meanwhile, most of the houses have been repossessed by the banks and in some cases, the houses have been resold and eviction notices served

PPWAWU General Secretary Sipho Kubheka this week criticised Pact for trying to intimidate its employees

"Even after winning the Industrial Court case, our members have had no relief It is scandalous that a state-linked employer like Pact should treat its employees like this," Kubheka said.

The workers now refuse to leave their homes

The Mamelodi Civic Association also supports their stand.

MCA media officer Pasty Molefe says the civic will take action to prevent people from being forcefully evicted.

Pact director Louis Bezuidenhout told City Press there was nothing Pact could do because they also faced financial difficulties

"Lawyers for the union suggested that Pact pay the bonds until the outcome of the appeal, but this is impossible as we do not have the money," said Bezuidenhout

"There is nothing we can do until the outcome of the appeal We keep approaching the Industrial Court for a date, but we haven't heard anything yet," he said

For one homeowner there was a sigh of relief on Friday when the Perm agreed not to auction his home.

After City Press explained the situation to Perm on Thursday, they agreed to postpone the sale in execution of Silas Mathebula's home until the outcome of the appeal in the Industrial Court

City Press put a series of questions to Saambou, but had not received a reply at the time of going to press

Readers' Hotline

Helping you with your problems

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City Press 2/2/92

165

More fight sackings in court

By CHARLENE SMITH

DISMISSAL cases before the Industrial Court and the Labour Appeal Court more than doubled in the second half of last year.

Increasing numbers of senior management employees are taking their dismissals before the industrial court. While the most common reason for the dismissal of blue collar workers is "misconduct", it is "incompetence" for senior staff

Figures released by Van Zyl, Rudd and Associates in a series of nationwide labour law seminars which began last week show that in the first half of last year there were 62 Industrial Court cases. In the second half of the year, the court's case load had increased to 105 cases

The Labour Appeal Court workload soared from five in the first half of 1991 to 18 in the second half.

In a major change of attitude, the Industrial Court indicated that mass dismissals as a result of stayaways, could be legally contested in future.

The Industrial Court said "the fact that a stayaway is politically motivated does not release an employer from the obligation of holding proper disciplinary inquiries .. en masse dismissals, without individual inquiries, may justifiably be seen as political retaliatory action by the employer against stayaways as such, apart from being unfair to the employee".

Insubordination was not viewed lightly by the courts, which had also held that it was legitimate for employers to isolate those inciting strikes for disciplinary action.

Failure of employees to obey safety regulations was also viewed in a serious light The court said that, "where the failure to obey any reasonable and lawful job instruction or safety rule or regulation was both serious and deliberate, the employee may be said to have repudiated his employment contract and it was competent for his employer to dismiss him". S1 Times 9/2/92

A white collar employee was no less entitled to receive a fair hearing than lower paid contemporaries, the Industrial Court ruled

He must have received warnings, been properly informed of the allegations against him, been given a fair hearing with opportunities to state his case, adequate time to prepare for the hearing and the employer must have attempted to help him rectify his inadequacies.

Union liability not law

GOVERNMENT was not considering introducing legislation to make trade unions liable for their members' actions, Manpower Minister Piet Marais said yesterday in reply to a question tabled in Parliament (165)

It was also not envisaged that amendments would be made to industrial court rules regarding costs of actions before it.

BDay 13/8/92

REPORTS Business Day Reporter, Own Correspondent Sapa, AP-DJ

BUSINESS DAY, Monday, March 30 1992 3

Talks on restructuring NMC

LINDA ENSOR

CAPE TOWN — Employer organisation Saccola will meet Manpower Minister Piet Marais on Wednesday to discuss the restructuring of the National Manpower Commission, Saccola chairman Bokkie Botha said last week

Cosatu and Nactu discussed the commission with Marais a few weeks ago

The takeover of the manpower portfolio by Marais has meant that parties to the talks on the commission's restructuring have had to once again sound out government's views Botha said it appeared a large area of agreement had been reached that the commission be a negotiating body to reach agreements and forward them to the minister, rather than a consultative body to advise him

It would then be necessary for participants to represent their constituencies, rather than being appointed by Marais

While there had been much debate as to how SA's 80 to 100 national employer organisations should be represented, Botha said the current structure was probably the most representative possible, but was still under consideration

The commission's representatives at present come from the Chamber of Mines, Seifsa, Sacob, AHI, the Agricultural Union, Cofesa (which represents public servants and companies in the northern Transvaal), Nafcoc and Fabcos

Regarding the economic forum, Botha said there were wide areas of agreement between employers and trade unions on its constitution Outstanding issues included the two parties' agendas Employers focused on the long-term framework of a future economy, while trade unions had tended to emphasise short-term issues

Botha said the economic forum could be in operation by the end of April.

DIRK HARTFORD reports that Cosatu and Nactu have set up a co-ordinating committee to promote unity between their affiliates, according to Nactu general secretary Cunningham Ngcukana.

In an interview in the SA Labour Bulletin, Ngcukana said Nactu wanted to draw the 250 000-strong Fedsal and other independent unions into the unity process

He said Nactu unions were merging into industrial unions Any union that had not merged before Nactu's congress in October would be expelled

Ngcukana said Nactu and Cosatu were discussing bringing the ANC, PAC and Azapo together as divisions between them had an effect on working relations in the union movement

B/Day 30/3/92

165

LABOUR

State may suspend funding for NMC

By DREW FORREST

GOVERNMENT cost-cutting initiatives have emerged as a threat to the National Manpower Commission, a vital statutory think-tank on labour law.

Government sources said this week an official study of the Manpower Department's infrastructural requirements was under way and that there was a real possibility that funding for the NMC's secretariat might be withdrawn

A possible response would to secure alternative funding through a levy on employers and workers, they said

The news comes as efforts to revamp the NMC move to a climax Last week the employer body Saccola met Manpower Minister Piet Marais on the issue, and sources said Marais was likely to respond within the next fortnight W I Mail 10/4-15/4/92

Last year the commission formally recommended its own restructuring to the government Saccola, the Congress of South African Trade Unions — at that stage an NMC member — and other parties called for it to be reshaped into a negotiating forum representing key actors in the labour field, with a direct Manpower Department role to ensure a single law-framing process

Official sources said the government's response might be critically affected by a policy decision on whether to join forums in general, including the proposed economic negotiating forum Apparently fearing it will concede away its right to rule, and wishing to focus on the Convention for a Democratic South Afric, the state has been resisting negotiations on a range of fronts

Last week Cosatu, Saccola, the South African Chamber of Business and Foundation for African Business and Consumer Services (Fabcos) tabled joint proposals for an economic forum in talks with Economic Co-ordination Minister Derek Keys

Sources said that as the NMC was its statutory advisor, the Manpower Department was unlikely to shun it completely However it might opt for observer status, rather than the more active, albeit non-voting role envisaged in the commission's recommendations

There are two other potential areas of conflict. Cosatu wants a direct relationship between the NMC and parliament, governed by a protocol One implication would that if the minister rejects a consensus recommendation, it would still go to the legislature.

In addition, the NMC proposed a 25-member commission with 10 seats each for employers and labour The government appears to favour a larger body with significantly more independent members

BUSINESS DAY, W

Manpower commission's future lies in the balance

GERALD REILLY

PRETORIA — The existence of the National Manpower Commission is uncertain after it became known that government was reviewing the body's structure and functions

NMC chairman Frans Barker said yesterday the review had two main directions — the commission and its functions, and the size and functions of the secretariat

The basic issue is whether the commission should have a secretariat at all and whether the funding of the NMC should be severely reduced

Barker said if staff and funding were cut the work of the commission would be endangered

The scope of its work would have to be restricted and the question would then arise — could the NMC be funded some other way, for instance by a levy on employers and employees? However, this could meet with resistence from trade unions and employer organisations.

Barker said the work of the commission was virtually suspended The staff, however, were continuing with background investigations into projects identified by the commission at its last meeting last November

Barker said the future of the commission would likely be decided by government at the same time as decisions were taken on the proposed economic forum

The commission was established in 1979 Some of its better known work included investigating amendments to the Labour Relations Act of 1991

Another recent project was an investigation into labour legislation for farm and domestic workers

Sapa reports the secretariat was the lifeblood of the NMC and without it the commission would not be able to develop labour law

Barker also said he was confident that Cosatu and Nactu would rejoin the NMC The two labour movements withdrew from the commission last year saying they could rejoin only if it could be reshaped into a negotiating forum representing key actors in the labour field

Cosatu, Saccola and Sacob recently tabled joint proposals for an economic forum It is envisaged this forum, if accepted, could replace the NMC

NMC funding (165)

NATIONAL Manpower Commission Secretariat acting

WMail 16/4-23/4/92

LABOUR BRIEFS

WMail 16/4-23/4/92

chairman Frans Barker this week reacted strongly to the rumour that the government was planning to withdraw funding from the secretariat. (165)

"The secretariat is the lifeblood of the NMC and without it the commission will not be able to develop labour law," he said.

Barker said he was confident that both the Congress of South African Trade Unions and the National Council of Trade Unions would rejoin the NMC subject to that body's being modified.

Cosatu backs growth strategy

Plans to ease labour law for small business

BDay 21/4/92 (165)

THE National Manpower Commission has recommended the easing of labour laws and regulations applicable to small businesses as part of a strategy to encourage economic growth.

The call for a special dispensation for small business has the support of Cosatu, whose commission representatives have signed the report.

In the report, a summary of which was published in the Government Gazette last week, the commission said a balance between employer and employee interests was "of the utmost importance"

The aim of the investigation, commissioned by the Manpower Ministry in April 1989, was to "stimulate small business development and the creation of employment without detracting from the basic rights of employees"

The commission was therefore opposed to granting small businesses blanket exemptions from labour legislation — including wage-regulating instruments But its recommendations would streamline the process by which they were exempted if they could provide adequate reason for this, and also reduce to a minimum the red tape involved in complying with labour law

Acting commission chairman Frans Barker said yesterday that, while the recommendations were not dramatically far-reaching, he hoped they would encourage a process which would bring more concessions in the future

The initial draft was more drastic, but it had to be adjusted in an effort to seek consensus, he said Not only the unions, but also big business which feared unfair competition, were opposed to comprehensive exemptions for small businesses

The recommendations, if accepted,

ALAN FINE

would apply to "micro businesses" defined as units employing no more than five people with an annual turnover of up to R250 000 measured in 1990 terms They should be independent, and managed and controlled by the owner

The report proposed that each industrial council agreement include a provision stating that its purpose was not to restrict entrepreneurial initiative Where it could be shown that this was occurring, the council could grant exemptions from specific provisions of its agreement. Unless the councils complied with this, or agreed to call for and consider representations from small businesses covered by them, the Minister should refuse to promulagate wage-regulating agreements

As regards the Basic Conditions of Employment Act, the commission proposed the retention of the existing ad hoc system for granting exemptions to the Act's minimum standards, except that a set of guidelines be drafted These guidelines should take into account the nature of the specific business, its size, how long it had been in operation and whether an agreement existed between the employer and employee

The commission proposed that micro businesses and new small businesses (employing, say, up to 20 people) should be automatically exempted from particular provisions of the Act, especially administrative requirements

This should apply not only to industrial council requirements, but also to particular laws For example, there could be rationalisation of the repetitive information which had to be provided in terms of

☐ To Page 2

Small business

(165)

☐ From Page 1

the Unemployment Insurance Act and the Workmen's Compensation Act

The commission recommended that, to lighten their administrative burdens, micro businesses be permitted to pay their Unemployment Insurance, Workmen's Compensation and Industrial Council-imposed social security contributions quarterly or even annually

The report suggested the appointment of a "facilitator" to monitor the exemption process and recommend improvements

The report also proposed a simplified dispute-settling procedure in terms of the Labour Relations Act Greater emphasis should be placed on alternative dispute resolution through mediation and arbitration — subsidised by the state — rather than the normal procedures involving industrial councils, conciliation boards and the Industrial Court BDay 21/4/92

It also proposed that micro businesses be exempted from aspects of the Machinery and Occupational Safety Act, including regulations relating to sanitary and washing facilities, dining rooms and provision of seats Further investigation was required into regulations on lighting, thermal requirements, noise, windows and fire precautions

The Manpower Department has called for comment and representations on the report within 90 days

Manpower commission 'could become extinct'

BDay 22/4/92 (165)

CAPE TOWN — The National Manpower Commission, dogged by delays in extending labour laws to all workers, could become extinct if it is not restructured, acting chairman Frans Barker said in the commission's 1991 annual report

It had been impossible to achieve full consensus on principles for restructuring the commission by January 1992 The advisory body had recommended that it be appointed in a restructured form by April

Barker said employers and labour representatives had shown a greater willingness to find some common ground on labour policy in 1991

However, the loss of man-days to strikes, Cosatu's "symbolic" withdrawal from the commission and deteriorating economic circumstances were less encouraging

☐ Our political staff reports that the commission recommended a one-season trial period of daylight saving, beginning on the first Sunday of October and ending on the last Sunday of March, with clocks throughout SA advanced one hour for the period

☐ The Unemployment Insurance Fund, in its annual report tabled in Parliament yesterday, said an actuarial investigation had shown its reserves were sufficient to allow the inclusion of farmworkers — Sapa

New small business proposals endorsed

WMail 24/4-29/4/92

165

Proposals to ease regulations on small business have been endorsed by both the business community and the labour movement, reports

DREW FORREST

THE National Manpower Commission's recommendations to the government on small business are yet another sign of the growing common ground between labour and capital on labour policy

Gazetted last week, the proposals seek to ease the administrative burden of labour laws on micro-enterprises — defined as being owner-managed, with five or fewer workers and a 1990 turnover of no more than R250 000 — with an eye to promoting the small business sector and with it, job creation

They were endorsed both by business representatives on the NMC and the Congress of South African Trade Unions, while still an NMC member

Black labour has traditionally resisted the idea of a special labour regime for small business, seeing it as an application of free-market thinking and fearing that it will subvert union rights

The changes urged by the NMC are for the most part minor and technical — the report specifically states the aim of the inquiry as the stimulation of small business and work creation "without detracting from the basic rights of employees".

But Cosatu's endorsement is symbolically important, and signals its shift from narrow union concerns to a broad interest in macro-economic policy. "The proposals are not dramatic, but it is important that consensus was reached," said NMC chairman Frans Barker

"If they are accepted, a process will be set in motion which may bring further changes at a later stage "

In its annual report, the commission estimates that three quarters of new job opportunities are created by small business

Central to the NMC's recommendations are proposals for a simplified statutory disputes procedure for micro-companies

It suggests that in the first instance, small businesses should be encouraged to resolve differences by discussion. If this fails, referral to an industrial council (IC) or conciliation board (CB), or arbitration or mediation, should be compulsory before a strike or industrial court action is launched

The Labour Relations Act should be amended to provide for mediation as an alternative to an IC or CB, it suggests.

In the case of dismissals disputes, the NMC proposes, the parties should be able to choose between the industrial court or the proposed Small Labour Court. Other proposals include

- A simplified procedure for exemptions from industrial council agreements, as well as a clause in all-agreements inviting firms to seek exemption from provisions "restricting entrepreneurial initiative and/or employment opportunities"
- The appointment of a Manpower Department "facilitator" to monitor exemptions, investigate restrictions on small enterprise and keep the definition of "micro-business" under constant review
- The drafting and distribution of guidelines to small companies on such matters as disputes procedure.

The NMC agrees that all-labour statutes should continue to apply to small business, while urging certain changes to the Workmen's Compensation, Unemployment Insurance and Machinery and Occupational Safety Acts to ease red tape

It suggests the drafting of guidelines for exemptions under the Basic Conditions of Employment Act, taking account of the nature, size and age of a firm, and whether employer-employee agreements are in force

In search of some common ground down on the farms

Wkly Mail 24/4-29/4/92

By FERIAL HAFFAJEE

A SERIES of high-level meetings between government, worker and farmer representatives has failed to clear the murky future of farmworkers legislation, which remains logjammed in the parliamentary process

But there is a groundswell of resistance among farmworkers who may not have the patience to weather yet another series of negotiations

Today farmworkers, political and church organisations will march on parliament In the past weeks, farmworkers have held placard protests

The third in the series of meetings to decide the future of the legislation took place last Friday It was to have been the last meeting but it too ended in an impasse

According to government sources, the only progress made was that the Congress of South African Trade Unions, the National Council of Trade Unions and the South African Agricultural Union (SAAU) are "at least listening to each other"

Cosatu's end of April deadline to the Minister to demand decisive action on the legislation will not be met — instead another meeting will be held on May 7

This week, the federation was adamant that this will be the last meeting

SAAU representative Kobus Kleynhans said "we will not easily reach consensus but I am positive that we will reach common ground"

But all parties know the fragility of negotiations and have adopted a wait and see approach to the May meeting Cosatu is eager to get legislation passed for one of its most embattled sectors while the organised farmers lobby (SAAU) has realised that it cannot wish away trade unionism on the farms and is keen to find "common ground"

In the path of the legislation is SAAU's insistence on seperate labour legislation for farmworkers To what extent it is still wedded to this scheme is unclear

Kleynhans was non-committal this week and would only say "Cosatu and the SAAU are looking for labour legislation that will work"

The Food and Allied Workers' Union (Fawu) is spearheading the campaign around the legislation It has only 25 000 members in the sector, a sector employing 1,6-million workers

But organising work is hampered by the lack of legislation Ben Sinzane, a Fawu farms organiser, said they are denied access to the farms in terms of the Trespass Act Instead, they have to meet workers at night or at the weekend outside the farms

Today, Fawu and Cosatu will march on parliament to demand that the Basic Conditions of Employment Act and the Unemployment Insurance Act be passed on to farmworkers in the current parliamentary session

They will also highlight the right to freedom of association and collective bargaining for farmworkers as well as campaign for the scrapping of the Trespass and Illegal Squatting Acts

Protect domestics, farm workers call

Sowetan 30/4/92

THE Department of Manpower has recommended that the Basic Conditions of Employment and Unemployment Insurance Acts be extended to the agricultural sector.

National Manpower Commission members, except the SA Agricultural Union, recommended that the Wage Act be extended to farms

The NMC also recommended that domestic workers be protected by the Basic Conditions of Employment, Labour Relations, Unemployment Insurance and Workmen's Compensation Acts

Its annual report covering its activities ranging from labour relations to religious objection to military service - was tabled in Parliament this week

The 154-page document reported a rise in trade union membership, advances in extending labour laws to unprotected sectors, fewer workplace accidents and increased unemployment

An amended Labour Relations Act - agreed between Saccola, Cosatu and Nactu - was passed by Parliament in 1991, but no progress had been made on its consolidation because the National Manpower Commission had not been restructured

The productivity-based wage agreements in the mining and automotive assembly industries could be regarded as important developments

Altogether 613 strikes in sectors covered by the LRA claimed 1,24 million mandays lost in 1991, but the numbers involved decreased by almost 50 percent on 1990 figures

Stayaway

Wages were the main cause and the manufacturing industry suffered most in terms of mandays lost.

In 28 strikes more than 1 000 workers were involved, and each strike lasted seven days on average

Strike figures did not include public sector disputes and the November 4 and 5 stayaway, when the majority of the country's workforce did not go to work

Violence in the workplace continued - 22 people were killed and about 90 injured at the President Steyn gold mine in Welkom during November 1991

The multiracial Federation of Independent Trade Unions, representing some 210 000 workers in 23 unions, was launched in October 1991 Its stated objectives included playing a constructive and moderate role in a free market economy

A meeting was held between Saccola and three major union federations to discuss setting up an economic forum to give employers and employees a say in restructuring the economy.

The Minister and the Department of Manpower met twice with Cosatu to discuss a wide variety of subjects concerning trade unionism

"It is the Department's policy, as far as possible, to consult employers and employees whenever changes are envisaged to the legislation administered by the department," wrote the Director-General of Manpower, Mr Joel Fourie

For the first time in many years, a fulltime deputy, Mr Glen Carelse, was appointed to help the Minister of Manpower, Mr Piet Marais

The number of employers' organisations dropped from 271 in 1987 to 214 last year

Trade union membership of registered unions rose from 1 879 million in 1987 to 2 750 million in 1991 and about three million employees belonged to registered and unregistered trade unions in terms of the Labour Relations Act

Agreements

Eighty-nine industrial councils administering 141 agreements were registered at the end of 1991 They regulated wage agreements covering 36 000 employees, and the conditions of service of 488 000 workers

The building and construction industries proved the most dangerous, with 123 fatalities in 1991, followed by agriculture and forestry with 86 deaths

In all, there were 474 work-related fatalities in 1991, compared to 435 the previous year

Only 53 percent of people who reported for trade tests actually passed It was hoped that modular training would alleviate this problem

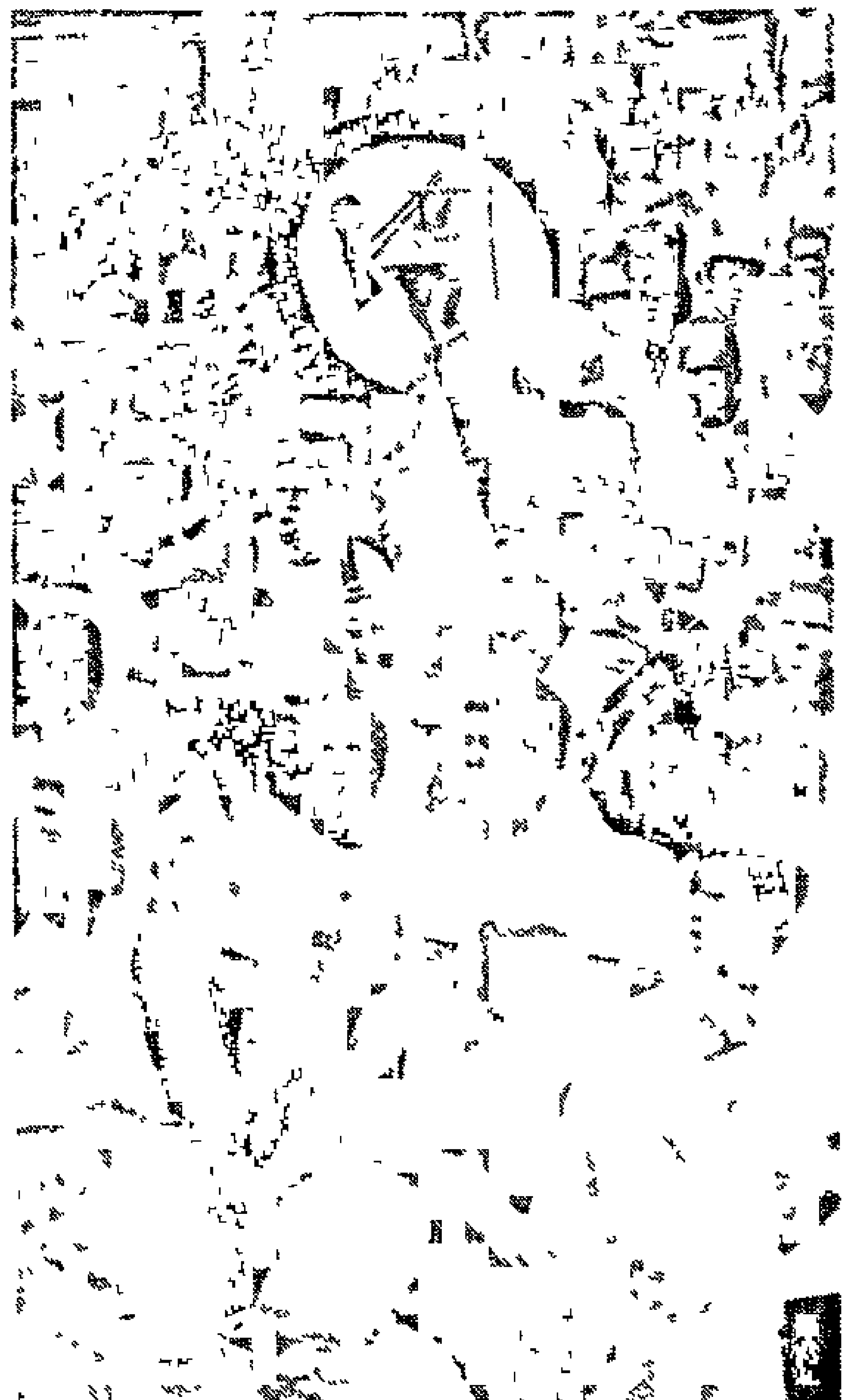
Apprenticeship contracts increased from one in 1990 to 566 in 1991, proof that training boards could make a significant contribution to training

During 1991, 173 religious objectors were referred to the department for placement in community service Owing to a Supreme Court judgment, 389 religious objectors were sentenced anew during 1991

More than R27 million was spent on training unemployed people for the formal sector by October 31 1991, and more than R31 million on skills' training for the informal sector

Altogether 550 185 people were paid unemployment insurance benefits in 1991, against 438 292 in 1990 More than R891 million was paid out in 1991, and about R587 million in 1990

Workmen's Compensation payments for medical costs increased by about 23 percent, amounting to over R111 million, compared with R61 million in 1986



There were 613 strikes in 1991.

The 1991 amendments to the Labour Relations Act resulted in a decrease in the number of cases referred to the Industrial Court, but the number of matters which could not be finalised increased by 39 percent

The Labour Appeal Court heard 65 cases in 1991

Altogether 7 280 conciliation boards were established following 11 114 applications between November 1 1990, and October 31 1991

Altogether 5 209 disputes were referred to Industrial Councils, of which 2 101 were settled The rest, if not settled, were referred to the Industrial Court, arbitration, mediation or eventually ended in deadlock - *Sapa*

PSA submits proposals

GERALD REILLY

PRETORIA — The Public Servants' Association has submitted its final recommendations to the Commission for Administration for a new labour relations deal for government workers.

The PSA wants included in the legislation, expected to come before Parliament before the end of the current session, the right to conciliation and arbitration, access to the Industrial Court and the right to strike.

PSA GM Hans Olivier said the PSA stressed in its submission its responsibility to take effective action against unacceptable salary and service conditions. B/Day

"Although we have asked for the right to strike, we would want to avoid a situation such as that which has developed in Germany at all costs," he said. 6/5/92.

But, he added, government workers could not continue to be at the complete mercy of government when it came to service conditions

Cosatu considers action on rulings

DIRK HARTFORD

THREE recent court decisions that went against trade unions might spark a campaign by Cosatu-affiliated unions against "problematic" Industrial and Supreme Court decisions

Cosatu unions are considering "targeting" certain judges and presiding officers of the Industrial Court by embarking on pickets and other demonstrations

Last week, in the Natal division of the Labour Appeal Court, Judge J Page ruled that it was legitimate for an employer to lock workers out — and not be bound by the Basic Conditions of Employment Act — if the lockout was solely to force workers to accept the employers' demand This judgment effectively overturned an earlier Industrial Court decision on lockouts

In another case last week, the SA Commercial, Catering and Allied Workers' Union (Saccawu) brought an urgent interdict to the Rand Supreme Court to prevent Checkers closing another two stores and retrenching about 50 workers The judge dismissed the application with costs, saying it was not urgent, and criticised the union for abusing the court's time

This week a five-month strike at Kentucky Fried Chicken was declared illegal in the Cape Town Supreme Court on the grounds of a "fraudulent ballot" by

☐ To Page 2

☐ From Page 1

Cosatu

Saccawu

Cosatu is considering a campaign based on its longstanding objections to the structure, functioning and some decisions of the Industrial Court and Supreme Court with regard to labour matters

A Cosatu source said a dossier of problematic Industrial Court decisions had been sent to former Manpower Minister Eli Louw last August Some progress had been made with ironing out these problems and Cosatu would be meeting members of the department later this month to pursue these discussions

Cosatu affiliates are concerned that there is a pattern between "anti-union" decisions and specific judges and presiding officers of the Industrial Court — who could become targets for union pickets and demonstrations if there is no "substantial progress"

Cosatu also wants the composition of the Industrial Court changed A first step would be for the unions to be consulted on the appointment of presiding officers There are also proposals to restructure it completely with, for example, lay presiding officers to make the process cheaper, quicker and more effective

Concerning the Supreme Court, Cosatu wants a Bill streamlining the functioning of the special Labour Appeal Court to be made law as soon as possible

Talks due on future of NMC

CAPE TOWN — A conference to discuss the restructuring of the National Manpower Commission (NMC) would be held on June 2, Manpower Minister Piet Marais said yesterday

Consensus had clearly not been reached on the restructuring, he said during the Manpower vote in Parliament.

There were at least 13 differing stances in the commission on the issue, Marais added.

Incoming Manpower Minister Leon Wessels would continue the process towards finding consensus, he said. — Sapa

Wessels leaps into the saddle

W/Mail 8/5-14/5/92

By FERIAL HAFFAJEE

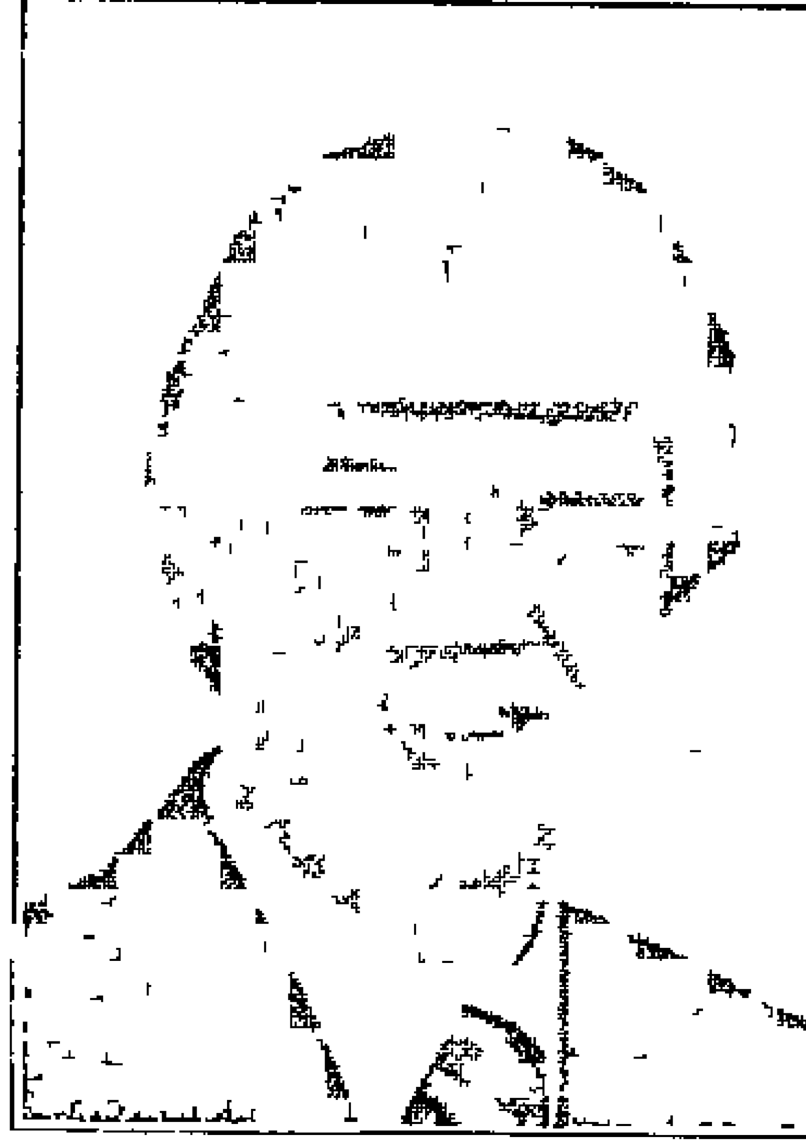
SOUTH Africa must have one of the highest turnovers of manpower ministers in the world In just eight months this strategic portfolio has been held by four different men

This week, President FW de Klerk chose Leon Wessels as his latest broker for the beleagured ministry

The Congress of South African Trade Unions criticised the appointment saying that the high turnover of ministers indicated "a lack of seriousness on the part of the government when it comes to labour affairs"

Cosatu assistant general secretary Sam Shilowa said that every time a new minister was appointed it took at least four to five months to brief him on developments and negotiations in the labour field.

At 56, Wessels is one of De Klerk's younger *verligte* Nats destined to go places Like Roelf Meyer, he is being promoted fast and furiously in strategic ministries



Leon Wessels

In October 1991, he was appointed to lead the Ministry of Planning, Provincial Affairs and National Housing In November 1991, he was given the portfolios of of local government and public works to add to his workload and relieved of the easier portfolios of planning and provincial affairs

He also served earlier terms as deputy minister of law and order and deputy minister of foreign affairs

The Weekly Mail interviewed Wessels last year soon after he took over as minister of national housing While his plans for the housing crisis did not impress, his easygoing manner and dress sense certainly did

He hitched up his immaculate bottle green pants and sat down to chat, asking interested questions and passing the tea His green pants matched perfectly with his green socks and green watch.

His eagerness to listen certainly earned him kudos last year when as MP for Krugersdorp he visited residents of Swanieville, in the district, who were holed up in a nearby community hall While he could only give an hour to listen to grievances because he had to jump on a plane to Cape Town, he promised faithfully to get back to residents "even if I have to phone you from the airport".

A less-publicised history of Wessels' career is the time he spent as a mounted policeman while he worked at the Police College from 1964 to 1966 Deciding that the life of a mountie was not for him, he decided to become a lawyer and enrolled at the University of Stellenbosch in 1967 where he quickly took up leadership roles

He was the chairman of the SRC and president of the Afrikaner Studentebond. His liberal philosophy was honed at university he organised meetings with members of South African Students Organisation (Saso), a Black Consciousness student movement

He was also influenced by senior *verligte* academics like Wimpie de Klerk and Johan van der Vyver

Court decides dispute

Sowetan 26/5/92

165

THE Appeal Court yesterday upheld the Natal Supreme Court's decision that the Industrial Court deputy president should have recused himself in a dispute between the now-defunct Metal and Allied Workers' Union and BTR Industries

The court dismissed, with costs, an appeal by BTR, the late Mr PE Roux SC, Mr MJ Oosthuizen and Mr CC de Witt against a judgment that set aside proceedings of the Industrial Court in the dispute, and which referred the case back to be heard afresh by a court that did not include Roux, Oosthuizen and De Witt.

After the late Roux, deputy president of the Industrial Court and presiding officer in the dispute court proceedings, refused to recuse himself, the Industrial Court on September 9 1987 dismissed Mawu's application for an order that BTR had been guilty of unfair labour practices

The case arose from the dismissal of striking employees at BTR's Sarmcol plant on May 2 1985

The application for recusal was made on the basis that Roux had attended and participated in a seminar arranged by a professional firm that acted as consultant and adviser to BTR

In the Natal Supreme Court on March 2 1989 Mr Justice JM Didcott set aside the Industrial Court decision He concluded that the average lay litigant - in the position of Mawu and its members - would have felt that, by his participation in the seminar, Roux was displaying too great an association with the professional firm

In the Appeal Court yesterday, Mr Justice Hoexter said it appeared that the lower court correctly reached that conclusion The appeal must fail

Mr Justice Milne, Mr Justice Kumleben, Mr Justice F H Grosskopf and Mr Justice Goldstone concurred - *SA Press Association*

Appeal against recusal order fails

BLOEMFONTEIN — The Appeal Court has upheld the Natal Supreme Court's decision that the late Industrial Court deputy president P E Roux should have recused himself in a dispute between the Metal and Allied Workers' Union (Mawu) and BTR Industries of Howick

The court dismissed, with costs, an appeal by BTR, Roux, M J Oosthuizen and C C de Witt, against a judgment that had set aside Industrial Court proceedings in the dispute, and which had referred the case back to be heard by a court that did not include Roux, Oosthuizen and de Witt

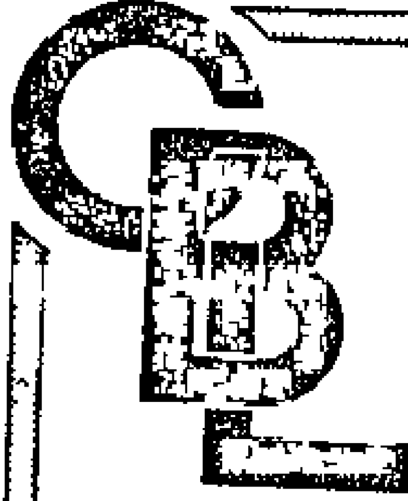
The court also dismissed, with costs, a cross-appeal by Mawu and one of its members, Phillip Dladla, against the part of the lower court order which had awarded them limited costs, instead of the costs of the whole review application

After Roux, the presiding officer in the proceedings, refused to recuse himself, the Industrial Court on September 9 1987 dismissed Mawu's application for an order that BTR had been guilty of unfair labour practices The case arose from the dismissal of striking employees at BTR's Sarmcol plant on May 2 1985.

The application for recusal was made on the basis that Roux had attended and participated in a seminar arranged by a firm acting as consultant and adviser to BTR

Judge J M Didcott set aside the Industrial Court decision in the Natal Supreme Court in 1989 He said the average litigant would have felt that, by participating in the seminar, Roux was displaying too great an association with the firm

In the Appeal Court yesterday, Judge Hoexter said it appeared the lower court had reached that conclusion correctly. He said while the firm had played no part in the litigation, it played a crucial role in events that led up to the trial and shaped disputes that occupied the Industrial Court's attention In Mawu's eyes, the firm was in the enemy's camp — Sapa



Crookes Brothers Limited

Co No 02/00290/06

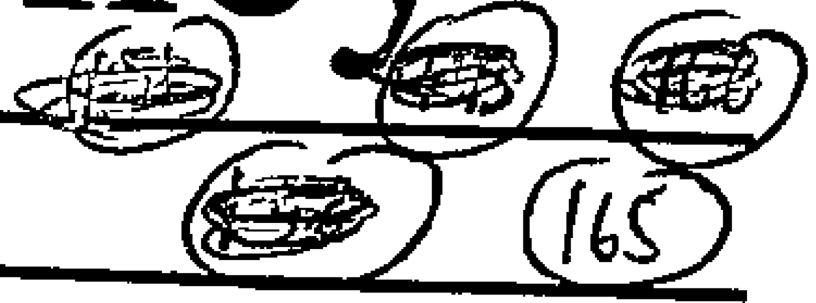
GROUP RESULTS AND DIVIDEND DECLARATION

The audited results of the group for the financial year ended 31st March 1992 together with those of the previous year are

Time for a rethink on unions' role in shaping policy

BDay 1/6/92

CLIVE THOMPSON



THE year 1991 was a wasted year with respect to social policy. It should have been a period in which the social parties — unions and employers — prepared important socio-economic ground for the imminent constitution-making process In the event, elements within the Cabinet and the Manpower Ministry, distrustful of the role of unions, contrived to block the tripartite initiative which had led to the signing of the Laboria Minute of September 1990

In terms of that Minute, it will be recalled, government agreed to accommodate the unions in the formulation of labour policy in return for a peace obligation However, by October last year, it became clear government had no intention of revamping the main statutory advisory body, the National Manpower Commission (NMC), and that it wished to outflank the unions in its attempts to restructure the economy

A disaffected Cosatu walked out of the NMC, fell back into the familiar adversarial relations of old (which took the form of the VAT stayaway), and then decided to pitch for higher political stakes

Now, in the middle of 1992, the NMC continues to languish while unions and employers have begun to direct their energies towards the establishment of a macro-economic forum Unions and business have a legitimate stake in fashioning national economic policy However, that process is convoluted, and labour is only one (and a latecomer at that) of many actors seeking a role Labour's influence will be diffuse

To the extent that the leap onto the macro-economic stage bypasses rather than builds on labour-specific institutions (existing and potential), the move represents a departure from a 20-year-old union strategy and is fraught with the risks typical of any top-down approach

Unions have an entrenched presence at plant level and a significant presence at industry level What they lack is an institutional base — statutory or independent — at national level within which to forge national labour policy

That base is necessary if unions are to play a key role in developing broader labour and social policy; the conflictual relations which characterise contemporary collective bargaining are to be converted into more co-operative ones through the conclusion of social pacts, an active labour market policy is to be developed, and unions are to commit their constituencies as part of a wider process of economic renewal

Under current conditions, union influence on macro-economic policy is likely to be marginal, and the costs of later disillusionment may be large Union influence on labour (and social) policy, by way of contrast, could be pivotal

Labour and management jointly control the major variables in the labour market, can make demands of the state, set attainable goals and, most crucially, deliver Mainly for its own worth but also, incidentally, if the macro-economic initiative is to have any prospect of sucess, it is essential that the social parties, and in particular the state, invest a great deal of effort in restructuring the NMC and the other statutory and non-statutory institutions of national labour policy

The Laboria Minute demonstrated a fatal deficiency within the existing NMC a body which purports to be representative of labour and business, and which wishes to negotiate its way to consensus positions, cannot be located within the labour ministry and cannot be a creature of the Minister of Manpower To play a useful role in a changing society, a refurbished labour council will need to enjoy a different status, be entrusted with new responsibilities and be composed on a new basis.

In terms of status, autonomy should be a defining feature of any new body It should not lie within the embrace of a labour ministry but should be constituted as an independent statutory body drawn from civil society and set apart from both the state administration and the legislature Autonomy requires financial independence and this should be achieved through a dedicated levy on commerce and industry

Its principal function should be to advise all ministries dealing with labour matters and Parliament on labour and social policy Conversely, all state ministries dealing in a substantial sense with labour matters should be obliged to confer with the council in arriving at departmental policy This consultative process should, ideally, be carried out in co-ordination with any future macro-economic forum (a successor to the Economic Advisory Council?), where unions should have a separate, though attenuated, representation

Another function of a council would be to co-ordinate policy in respect of all other statutory bodies dealing with labour matters, such as the Unemployment Insurance Board, the National Training Board and the Advisory Council for Occupational Safety and Health These other bodies, which are generally bilateral or tripartite in character, should play a larger role in transitional SA and should, by rights, already be receiving a substantial slice of development funding

To mention just one example in terms of the Manpower Training Act, provision has been made for a "fund for the training of unemployed persons" and a "manpower development fund", finance in both cases coming from (among other sources) Parliament.

Unions and employers should be pressing for the enlargement of these funds and a role in overseeing their deployment Some important demands relating to interim government and administration could be addressed by exploiting the possibilities in this entire area

A council should also have a research function to enable it to discharge its obligations of advising all ministries and Parliament competently and authoritatively

Finally, a council should play a key role in the appointment of judicial officers in the labour courts Those tribunals must enjoy legitimacy to play their proper role as arbiters of last instance in the industrial relations system The current Ministerial appointment process detracts from the stature of the labour courts With regard to composition, drawing generally on European and particularly the Netherlands experience, there seems to be much merit in comprising a council equally out of employer, union and "public interest" representatives

The last category should serve as a bulwark against some of the excesses of social corporatism Representatives here could come from constituencies such as rural workers, women's groups, small businesses and independent experts The presence of these representatives would force the business and labour elites of the formal economy to develop policies which reach both the urban informal sector and the countryside

Although a labour council's principal function would be advisory, one would expect the political convention to develop, over time, that ministries and Parliament would not lightly depart from a consensus position reached in such a council Parties represented on the council would be those most intimately involved in and affected by labour policy, and this social fact should be implicitly recognised in any new constitutional dispensation.

☐ **Thompson is associate professor and director of the Labour Law Unit, UCT, and was a member of the NMC legislation committee.**

National manpower body to be revamped

B/Day 3/6/92 (165)

CAPE TOWN — Major players in industrial relations agreed to form a working group to restructure the National Manpower Commission, after meeting Manpower Minister Leon Wessels yesterday

The working group would report to the Manpower Minister at the end of June, said the NMC's acting chairman Dr Frans Barker

A Cosatu spokesman said the trade union federation welcomed the move, but was exasperated with the poor progress made towards restructuring the commission.

"The NMC should have been restructured last year. We don't want the working group to repeat the NMC's work"

Barker, who attended the Pretoria meeting, said about 50 organisations were present, including Cosatu, Saccola, Sacob, the Afrikaanse Handelsinstituut, Fedsal, Sacol and the Federation of Independent Trade Unions

"The working group will look at specific aspects of restructuring the NMC and report back to the Minister The Minister will give a full response in July."

The Cosatu spokesman, who asked not to be named, said participants at yesterday's meeting discussed the relationship between the proposed National Economic Negotiating Forum and a restructured NMC. — Sapa.

FM 5/6/92 (165)

LABOUR LAW

FM 5/6/92 (165)

Time is money

Is it legitimate to use pressure tactics against your adversary in the midst of negotiating with him?

The question may be academic in the high stakes of power politics, as the ANC threat of mass action against government "intransigence" at Codesa shows

In labour law, however, this longstanding controversy has finally been settled in an important Appellate Division judgment recently delivered by Mr Justice Goldstone, in Macsteel vs the National Union of Metalworkers (Numsa), Cosatu's biggest affiliate

In terms of the judgment, a concerted refusal by employees to work voluntary overtime as a pressure tactic constitutes an unfair labour practice According to Webber Wentzel labour lawyer Tim Trollip (for the company), the judgment should be welcomed "because it emphasises the primary importance of collective bargaining and recognises that power play should be seen as a last resort rather than as a starting point"

The dispute goes back four years. It came to a head when the company obtained an interim interdict in the Industrial Court preventing employees from imposing a collective overtime ban while in the midst of wage negotiations Most employees went back to work but when the Industrial Court suspended the interdict on its return day, most of the company's Numsa members refused to work overtime

The matter went to trial and the Industrial Court found that it was a legitimate industrial relations pressure tactic for union members to ban voluntary, noncontractual overtime, without notice to the employer, to enhance their collective bargaining power

This decision was reversed by the Labour Appeal Court, which took the view that the overtime ban constituted a deviation from the proper purposes of collective bargaining It was unfair because it effectively pre-empted wage talks

The issue then went to the Appellate Division where the union's lawyers argued that it could never be unfair for employees to refuse to work overtime, regardless of the motive for such refusal, because workers were under no contractual obligation to work overtime Thus they were free to refuse to work overtime whatever the reason and whether they did so individually, collectively or simultaneously

Factors taken into account in the Appellate Division judgment were

- ☐ The overtime ban was instituted during the course of wage negotiations,
- ☐ There was no suggestion that Macsteel was not bargaining in good faith,
- ☐ Overtime had been done for some years to the mutual advantage of the company and employees who wanted to work overtime,
- ☐ The union knew that a ban on this overtime would seriously disrupt production and cause substantial losses for the company,
- ☐ The ban was instituted without the declaration of deadlock in negotiations and without notice to the company, and
- ☐ The union disingenuously denied any knowledge of the overtime ban

However, the court seems to have left open the question of the circumstances in which an overtime ban can be imposed Would it be legitimate, for instance, where an employer was bargaining in bad faith? And, if that were the case, does it imply that negotiations should continue regardless? ■

ILO moots far-reaching labour reforms

(165) DIRK HARTFORD

THE International Labour Organisation's influential fact-finding and conciliation commission has made a host of far-reaching recommendations for the reform of SA's industrial relations system — including extension of the Labour Relations Act to farm and domestic workers "as a matter of priority" BDay 5/6/92

The recommendations avoid detailed prescriptions Implementing all the recommendations would make SA labour law among the most advanced in the world

The commission's report — to be released next week with comments by government, Cosatu and Saccola — seeks to identify areas in labour law and practice that are incompatible with "the well-established body of jurisprudence developed by the ILO during the past 70 years"

The 300-page report is the result of a three-week investigation earlier this year by a high-powered ILO-appointed team

Sections of the report which could be controversial include recommendations to abolish racial criteria for membership of organisations, to entrench the right to strike and picket; to include farm and domestic workers under the Act; and to bring homeland and public-sector labour legislation in line with a reformed Act.

The commission recommends the Act be redrafted — taking its recommendations on freedom of association into account — to make it user-friendly

It urges government to "pursue vigorously" the reactivation of the National Manpower Commission (NMC) in a tripartite structure acceptable to all concerned parties It believes government should be involved in the NMC — but not necessarily as a full voting member.

On the right to strike the report recommends

- Simplifying pre-strike procedural requirements and amending provisions relating to strike ballots (so that a union will not be required to have an absolute majority of members' votes in order to strike),
- Widening the definition to allow unions to strike over economic and social issues that affect worker and trade union rights (political strikes are not included),
- Removal of criminal sanctions for

☐ To Page 2

ILO

BDay 5/6/92 (165) ☐ From Page 1

peaceful strike action;

- Protection of workers against dismissal for legitimate strike action;
- Narrowing the definition of essential services to allow workers in, for example, local authorities to go on strike, and
- Providing effective arbitration for all essential service workers who are unable to strike

The report also recommends that organisational rights and facilities be guaranteed to unions — including access to employer premises (especially where workers live on the premises) and space for union meetings and business.

Planned legislation covering public sector workers should be enacted as soon as possible, taking cognisance of the commission's recommendations — which amount to granting the public sector similar rights to those contained in a reformed Act

☐ Saccola will hold a seminar on the ILO's report next Friday to discuss its implications in detail.

Union now confident in BTR case

By FERIAL HAFFAJEE

THE long march of almost 1 000 British Tyre and Rubber (BTR)-Sarmcol workers, dismissed from the British multinational in 1985, is not over But it may now be a lot easier.

The Appellate Division last week ruled that the case should be retried in the industrial court This week, the company reacted angrily, accusing the court of not "ruling on the merits of the case" W/mail

But lawyers and the National Union of Metalworkers of South Africa (Numsa) — whose members were dismissed — welcomed the decision

The political climate and more enlightened labour law made them confident of a decision in favour of reinstatement 5/6-11/6/92

"I would rather be fighting the case in 1992 than in 1985," John Brand, the attorney for the dismissed workers, said this week

He said the workers now had a right of appeal in the Labour Appeal Court, legal precedent gave them a greater chance of reinstatement and current labour law provided better protection for strikers

In 1989 the supreme court ruled that the behaviour of one of the presiding officers of the industrial court could have been construed as showing bias The officer in question — also the deputy president of the industrial court at the time — attended a seminar hosted by Andrew Levy and Associates, industrial consultants to BTR-Sarmcol

Delivering the appeal decision this week, Judge Hoexter said "In our law, the existence of a reasonable suspicion of bias satisfies the test."

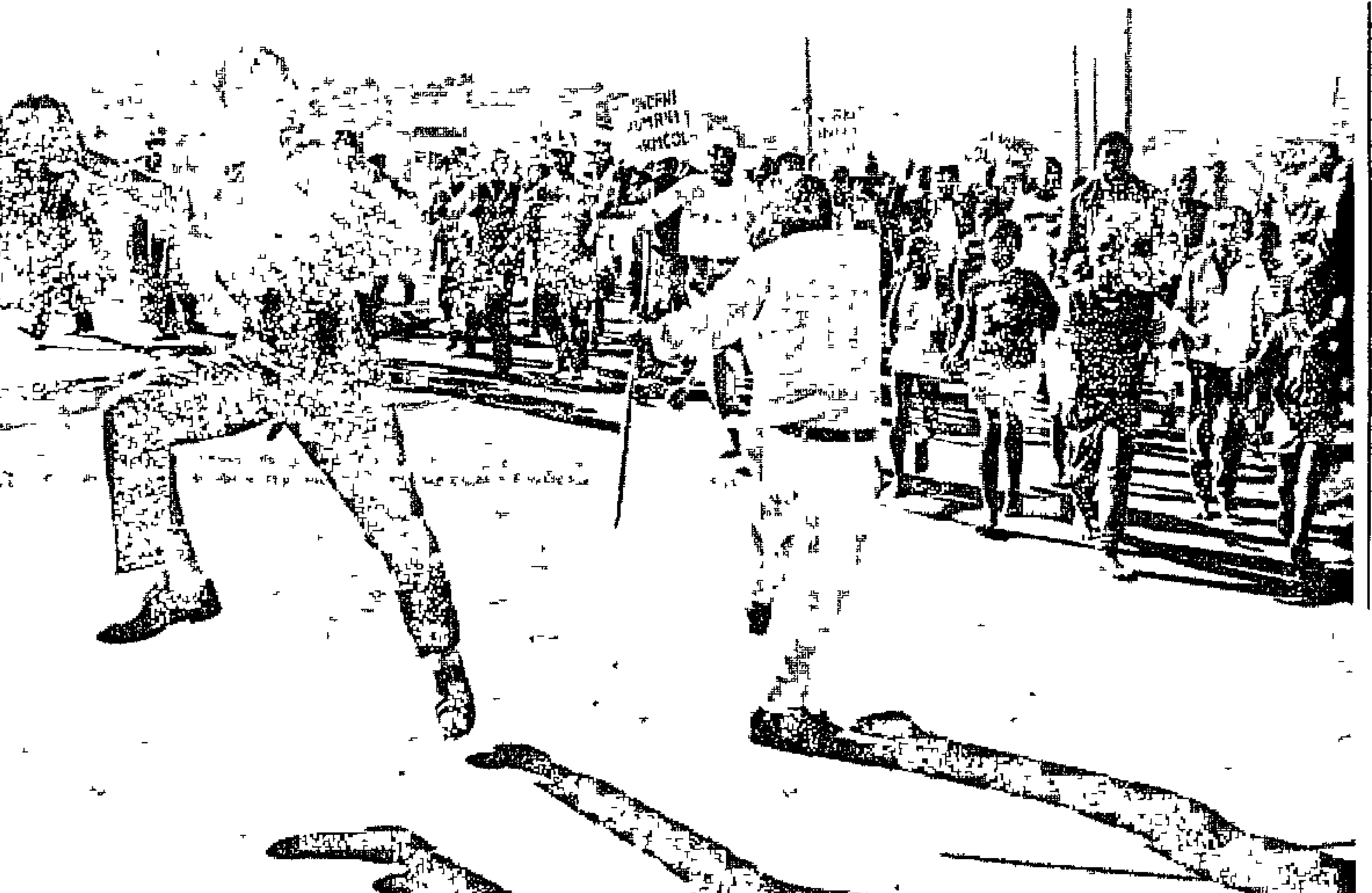
He added "If a judicial officer has any interest in the matter before him, he is disqualified, no matter how small the interest may be "

The company this week issued a veiled threat, saying that the judgment had serious consequences for judicial officers "attending organised seminars such as the one arranged by the Centre for Socio-Legal Studies which two appeal court and other industrial court judges attended".

The company also questioned whether approval was necessary every time a judge wanted to attend a seminar.

BTR-Sarmcol this week stuck by its guns, saying it "is confident of the merits of the case" and that it "did not commit any unfair labour practice"

Numsa representative Gavin Hartford this week welcomed the decision "It vindicates Numsa's position," he said, adding that the union believed it "had a strong case and were a lot more hopeful for the new trial"



Long battle ... The 1985 BTR-Sarmcol strike was one of the most acrimonious ever in South Africa

Perskor, union dispute appeal

By JOE MDHLELA

Sowetan 2/7/92

THE two-year-old dispute between the Media Workers' Association of South Africa and Perskor will be heard by the Appellate Division of the Supreme Court in Bloemfontein on August 27

The case is a sequel to the dismissal of 3 500 workers by Perskor in 1990.

The company subsequently re-employed some of the dismissed workers, a move that angered the union, which then took the matter to the industrial court

Favour

The industrial court ruled in favour of the union and ordered the company to reinstate all the dismissed workers

The company appealed to the Pretoria Supreme Court, which upheld industrial court ruling and dismissed the appeal

At a later hearing, the same court overruled an earlier decision by Mr Justice Curlewis in favour of Perskor

Mr Justice Spoelstra ruled in favour of the company, prompting Mwasa to take the the matter to the Appellate Division

Two courts at odds over a can of Coke

S/Times (BUSS) 5/7/92

The case of the waiter who stole a can of Coke highlights the increasing severity of Labour Appeal Court rulings. CATHY STAGG reports.

(165)

THE Labour Appeal Court (LAC) has become much stricter than the Industrial Court when dealing with employees

The matter was discussed at a law seminar by PAK le Roux of Unisa's department of mercantile law

He said the Industrial Court found that a waiter sacked for stealing a can of soft drink had been unfairly dismissed because of its low value But the LAC found the dismissal to be fair because the relationship of trust between employer and employee had been eroded.

Line

Another issue discussed at the seminar was the importance of the employee's circumstances In the case of a woman who stole films worth R50 from CNA, the LAC ruled that because she had destroyed the trust relationship, the importance of her personal circumstances could be downgraded

The LAC was also much stricter on a managerial employee than was the Industrial Court in a case concerning dismissal on the grounds of incapacity

On several occasions a department failed to submit accounts to management within the specified time. So the woman employed as the head-office accountant was fired

Professor Le Roux says that technically she was a good accountant, but a bad manager She believed the problem was inadequate staffing of her department.

The Industrial Court agreed with her employers that the problem was her inability to manage properly — but found the dismissal unfair because she was never told "her job was on the line"

It found that her superiors should have told her of her shortcomings

But the LAC said the employee must have known she would be dismissed unless the problems were resolved The Industrial Court should have held that as a senior employee, she should have been aware of where she was failing

Clive Thompson of the University of Cape Town labour law unit spoke about collective bargaining. Professor Thompson said that in spite of changes in legislation, it seemed the Industrial Court had a mind of its own The basic rules had been set out over five to six years and the main theme was the promotion of collective bargaining

Cancel

The highlight of the past year was the first unfair labour practice appeal to go before the Appellate Division of the Supreme Court Num vs Ergo was the first at that level (the highest court in the land) since provision for appeals was introduced in 1988

The hard law which the appeal established spanned a relatively modest part of collective bargaining turf, said Professor Thompson

However, in deciding the narrow points, the court declared its position on three major labour law issues

- The fundamental philosophy of the Labour Relations Act was that collective bargaining was the means preferred by the legislature for maintaining good labour relations and for the resolution of disputes.

Professor Thompson said it was a revelation for the Appellate Division to come out with this type of language

- The right to strike was an essential and integral element of collective bargaining
- In the exercise of its power and the discretion given to it, the Industrial Court was obliged to have regard not only, or even primarily, to the contractual or legal relationship between the parties to a labour dispute It must have regard to the applications of the principles of fairness In essence the Industrial Court was one in which both law and equity were to be applied

Professor Thompson said the court held that Ergo had breached the terms of a sole collective bargaining agreement when, at the point of impasse in wage negotiations, it had gone directly to its employees and made them an offer not previously put to the union The offer was to give back pay to those who ignored the strike call

Professor Thompson said an employer was not entitled to suspend or cancel a recognition agreement. In an impasse, an employer could implement only the final offer

For as long as the union's recognition agreement was in effect, an employer could not negotiate with individual employees. However, the employer could take unilateral action

Professor Thompson said that if the employer's last stance had been that all workers must take a pay cut, he could communicate that fact to union members and then implement it by reducing the wage packet.

The fact that the shrunken pay envelope was received by workers did not mean that they accepted the position and that their contracts had been amended accordingly

Status

The parties remained in dispute and union members, even having taken the reduced wage, were allowed to strike for something better until such time as their collective bargaining representative had settled their claims with the employer

Only if there was a basis on which to cancel the union's collective bargaining status could the employer deal directly with workers

The employer could indirectly induce the members to persuade the union to amend its bargaining position, but could not invite the members to accept its last offer

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(BUSS) 5/7/92

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Sackings contested

DISMISSAL cases in the Industrial Court and Labour Appeal Court have increased sharply, writes ADRIAN HERSCH.

Statistics compiled by Van Zyl, Rudd & Associates show that challenges to dismissal in the first six months of this year more than doubled compared with the same time last year.

Continuing recession means that employees are becoming more determined to keep their jobs.

But most cases relate to industrial court powers and functions — which could result in a move to arbitration.

Brian van Zyl says the Labour Relations Act (LRA) — as it now stands — presents problems about the jurisdiction of the industrial court.

Mr Van Zyl says the restructuring of the LRA is expected to deal with these problems.

He predicts that until there is a new LRA the parties will make greater use of arbitration because they are able to agree on its jurisdiction.

In the first six months of 1992 the National Union of Metalworkers of SA (Numsa) and the SA Commercial Catering and Allied Workers Union (Saccawu) were involved in most of the labour court cases.

S Times (Buss) 16/8/92

165

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LABOUR FEATURE Numsa members lose their legal battle for refusing voluntary work

Overtime ban is 'unfair practice'

By Ike Motsapi

FINAL RULING Appellate Division rules employees' action as pressurising employers:

Sowetan 27/8/92 (165)

A CONCERTED refusal by employees to work voluntary overtime which they had worked regularly constitutes an unfair pressure and labour practice.

This is the view of Peter Grealy and Sara Gon of Webber Shepstone Findlay following a recent Appellate Court Division judgment in the case of the National Union of Metalworkers of South Africa (Numsa) versus Macsteel

Grealy and Gon, writing in *People's Dynamics*, said the judgment ended years of controversy as to whether or not pressure tactics during negotiations were legitimate.

Macsteel originally obtained an interim interdict in the Industrial Court requiring workers to terminate a collective ban on overtime embarked upon during wage negotiations

After the Industrial Court order was served on the union and its members, the majority of employees worked overtime when requested by the company

On the return day of the interim interdict the Industrial Court suspended the existing interim interdict. The next day the union members collectively refused to work overtime

After the two parties had reached an agreement on wages union members agreed to work overtime as requested.

The company then sought a final determination on the issue in the Industrial Court The court found that the imposition of a collective overtime ban by the union and its members in the performance of voluntary or non-contractual work during wage negotiations was a legitimate industrial relations pressure tactic which workers could exercise without any notice to the employer in order to test their collective bargaining power

The Labour Appeal Court reversed the Industrial Court's decision

The reason why the ban on overtime was, in the Labour Appeal Court's view, unfair was that it constituted a deviation from the purpose of collective bargaining

"It, so to speak, pre-empted collective bargaining," Grealy said

Gon said "The Labour Appeal Court had no hesitation in finding that the premature resort to collective action instigated by the union was unfair

"The fact that the ban on overtime commenced on the day following a mass report-back meeting on negotiations by the union was, in the absence of evidence to the contrary, conclusive evidence in the court's view of the union's involvement."

The union referred the matter to the Appellate Division

It submitted that it accepted that the refusal by the majority of the workers to do overtime was "concerted action" taken by the employees in order to pressurise the company during wage negotiations

The union also accepted that it was party to and encouraged this refusal and that the refusal by the employees to work overtime constituted a "labour practice" for the purpose of the definition on unfair labour practice in Section 1 of the Labour Relations Act as amended by the Act of 1988

The union, however, submitted that it could never be unfair for workers to refuse to do overtime, regardless of the motive, because employees were under no contractual obligation to work overtime Grealy and Gon said the Appellate Division's judgment should be welcomed as it emphasised the primary importance of collective bargaining and also recognised that parties should only enter into "power play" as a last resort.

Commission 'balanced'

DIRK HARTFORD

NATIONAL Manpower Commission chairman Frans Barker says the decision of Manpower Minister Leon Wessels to restructure the commission strikes a healthy balance between the interests of the various parties to the commission

Barker said the immediate issues on its agenda included the consolidation of the Labour Relations Act (LRA) — including the issues of the registration of unions, industrial councils and strike law The NMC had to decide on whether courts or legislation should clarify disputes around retrenchment and dismissal.

Other issues on its agenda were likely to include affirmative action and improving productivity

He said the issue of independent members to the commission — and how they should be dealt with — was likely to be the most controversial matter for the other parties to the commission He emphasised that the commission working group itself could not reach consensus on this.

Wessels said the one third of the members of the commission delegated by the Minister would consist of the chairman, deputy chairman, departmental representatives and expert (legal and otherwise) appointed by the department.

The other two thirds will be representatives of employers and labour chosen by those constituencies The Minister would also hear the views of majorities and minorities.

Wessels stressed the commission advise the Minister. But DP spokesman Robin Carlisle said it would serve little purpose unless and until government gave it decision-making power so it could function as a true labour relations forum

Cosatu said its executive would be meeting in a week's time to decide on whether or not to participate

Its preconditions for participating included that the department be bound by majority decisions, that public sector parties be represented and that consensus in the commission be put directly to Parliament

● Comment: Page 10

165 BD 2/8/92

Govt concessions might lure Cosatu back to NMC

WMail 28/8 - 3/9/92. (165)

Weekly Mail Reporter

THE Congress of South African Trade Unions is set to return to the government's labour law advisor, the National Manpower Commission (NMC), which it quit in a controversial move last year.

Yesterday Manpower Minister Leon Wessels announced a cabinet decision to convert the NMC from a body of experts hand-picked by the state into a tripartite body with equal representation for labour, organised business and government.

This has been a long-standing demand of Cosatu, which pulled out of the NMC alleging state "foot-dragging" over restructuring of the commission. The withdrawal of Cosatu, South Africa's largest labour grouping, temporarily crippled the NMC and cut short a unique experiment in tripartite "co-determination".

Cosatu campaigns co-ordinator Lisa Seftel yesterday welcomed the decision and said that the federation's executive would meet next week to decide on whether to rejoin the NMC. But given the NMC's critical influence on labour legislation, observers consider it highly likely that the federation will resume its seat.

Seftel stressed that the lengthy delay in the government's response "reflected on the character of the manpower department and held up progress on worker rights and in framing new legislation". In the 18 months restructuring has been an issue, there have been three changes in the manpower portfolio.

Wessels' statement suggests that some of Cosatu's demands, however, have not been met. There is no reference to representation for employers and unions in the public sector, which the federation seeks.

And while accepting that the NMC would remain an advisory body, Cosatu wanted mechanisms which would make it difficult for the manpower minister to reject majority recommendations.

It proposed, for example, that the NMC should have the right to draft legislation based on consensus views and put this directly to parliament, without the minister's approval.

Court orders reinstatement of Pact workers

SUSAN RUSSELL

PACT would have to give about R2,5m in back pay to 300 employees fired in 1990 after the Labour Appeal Court in Pretoria found that the dismissals constituted an unfair labour practice and ordered the reinstatement of the workers.

The R2,5m represents pay owed to the workers from April last year to the date of this week's hearing

Judge D van Zyl dismissed Pact's appeal against an Industrial Court ruling last September that the dismissals were an unfair labour practice. On September 16 the Industrial Court ordered Pact to reinstate the workers with six months' back pay.

The workers, members of the Paper, Printing, Wood and Allied Workers' Union, were fired two hours after they went on an illegal strike during their lunch hour on September 25 1990. Pact fired them after they ignored an ultimatum to return to work. A union offer later that afternoon to return to work was rejected

Van Zyl said he was satisfied the Industrial Court had been entitled to order the reinstatement of the workers.

"It is true that the workers were involved in an illegal strike, but it was of very short duration and the matter could, to my mind, have been resolved amicably without resorting to the drastic action upon which Pact had decided."

☐ Pact deputy director Louis Bezuidenhout said last night the dismissed workers would not be reinstated or given back pay Pact believed there were "good grounds" for taking the matter to the Appeal Court in Bloemfontein Ppwawu general secretary Sipho Kubheka said he viewed Pact's defiance "very seriously".

JOHAN NAUDE

Penalties for enterprise

FM 4/9/92 (165)

Johan Naude is senior manager of development promotion at the Small Business Development Corp

Efforts to revitalise the economy can benefit from a hard look at the impact of labour law on the small, or developing, business sector

The statutory framework for labour relations evolved during the Eighties, within formal collective bargaining structures These were dominated by the larger employers, the benefits of labour democracy were secured for thousands of employees

But to what extent can our labour legislation be reconciled with the need for economic growth?

The recent report of the National Manpower Commission (NMC) on the influence of labour law on the small business sector accepted a number of important principles

The report says it is imperative that more South Africans become involved in the ownership of the means of production It stresses the need for accelerating the development of entrepreneurs

One way to achieve this would be to acknowledge legally the special circumstances and structural weaknesses of smaller businesses

The NMC report recommends that micro enterprises (those with no more than five permanent employees), as well as new small businesses still in their first year, should get automatic concessions in terms of the Workmen's Compensation Act, the Unemployment Insurance Act and the Machinery & Occupational Safety Act More fundamental are proposals to make the system of exemptions more accessible

A compromise is necessary between protecting jobs and protecting workers Here a distinction must be drawn between

- Costly legal requirements that undermine start-up and growth prospects, and
- Principles that ensure fairness

The report says there should not be interference in the autonomy of industrial councils However, it recommends that where parties to an industrial council have requested the promulgation of a wage agreement, the Manpower Minister may refuse this unless the council has tried to meet the needs of small business

To what extent will such an approach be followed in practice?

Industrial councils are inherently biased against competition The development needs of the small business sector are not being accommodated because of the centralised nature of industrial bargaining Negotiation forums are dominated by larger employers (and unions) Their agreements impose requirements more suitable to big companies — though some small employer bodies have recently acquired representation on industrial councils to try to rectify this

More emphasis should be placed on regional or geographic agreements Micro enterprises should also be exempted from such cost requirements as minimum wages, social security contributions, prescribed equipment and record-keeping — or have them phased in gradually

The reliance on existing exemption procedures is over-optimistic — despite the recommendation that such applications should be treated more seriously and that micro businesses be made more aware of their exemption rights

Industrial councils need to become more accountable for their decisions It may be necessary to impose statutory requirements on them to comply with the rules of natural justice

Wealth creation through small business development can happen only if structural inequalities are removed For example, it is not entirely clear to what extent the interests of the small business sector will be represented on a reconstituted NMC

Equity has often been cited as a primary reason for strict compliance with all provisions of the labour law But surely there is merit in determining compliance based on size and affordability

We cannot go forward with a burdened small business sector There has to be consultation, negotiation and compromise in order to achieve the goals of economic development

employer turnout Those who did hours

The giants prepare for battle

W/Mail 11/9-17/9/92

Anglo's liberal stance goes no further than its pocket, claims Numsa. The country's biggest union is set to take on the country's biggest corporation, reports

MONDLI MAKHANYA

ANGLO AMERICAN is to become the target of a National Union of Metalworkers Union-led campaign aimed at forcing it to change its alleged strategy of trying to "smash" unions during disputes

This campaign — which Numsa will propose at the Congress of South African Trade Unions' campaigns conference this weekend — follows the recent industry strike in the steel and engineering sectors, in which several thousand strikers were dismissed by Anglo subsidiaries.

It will supplement Numsa's push to have the Labour Relations Act's provisions on balloting and legal strikes scrapped and a court battle later this year to overturn a supreme court interim finding that the strike was illegal

Numsa also insists it is still in dispute with the Steel and Engineering Industries Federation of South Africa (Seifsa) and has re-opened negotiations with the employer body. At a bargaining meeting this week, employers raised their pay offer to 9,1 percent, while the unions party to the industrial council dropped their demand to 12 percent

Numsa claims that Anglo was behind Seifsa's hard-line approach in this year's negotiations and that the decision to attack the strike in court emanated from Anglo

Anglo spokesman Glen Finnegan dismissed the claims, saying the response of subsidiaries varied depending on how the strike and trading conditions affected them "Against the background of a severe national economic downturn and soaring unemployment, the companies which dismissed striking workers because their business operations were damaged did so only as a last resort," contends Finnegan

On the dismissals, the union suggested Anglo had used the same strategy as in the 1987 National Union of Mineworkers' (NUM) strike, when 50 000 miners were dismissed — most at Anglo mines

Characterising Anglo's attitude as "workers have the right to strike and Anglo has the right to dismiss", Numsa's Les Kettledas said "Anglo claims to be a major protagonist of liberal and democratic values Yet since the 1987 NUM strike it has shown that its support for the right to strike goes no further than its pocket."

Other Cosatu affiliates are likely to sympathise with Numsa's campaign proposal The NUM is currently locked in a wage dispute with the Anglo associate company De Beers, which recently de-recognised the union. Several other Anglo subsidiaries — including Amcoal — have given warnings to workers who missed work during the August national stayaway

LABOUR BRIEFS

W/Mail 11/9-17/9/92

Cosatu queries on NMC

AFTER reservedly welcoming the restructured National Manpower Commission two weeks ago, the Congress of South African Trade Unions is to meet Manpower Minister Leon Wessels about aspects of the body.

Cosatu wants to seek clarity on the role and voting status of "experts" on the commission. Only thereafter will it decide on whether to rejoin the body it pulled out of last year.

Workers threaten sit-in

DISMISSED Walter Chipkin workers have threatened to stage an indefinite sit-in on the food merchant company's premises to press management to re-instate them.

The 1 000-strong work-force was dismissed in June after going on strike demanding that the human resources manger should not take part in the negotiations with the union.

W/Mail 11/9-17/9/92.

Guide to holding of proper strike ballot

■ **Judge found there were irregularities in Numsa's action:**

Sowetan 24/9/92

By Ike Motsapi

RECENT Industrial Court decisions have resulted in trade unions wondering what constitutes a proper strike ballot for the purpose of Section 65 of the Labour Relations Act (LRA)

The strike by the National Union of Metalworkers of South Africa (Numsa) was declared null and void by the Pretoria Supreme Court after the court found that there had been some irregularities during balloting

People's Dynamics on Labour Law in South Africa has published an article on the issue of what constitutes a proper strike ballot.

Among the guidelines are:

A ballot officer must make the necessary arrangements for the holding of the ballot, supervise the conducting of the ballot and ensure that procedure in the union's constitution is strictly adhered to,

The ballot officer should give the employer reasonable written notice of the date, time and place of the ballot and invite him to send an observer to witness the balloting;

Where an employer permits a ballot to be held on his premises, the ballot officer should ensure that the balloting is not disruptive;

The issue upon which the ballot is to be taken must be the same issue which formed the subject of the dispute between the parties at the Industrial Council or Conciliation Board meeting;

The issue as it appears on the ballot papers, in one of the official languages, should be clear, concise and understandable

Chamber calls for flexible approach in recession

Sowetan 3/10-7/10/92 165

AS THE recession bites deeper, greater flexibility is needed to help small and medium-sized enterprises stay afloat, reports the Cape Town Chamber of Commerce

According to the Chamber's human resources manager, Mr Charl Adams, 1992 has been "extremely tough" for small business

The number of bankruptcies in the first nine months of the year is expected to be about nine percent up on the 1 764 during the same period last year

"This is all the more reason why there should be greater flexibility in dealing with small businesses, in providing them with protection and support services," Adams says

Small businesses are inherently at a disadvantage Labour legislation, for example, is geared towards big business, which has a highly organised and unionised workforce Many small businesses cannot afford to meet all the health and safety regulations or the minimum wages laid down by the industrial councils

These councils often throw the book at small businesses instead of understanding their circumstances and being more lenient They should not let all standards go, or allow workers to be exploited, but should adapt the regulations to the needs of small businesses.

The Chamber would like to see a "sliding scale" of legislation for the small business sector, which should also be represented on the National Manpower Commission (NMC)

A NMC report on this issue will be released shortly, but it is understood that the Chamber's recommendation has not been heeded

Adams says this negative approach to the small business sector springs from the fact that "big business still calls the shots, despite the fact that over 80 percent of our membership are small and medium-sized enterprises".

There should be a happy marriage between the two, but small business remains the abused partner Although government could act as a marriage counsellor, it is not doing so

Instead, the Chamber is acting as a surrogate counsellor and 1992 has been one of the busiest yet for Chamber staff, who are dealing with more and more enquiries from members on how to deal with the difficult times

Unfortunately, at a time of rising unemployment, many of the calls from businesses seek advice on retrenchments to cut overheads If labour laws were relaxed, these overheads could be cut without losing jobs

"Ways of allowing people to move into self-employment have therefore become more important — entrepreneurship has become the name of the game

"But we are falling behind in this and we need to do much more to inculcate the ethic of entrepreneurship, from school level onwards Difficult times call for creative approaches," Adams says.

Other problems that continue to plague small businesses include their difficult access to loans because of a lack of collateral

Banks are obsessive about minimising risks, and the small business sector is undoubtedly risky But, again, innovative approaches are called for and some are now being pioneered by a few banks in association with stokvels, hawkers' associations, the Small Business Development Corporation and others

The banks realise that today's small business can develop into the big businesseses of tomorrow — and need help But much more needs to be done **Lynda Loxton**

NMC bogged down on farms

LABOUR'S return to the National Manpower Commission (NMC) may be further delayed by what the **Congress of South African Trade Unions** regards as foot-dragging on key legislation by the government.

At talks with Manpower Minister Leon Wessels last week, Cosatu voiced concern over lack of progress in the **promulgation of** the extension of Basic **Conditions** of Employment and **Unemployment Insurance** Acts to **farmworkers** — despite their enactment by parliament earlier this year.

Furthermore, government has yet **to draft and publish** Bills on the extension **of the Labour Relations** and Wage Acts to farmworkers, one year **after the NMC** recommended this. **No move has yet been made** on the question **of extending** all these Acts to **domestic workers, or to promulgating legislation for public** sector workers, Cosatu charges.

The federation will meet Wessels again at the beginning of November **for a report-back from** the **minister on these questions.**

Meanwhile, the South African Agricultural Union (SAAU) has **made its own representations to Wessels regarding labour legislation** after **talks with Cosatu broke down.**

While Cosatu insists the LRA **should be extended to farmworkers**, **SAAU wants** separate legislation for **the sector.**

9/10 - 15/10/92

Wage agreement in engineering sector

ALAN FINE

AFTER seven months of negotiations, including a four-week strike by 80 000 Numsa members, employers and unions in the engineering industry reached agreement yesterday on wages and working conditions for 1992/3.

A Seifsa statement said the agreement, effective from July 1, provided for a 9,1% wage increase for 320 000 employees.

For the first time, the increase will apply to actual, as opposed to scheduled, minimum wages. In return, the unions have agreed to a clause that will bar them from compelling employers to negotiate additional increases at plant level.

Another unusual feature is an undertaking by parties to the industrial council to give sympathetic consideration to applications from companies in certain economically depressed regions for permission to pay less onerous increases.

Free State and northern Cape employers dependent on the mining industry may apply for an exemption allowing them to implement the increase from January 1. Natal employers may apply to pay only a 7,3% increase.

A previous arrangement whereby Border employers could pay 5% less than the scheduled rate to people employed from July 1 1991 remains in force The agreement also offers improved severance pay and subsistence allowances.

Sapa reports Numsa spokesman Les

☐ To Page 2

Engineering

☐ From Page 1

Kettledas said it was not an agreement members could be jubilant about

It is understood Numsa withdrew a request for a clause committing Seifsa to recommend reinstatement of 3 000 workers dismissed during the August strike

The union is attempting to pursue the issue through official channels A request that the matter be dealt with as a single dispute was turned down by employers

Confederation of Metal and Building Unions director Ben Nicholson, who represents six artisan unions, said certain unions had dragged out discussions by their "unwillingness to accept the realities"

"We could have saved those 3 000 jobs Although we are accused of not being militant enough, the outcome shows that militancy does not always pay," he said

☐ Numsa announced it planned a march on Anglo American headquarters tomorrow to protest against the dismissal of 600 Boart employees during the strike

LABOUR Mwasa achieves a major breakthrough for workers

Court rules accommodation is part of labour practice

(165)

Sowetan 19/10/92.

■ IMPORTANT RULING Both the union and the company will appeal against ruling:

AN INDUSTRIAL COURT ruling that provision of sleep-in accommodation for workers constitutes a labour practice has been hailed as a major breakthrough

The ruling by Professor PH Cloete in the industrial court sitting n Pietersburg affected members of the Media Workers Association of South Africa (Mwasa) employed by Sakkor manufacturing

Cloete found in his judgment that the dismissal of more than 400 workers following a dispute over the termination of accommodation and demand for a wage increase constituted an unfair labour practice

He found that the accommodation in the company's premises was a condition of service and that the workers' strike in June last year was the only remedy available for them

Tabulating the case and its progress, Cloete said the workers, who earned R120 per month in instalments, were housed in compounds erected by the management until they were verbally told about the intention to terminate the accommodation

Not zoned

The company said the town council had given it notice to terminate accommodation of workers on the premises as the area was not zoned for residential purposes

In efforts to stave off a confrontation, Mwasa arranged alternative accommodation on a farm near Silicon mine, about 19km from the company premises

The company would have had to pay an accommodation fee of R15 for each worker a month as well as transport to and from work

The company refused, saying it did not have money for such a project

Mwasa then secured a plot in Seshego where accommodation could be built by the company, but this too was turned down

The union then coupled its proposals with a wage increment to enable employees to afford the rental and transportation fees

On agreement with the union, the company applied to the town council for permission for the employees to stay on the then existing accommodation in the premises

The town council however responded by instructing the company to "cease illegal occupation and remove all illegal structures and buildings on the premises"

The workers later approached the management to get clarification on developments regarding the termination of the accommodation

The management remained adamant that no alternative accommodation would be provided and was not prepared to accede to proposals by their union

This became the turning point of the dispute which resulted in a strike

They were later dismissed in an action that attacted the attention of overseas trade unions including the International Confederation of Free Trade Unions (ICFTU)

Police raided union offices and arrested several strikers who were accused of harassing scab labourers The company even applied and was granted a restraining order

Labour unions in Taiwan, where the Chinese owners of the firm come from, also intervened after the ICFTU had asked for world wide support

A consumer boycott in Pietersburg was also implemented

When the consumer boycott began to bite, the town council met the union and denied issuing an order for the demolition of the accommodation but that existing accommodation on the company premises be upgraded

The company however contended that the premises was zoned for industrial purposes and employees, except night watchmen, could not be housed

"When the consumer boycott began to bite, the town council met the union and denied issuing an order for the demolition of the accommodation but that existing accommodation on the company premises be upgraded."

The company maintained that accommodation was not part of the employment package

But in his judgement, Cloete found that agreement was expressly and in some cases tacitly entered into since the employees were allowed to sleep on the premises while the management was aware and never objected to it for four years

All employees who testified said the right to stay on the premises was a condition of service since it was negotiated and never denied They all said they would not have accepted employment without accommodation.

They also testified that their wages were low because accommodation was provided Management did not testify nor challenge this point and Cloete took it as evidence that remained unrebutted

Cloete also found the right to accommodation had been part of the conditions of service adhered to for over four years and has constituted a labour practice

The management therefore committed a breach of that condition while hiding behind the town council's instructions, he concluded

The dismissal constituted an unfair labour practice because they resorted to the only available remedy

Since the majority of dismissed workers have already been replaced and the company was without vacancies, Cloete ordered the management to pay the workers two months salaries which amounted to a total of R103 832

However, the dispute is still raging as both parties have indicated that they are to appeal against the judgment and finding

The union wanted the workers to be reinstated While accepting the finding of the court, Mwasa is to appeal against the monetary settlement granted It is too little and in any case, not what they had wanted, they said

The company on the other hand, according to their lawyer, Mr Jan Stemmet, is to appeal against the findings that

The right to accommodation was a condition of service,

There was no other remedy available to the workers than to withold their labour,

The decision to terminate their services was unfair, and

The company pay compensation to workers

Mwasa official Mr Albert Makgoba said the judgment was an important victory as it established that provision of accommodation to workers on a long-term basis constituted an employment practice that if terminated unfairly can be punishable by law

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present and compile plans for the future This could be a dynamic phase for you to negotiate if you make the

Wessels calls off meeting

BDAY 21/10/92 (165)

DIRK HARTFORD

MANPOWER Minister Leon Wessels has called off his meeting with Cosatu next month because of Cosatu's "confrontational attitude" and lack of sensitivity in building sound labour relations

But Wessels will send Manpower director-general Joel Fourie instead

The Minister will re-enter negotiations as soon as he senses a more serious approach from Cosatu. The "status" of Cosatu's delegation to the meeting will be an indicator of its seriousness

Wessels is peeved that Cosatu delegations which have met him have not included Cosatu's president, vice-president or general secretary.

He said in a statement yesterday this illustrated their contempt for these bilateral negotiations

Cosatu responded by saying it was prepared to address these concerns — "at the highest level" — in a meeting with Wessels to pave the way for the scheduled November meeting to still go ahead.

Alluding to Cosatu's decision at the weekend to "conditionally" re-enter the National Manpower Commission, Wessels said Cosatu had unilaterally shifted the goalposts and was negotiating in bad faith

Cosatu insisted that its conditions for re-entering the commission were legitimate concerns and did not mean it would not participate until these had been met.

It meant that Cosatu would participate — but this hinged on progress within the commission on the conditions the federation had raised.

"We do not intend to participate in the NMC for its own sake, but in order to achieve real progress for workers as a result of bona fide negotiations," Cosatu said.

National Manpower Commission chairman Frans Barker said although there was some uncertainty on Cosatu's position, it appeared Cosatu had not set preconditions on re-entering the commission . He still hoped the restructured commission would get going soon.

Wessels rejected Cosatu's allegation that government was giving veto power to other organisations over extending worker rights to farm workers, or that government was acting unilaterally.

And he challenged Cosatu to act in the spirit of the Laboria Minute

Court rules for Times Media against union

RAY HARTLEY

AN APPLICATION by the SA Union of Journalists to compel Times Media Ltd to participate in the media industry's collective bargaining forum, known as the Conciliation Board, has been turned down by the Industrial Court. BDAY 23/10/92

SAUJ president Dirk Hartford said yesterday the application had been brought to force TML to participate in the board until a final court ruling was made next year

The court ruled that TML could remain outside the board, from which it withdrew in April.

TML group secretary Barrie Harris said negotiations were still under way with the union over ways in which the conciliation board could be used in future

Protest at delay on farmworkers' rights

BDAY 29/10/92 (165)

CAPE TOWN — Manpower Minister Leon Wessels has agreed to delay extending basic rights to farmworkers until he has tested the feasibility of a separate statute for agriculture, says the SA Agricultural Union (SAAU).

SAAU deputy director Kobus Kleynhans said this yesterday in response to allegations that government had held back on a revised labour law covering farmworkers because of "undue lobbying" by the farmers' union.

In a statement, he said: "The only agreement which we have with the Minister is that he will hold back the Basic Conditions of Employment Act until he can determine if our proposals for a separate labour law are feasible or not".

Earlier, the Stellenbosch-based Centre for Rural Legal Studies and Lawyers for Human Rights (LHR) said the Basic Conditions of Employment Amendment Act still had to be promulgated despite being passed by Parliament in June.

They said they were seriously concerned that, at this late stage, Manpower Minister Leon Wessels had chosen to accept representations from one party, the SA Agricultural Union, effectively stalling the Act.

Government's withholding of the Act "smacked of political dishonesty".

Meanwhile, about 1,4-million farm workers remained without the barest minimum of legal protection against abuses in the workplace.

The LHR and rural studies centre said the amended Act had been passed after lengthy negotiations in the National Manpower Commission between a wide range of parties.

These included the SAAU and Cosatu. — Sapa.

LABOUR LAW FM 6/11/92 (165)

Choose your forum

The drive by "progressive" unions in recent years towards centralised wage bargaining has suffered a setback The Industrial Court has ruled that parties cannot be compelled to negotiate at a particular bargaining forum

The judgment, in the case brought by the SA Union of Journalists against Times Media Ltd (owner of the *FM*), was delivered by Arthur de Kock, a senior member of the Industrial Court, on October 20

The union had, under Section 43 of the Labour Relations Act, sought an order declaring TML's withdrawal from the SA Newspaper Press (Editorial) Conciliation Board an unfair labour practice Further, that TML had unfairly breached a 1983 agreement (which appeared to cast the relationship in stone), and that TML's withdrawal notice should be rescinded

The union's application was dismissed without costs

The dispute involved not the obligation to negotiate, but rather the appropriate bargaining forum and the company's right to withdraw from the forum previously agreed and used Respondents included Argus Newspapers and the SA Press Association, which, though no relief was sought against them, were cited as they had an interest in the matter

TML had reached the conclusion that the board was no longer suitable for negotiations with its editorial staff represented by the union "to the extent that it was representative of them " (Representation was not at issue) The company believed that its attempts to negotiate changes to the board, or create a new forum, had failed In April it informed the union that it would opt out at the end of July.

The employers had been unhappy with the old board for some time They tried to pull out in 1982 but were checked by the union through the Industrial Court (Bleazard *vs* Argus and others, 1983).

That dispute was settled in terms of the 1983 agreement, which restricted the right of signatories to withdraw. They could not withdraw if it amounted to an unfair labour practice, unless a new forum was jointly agreed, if it breached the board's constitution, upon failure to agree; nor "solely upon notice."

The court found it difficult to determine precisely what the parties intended by this Its interpretation, however, is that an agreement of indefinite duration could be terminated if reasonable notice were given

Though the 1983 agreement says no party is entitled to withdraw at will, this did not mean a party could not withdraw for reasons other than those contained in the agreement — commercial reasons, for instance The provision against withdrawing "solely upon notice" clearly implied that there may be good and sufficient reason for withdrawing upon notice

Among TML's reasons for wanting to leave the board, or restructure it, was that it was disadvantageous to the process to bargain in the presence of its main rival, Argus While TML preferred plant-level bargaining, it was not wedded to the idea. The court found that TML's efforts to seek a new agreement with the union were fruitless and would continue to be fruitless

While the court would compel collective bargaining where it is refused, it would not interfere as to where and when this should take place, because collective bargaining should always be voluntary to be effective There was no universally correct forum that should be used

The only effect of TML's withdrawal from the board, said the court "will be to stifle an agreement which is 'national' in the sense of providing minimum conditions of employment for English-language publications published by it and others "

That observation highlights a key reason why certain unions, notably those aligned to Cosatu, prefer centralised as opposed to plant-level bargaining It gives the union greater leverage to negotiate wages and conditions of employment which can apply nationally, irrespective of whether these can be borne in all regions or by smaller companies ■

Mediators take over from industrial court

S/Times (Buss) 8/11/92. (165)

By ADRIAN HERSCH

DISMISSAL disputes are increasingly being referred to private arbitration

The Independent Mediation Service of SA (IMSSA) reports that in the year to the end of September it conducted 386 arbitrations compared with 312 in the same time last year

Most arbitrations concern dismissals

The rising use of arbitration can be ascribed to the fact that industrial court cases take a long time to be resolved.

IMSSA director Charles Nupen says "The advantage is that it is a flexible mechanism. The parties choose their own terms of reference and the whole process is concluded relatively quickly"

CHARLES NUPEN It's flexible and quicker to go to arbitration

Trend

Some large companies and corporations and their respectively recognised trade unions have agreed to use the process permanently

For example, in the mining sector, Anglo American and the NUM agreed this year to refer dismissal disputes to arbitration.

The process is also being used by the public sector

Transnet management and 13 unions in the Transnet industrial council agreed early in the year to this.

Mr Nupen says "Throughout the year we have handled many dismissal disputes from this sector, most of them involving members from the Cosatu-affiliated SA Railways and Harbours Workers Union (Sarhwu)"

The number of mediations conducted by IMSSA so far this year is 399 compared with 456 in the same time last year Most relate to wage disputes.

Mr Nupen ascribes the reduction to several factors, including the trend to centralised bargaining both at corporate and industry level

"This has resulted in fewer sets of wage negotiations taking place," he says

Another reason could be that economic conditions are so tough that in pay talks employers have been unable to be as flexible as they were as in previous years

For example, Seifsa executive director Brian Angus said in June that the pay dispute in the metal industry was unlikely to go to mediation this year because "employers don't have the same leeway for flexibility as they had last year"

This year IMSSA continued to provide its balloting service for strikes and other purposes in several sectors

Unique

IMSSA regional director Inthiran Moodley says a unique voting method was used in a ballot to choose worker representatives at a mining house

Mr Moodley says "Many mineworkers are illiterate, but the voting problem was overcome by having the photographs of the potential representatives on the ballot forms"

Mr Nupen says Immsa continues to be involved in mediating disputes in the community as well as providing other services in this area

Labour law accord 'breaks new ground'

BDAY 9/11/92.

DIRK HARTFORD

COSATU and Manpower Minister Leon Wessels will jointly announce today details of a "ground-breaking" agreement covering the whole range of legislation and institutions affecting the labour market

Sources close to Friday's talks between the parties said the agreement was the biggest yet reached between government and labour and dwarfed the September 1990 Laboria Minute in its scope

The sources said that while the Laboria Minute laid down "broad agreement" on general issues, the latest agreement dealt with a host of specific issues — down to the clauses in legislation affecting workers

The agreement covers the Labour Relations Act, the Unemployment Insurance Fund Amendment Act, the Workmen's Compensation Act and laws affecting farm, domestic and public sector workers

In addition, agreement was reached to make the restructured National Manpower Commission a working body by the end of January Agreement had also been reached to establish task teams to tackle "outstanding issues"

In terms of the agreement, Cosatu would be involved in preparing legislation for public sector workers This would replace proposed legislation which Cosatu had not been involved in drafting A meeting has been planned between Wessels, Cosatu and National Health Minister Rina Venter

A Bill on public sector labour relations, which Cosatu rejected, was withheld during the past parliamentary session

Agreement to extend the Basic Conditions of Employment Act to domestic workers was likely soon, as was draft legislation for farm workers. In addition, the year-end deadline for a report on the implementation of the recommendations of the International Labour Organisation commission, which visited SA earlier this year, was discussed

Shock for organised agriculture

Labour deal extends rights to millions

BDay 10/11/92

DIRK HARTFORD

AN AGREEMENT between government and Cosatu to extend basic labour rights to millions of previously unprotected workers was a major breakthrough for SA labour relations, Cosatu general secretary Jay Naidoo said yesterday.

Manpower Minister Leon Wessels said the agreement paved the way for all players on the labour terrain to work to establish reasonable and just labour relations compatible with international standards.

And DP manpower spokesman Robin Carlisle described yesterday's announcement as the most notable agreement for some time, which could have far-reaching consequences for economic growth.

However, organised agriculture greeted the agreement with "shock and indignation" The SA Agricultural Union (SAAU) said it had not been consulted on the plans for new legislation which will extend labour rights to farmworkers

The Centre for Rural Legal Studies and Lawyers for Human Rights welcomed the "momentous nature" of the announcement and called on Wessels to immediately promulgate the Basic Conditions of Employment Act for farmworkers to prevent arbitrary dismissals before it was made law.

Naidoo said although much of the agreement had yet to be implemented, it represented major progress towards an equitable labour relations system

One aspect of the agreement, which involves government in the dispute over Bophuthatswana's proposed labour legislation, will be implemented immediately. Cosatu will attend a meeting today, convened by Foreign Minister Pik Botha and attended by Wessels, Finance Minister Derek Keys and Mineral and Energy Affairs Minister George Bartlett, with the Bophuthatswana government to discuss the proposed new law.

Other aspects of the agreement include·

- Extension of the Basic Conditions of Employment Act (by March) and the Unemployment Insurance Amendment Act — by January — to farmworkers Draft legislation to extend the Labour Relations Act (LRA) and the Wage Act to farmworkers will be published by the end of the year with a view to passing it next year;
- Promulgation of the Basic Conditions of Employment Act for domestic workers by the second half of 1993, the extension of the Unemployment Insurance Amendment Act and Workmen's Compensation Act to domestics by 1994 Committees will investigate the extension of the LRA and Wage Act to domestics and report to the Minister by April and October respectively;
- The establishment of a committee to consider how the recommendations of the

To Page 2

Labour deal

BDay 10/11/92

From Page 1

International Labour Organisation's fact-finding mission — which made recommendations to bring SA labour law into line with internationally accepted standards — may be implemented,

- Amendments to the LRA to enable registration of public and private sector unions by February, and
- Allowance for Cosatu to make an input on the Public Sector Labour Relations Bill.

There was also agreement on processes and committees to investigate problems regarding industrial council agreements, the Industrial Court (including the appointment of court personnel), the harmonisation of labour relations in SA and the homelands and the introduction of a labour appeal court next year.

In addition, it was agreed the restructured National Manpower Commission should start working by February.

Naidoo said Nactu and Saccola were not part of the agreement because the "sticky points" in negotiations had been between Cosatu and government

GERALD REILLY reports SAAU manpower committee chairman Chris du Toit said the decision had been taken without consultation with organised agriculture

The SAAU had submitted its own draft legislation to the Minister and had arranged to discuss its document on November 20 "It was, therefore, with shock and indignation that agriculture learned that the Minister had, before his discussion with the agriculture sector, made a decision in consultation with Cosatu, especially in the light of the fact that Cosatu has virtually no members among farmworkers

"All the good work of the recent past has now been rendered worthless by an ill-considered decision"

Labour law cannot wait for farmers' union — Wessels

BDM 11/11/92 (165)

CAPE TOWN — The country could not wait for the SA Agricultural Union (SAAU) to produce concrete proposals for labour law for agriculture, Manpower Minister Leon Wessels said yesterday

Justifying his announcement on the extension of key labour laws to agriculture, Wessels said he was surprised at the SAAU's reaction.

In terms of an agreement between himself and the SAAU, it was to have submitted its proposals for a "consolidated, agriculture-friendly" law by September 30.

"What was eventually submitted to me did not even approximate the needs for reform and the need for timeous and swift performance in this process.

"(The SAAU) only spelt out principles regarding the Labour Relations Act and (the proposals) implied that the Basic Conditions of Employment Act would have to be substantively renegotiated"

Meanwhile, the Afrikaanse Handelsinstituut said yesterday the accord between government and Cosatu on extending the Basic Conditions of Employment Act had again highlighted the need for employer involvement in negotiating labour laws.

AHI vice-president P A Olivier welcomed the agreement and said it paved the way for creating and establishing a comprehensive labour dispensation

However, the AHI regretted the perception that certain parties had been excluded from the process, illustrating the need for employer involvement

The PAC-aligned Nactu union federation said yesterday it cautiously welcomed the accord

The Domestic Workers' Association yesterday expressed concern that it was not consulted about the negotiations.

The association had been negotiating with government since 1974.

In its reaction the Domestic Employers' Association of SA said it was critical to the interests of domestic employers that any draft legislation concerning domestic workers be submitted to the association Chairman Claire Read said the agreement with Cosatu was "very wide and general in its scope" and called on goverment to hear the association's views — Sapa

LABOUR

Sudden agreement

While the provisions of the pathbreaking agreement between government and Cosatu on farm and domestic worker rights were generally expected, employers are concerned at the way in which the deal was done

In particular, it appears that the National Manpower Commission (NMC) was bypassed — and taken by surprise — at Monday's announcement of the agreement It was signed exclusively — and suddenly — by new Manpower Minister Leon Wessels and Cosatu general secretary Jay Naidoo last Friday

Cosatu only recently announced, after a great deal of discussion, that it is to re-join

FM 13/11/92

the tripartite NMC (labour, business and government), having pulled out in part because government ignored the NMC's recommendations

Aside from the SA Agricultural Union, other employers are wondering whether this will set the pattern and bypass them Puzzlement is compounded by the fact that Cosatu has hardly any farmworker members — except those in agri-business, who are organised mainly through its Food & Agricultural Workers Union in the Natal sugar and western Cape fruit industries The inherent difficulty in organising farm labourers is a separate issue

A "shocked and extremely indignant" SAAU said the decision to extend basic labour rights to agriculture was taken "without any consultation with organised agriculture " It said a meeting had been arranged with the Minister for next Friday to discuss an SAAU draft document (earlier sent to the Minister) outlining a separate labour Act for the sector While much work had been done "to make the idea of practical labour legislation acceptable to farmers," said SAAU manpower committee chairman Chris du Toit, "I now expect strong opposition to the labour laws "

Indeed, observes labour consultant Duncan Innes, the worry is that SAAU, "which has dragged its feet on the matter," may prevent the effective implementation of the new laws, which will be difficult to police in any event

While welcoming the envisaged new legislation for "extending protective rights to millions of workers exploited in the past," Innes hoped government would not renege or water down the agreement.

Its main provisions state that the Minister shall

☐ Promulgate the Basic Conditions of Employment Amendment Act (BCEA) to take effect on March 1 1993;

☐ Promulgate the Unemployment Insurance Amendment Act on January 1 1993;

☐ Introduce in parliament, with a view to passing it in the 1993 session, legislation to appropriately extend the Labour Relations Act (LRA) and Wage Act to agriculture and seek early Cabinet approval for this, and

☐ Before the end of the year, get his department to publish for comment the proposed legislation with due regard to the NMC's recommendations

Regarding the BCEA for domestic workers, the Manpower department will submit to the Minister, by the end of next March, draft legislation to be introduced into parliament for passage not later than the second half of the year. It was further agreed that the LRA, appropriately amended and including effective dispute resolution procedures, needs to be extended to domestic workers

Consideration is to be given to extending the Wage Act to domestics as well A committee will be set up by Manpower including Cosatu, Nactu and Saccola, together with the Justice department in respect of dispute

Manpower's Wessels *bold foray into the labour field*

resolution procedures It is hoped to enact this by the first session in 1994

Extending unemployment and workmen's compensation benefits to this sector is agreed in principle and is to be investigated So will labour law in the homelands ■

LABOUR

New labour deal with old problems

W/Mail 13/11-19/11/92

The new deal for public servants and domestic and farm workers has been greeted as a major breakthrough. But opposition from the agricultural and domestic workers lobby could put a spanner in the works

By **FERIAL HAFFAJEE**

THE accord signed this week between the Congress of South African Trade Unions and the government is being hailed as a victory for negotiated labour policy, but those left out in the cold can derail the hardwon agreement.

The labour movement has always led the field with negotiated and co-determined agreements that outstrip national political negotiations in sophistication as well as content. This week's agreement is no exception.

Concrete dates have been set for legislation to regulate the stepsister sectors of domestic and farm workers and public servants. The more powerful National Manpower Commission (NMC) will begin work early next year and the new National Training Board will start negotiations this month.

Cosatu lawyers have, through concerted campaigning, won a promise for the revision of the controversial industrial court. In addition, the labour appeal court will now be a court of final appeal for all labour matters, ending problems both employers and unions have with supreme court judges with a scant knowledge of labour law. Judges to the appeal court will be appointed with the consensus of government, employers and trade unions.

Cosatu general secretary Jay Naidoo called the agreement a "major breakthrough for labour relations" while Leon Wessels said the agreement set the foundation for South Africa to get its labour law in line with international standards.

But their elation is tempered by the voices of discontent which have quickly made themselves heard.

The farmers' lobby, in the shape of the South African Agricultural Union (SAAU), reacted angrily to the announcement that the minister will promulgate the Basic Conditions of Employment Act for farmworkers by March next year. The SAAU said it was "shocked and indignant" at Wessels promise.

Only a fortnight ago, Wessels agreed to withhold farmworkers legislation after receiving the SAAU's new proposals for labour legislation.

This week, the minister set himself on a collision course with the farmers when he said the new proposals "did not even approximate the needs for reform and the need for timeous and swift performance".

A determined Wessels said the country could not wait for the farmers to produce concrete legislation.

Despite the headstrong position of the SAAU, Cosatu indicated its willingness to continue negotiations with the organisation on the other labour statutes for farmworkers.

Wessels has agreed to publish the NMC proposals on the extension of the Labour Relations Act and the Wage Act to farmworkers by the end of the year and to introduce draft legislation into parliament early next year.

Basic conditions of employment for domestic workers will be promulgated by the middle of next year and a committee will soon be set up to deal with the difficult areas of dispute settling mechanisms and wages for domestic workers, with a view to extending this legislation to the sector by 1994.

The Domestic Employers Association opposes a minimum wage for domestic workers and wants to be extensively consulted about any legislation for this sector.

In addition to the housewives and farmers lobby, the public servants employer body — the Commission for Administration — could also put a spanner in the works.

Lucy Nyembe, of the Centre for Applied Legal Studies, has been centrally involved in drafting legislation for the public sector.

She says there is a subtle power play between the Commission for Administration and the government because the former wants to administer the Act and Cosatu would prefer that the Department of Manpower do the administration.

"Wessels may be a liberal and a pragmatist, but the CFA is not," she says.

Draft legislation for the public sector was finalised in September, but there are many problems with the legislation and Cosatu wants the legislation referred to the NMC for further negotiation.

The problems include:

- An unreasonably wide definition of essential services which effectively erodes the right to strike.
- The criminalisation of the right to strike.
- The requirement that trade unions give 20 days notice before a strike while employers can get a strike interdict in 48 hours.

Cosatu assistant general secretary Sam Shilowa agrees that dates have been negotiated in the past with various manpower ministers and that they have gone by with no action.

"Minister Wessels is convinced that the acts should go through and we don't want to prejudge him," says Shilowa. "We want him to prove his bona fides."

Other features of the agreement include a resolution to form a high-powered committee which will work at implementing all the recommendations made by the recent International Labour Organisation Commission to South Africa.

In line with Cosatu's strategy to fashion a key role for itself in the labour market, two task forces have been set up to determine policy on training and the industrial court. The task forces are appointed by consensus and will include key union policy-makers whose appointment will only be rubber-stamped by the minister.

While the Laboria Minute, the foundation stone of this week's agreement, was negotiated by employer bodies, unions and the state, the latest accord is bipartite. Employers and politicians welcomed the accord but said it was essential that employers and other union federations be included in negotiations.

Nactu urges Govt to reject demands

Sowetan 24/11/92

■ **Farmers want to be exempted from Industrial Court in disputes with their farm workers:**

(165)

By Ike Motsapi

THE National Council of Trade Unions urged the Government to reject farmers' demand that they be exempted from arbitration, conciliation boards or Industrial Courts in disputes with their workers

Nactu was reacting to the farmers' demands after meeting State President F W De Klerk in Pretoria last week.

The farmers told De Klerk they wanted pending legislation to extend labour rights to domestic and farm workers to "relegate dispute resolution to only between the farmers and the workers"

Mr Mudini Maivha, Nactu's information and publicity officer, said."My union is of the opinion that the extension of these rights to farm workers is long overdue

"These rights are part of their universal human rights and international labour standards.

"Farm workers have been the most exploited section of the working class in South Africa.

"To confine dispute resolution to farmers and workers only will be defeating the objective of establishing sound industrial relations in the farming industry

"This will disadvantage the farm workers whose level of training in trade union rights is still low.

"Nactu believes that the labour movement must carry out a vigorous education and training programme for farm workers

"The suggestion that the extension of labour rights to farm workers could open the way for strikes in the industry is an arrogant one," Maivha said

Govt to publish Bill for domestic workers

GERALD REILLY

PRETORIA — A draft Bill to adapt the Basic Conditions of Employment Act to cover domestic workers will be published this month for comment

The Bill makes no provision for minimum wages Manpower director-general Joel Fourie said incorrect impressions on the extension of labour laws to domestic workers had been created in the media

Comment on the Bill can be submitted to the department before February 28

Provisions in the draft include determination of maximum daily and weekly ordinary working hours, meal intervals, payment of overtime, work on Sundays and public holidays and sick and ordinary leave (165)

Fourie said a committee would be appointed on the issue of a minimum wage and settlement of disputes Proposals would be submitted to Manpower Minister Leon Wessels before September 30

An independent investigation into unemployment insurance and workmen's compensation for domestic workers would report during May

A curate's egg for civil servants

W/Mail 11/12 - 17/12/92 (165)

LUCI NYEMBE *argues that the Public Service Labour Relations Bill gives with one hand and takes with the other*

A DRAFT statute which covers civil servants was finally introduced into parliament last week, two years after the Laboria Minute was signed

Unfortunately, there are many features which undermine any positive effects the Bill may have.

But two features — the extension of the "unfair labour practice" jurisdiction and stop-order facilities — establish important basic rights It is important that these features will now be a right rather than a privilege at the discretion of the director general of manpower

This will allow unions in the public sector to establish their resource base and their ability to defend the rights and interests of their members

The Bill intends "to regulate new labour relations in the public service, including collective bargaining at central and departmental levels . and to provide the prevention and settlement of disputes ... between the state as employer, its employees and employee organisations"

At present there is only a forum for consultation between the Commission for Administration and employee organisations on wage or salary matters and on the proposed legislation

This is clearly unsatisfactory — the lack of proper collective bargaining rights and formal procedures for speedy dispute resolution were major contributory factors to the recent, lengthy hospital strikes

While the Bill establishes a bargaining council at central level, it also presents a number of impediments to concerted bargaining

For example, an employee organisation has to prove that it represents workers affected by a particular issue if it wishes to negotiate that matter in the council.

With 11 unions and staff associations presently recognised, the effect is that employee organisations would not be able to challenge or support each other unless an issue affected their members.

It is generally accepted that disclosure of information is crucial in the bargaining process In the private sector, unions often have access to company annual reports or interim statements

This enables them to challenge or accept the validity of company claims about their "ability to pay"

In the Bill the definition of "classified information" is so broad that it can be used to withhold basic and necessary information from employee organisations

There are at least five separate procedures in the Bill for resolving disputes depending on the categorisation of the dispute It can be a collective dispute of right, an individual dispute of right, an unfair labour practice, a dispute of interest which has financial implications in an essential service, or a dispute of interest which has no financial implications in an essential service

Problems arise where a dispute may simultaneously be a dispute of right and of interest, for example retrenchments. Where the categorisation of a particular dispute is challenged (probably by the employer) the case could be thrown out on a legal technicality and the merits of the dispute would never be heard.

This bodes ill for the resolution of disputes in a sector where their resolution or escalation has a direct impact on the lives of ordinary citizens

Strike action is permitted for public service employees, following elaborate procedures and requirements, including balloting and 20 days' notice to the employer

The employer, on the other hand, can interdict a strike on 48 hours' notice But even following these legal requirements to the letter does not indemnify "legal" strikers against dismissal

In addition, failure to comply with the legal provisions makes the "guilty" parties criminally liable. Criminal sanctions include a fine or imprisonment or both

Strikes are also prohibited in "essential services" and the definition of these goes way beyond the International Labour Organisation (ILO) definition of "services whose interruption would endanger life, personal safety or health of the whole or part of the population"

●Luci Nyembe is a research officer at the Centre for Applied Legal Studies specialising in the public sector.

JOB MARKET

Beware shady 'consultants'

S Times [Buss] 13/12/92.

By ADRIAN HERSCH

BUSINESSES that cannot afford the high legal costs of industrial court cases are in some instances being taken advantage of by "consultants" acting on behalf of dismissed employees, claim a number of employers and labour lawyers

The effect of this, and stringent regulation regarding dismissal of employees — even more stringent than some other countries in the world — is having an adverse effect on the economy and stifling job creation.

The introduction of a small labour court (SLC), which is being planned, may address some of the problems

But until such time as legislation changes, there are a number of remedies available to employers — large and small — to combat cases where unfair advantage is being gained, says labour lawyer Rod Harper

He says that, in many instances, consultants take on cases of dismissed employees regardless of the merits of the case

"They drive the matter and attempt to force the employer to settle the matter on an extravagant basis, rather than facing the threat of legal proceedings

"The company would rather pay, than spend two days in court where substantial costs can be involved"

Split

Mr Harper says a method commonly used is that the dismissed employee pays no deposit or other fee to the consultant.

An agreement is struck where the settlement — for example, six months to pay — is split on a 50-50 basis between the dismissed employee and the consultant. The dismissed employee therefore has nothing to lose

"Some consultants will try to get as best a settlement before legal proceedings begin, with the aim of ultimately avoiding legal proceedings

"Where there is no sound case any competent labour lawyer will whip them in court," he says

Mr Harper says it is ironic that when employers settle out of court, even though they may have a fairly sound case, they are encouraging the process where consultants take on cases even where the merits are poor

But he has noticed some changes recently "Some employers are getting fed up, and where they have a good case they are taking up the challenge head-on

"They believe a process tantamount to blackmail is emerging and are determined to fight it."

Louis Moll, senior industrial relations manager of First National Bank, says the company stands firm on its principles

"It is important for our clients to be trustworthy of us, especially when you consider we are in the banking sector

"On matters of principle we will fight cases, irrespective of costs"

But Mr Moll is particularly concerned about those in small businesses He says "Fighting a case can take days and weeks out of the life of the head of a small business He loses production, and the legal risks can be high His business can go under

"You may find that some of these people will rather pay out a few months' salary, regardless of the merits of the case, to continue being in business

"It's not the employer's fault, but there is a breakdown of justice"

Mr Harper says there are a number of options open to those in small and medium-sized businesses

"Many fall under industries where there are employer federations If they are not members they should look to join, because specialist industrial relations advice is provided to members

"For example, in the steel and engineering industry, Seifsa gives advice In building there is Bifsa, in construction Safcec, and so on

"Employers should look carefully to see if there is some kind of employer federation and, if so, to see what industrial relations advice is available"

While some provide advice only up to the point of legal proceedings, Mr Harper says this is invaluable

"The golden rule is to take advice before the action, such as dismissal, because one of the advantages of getting 'advice in advance' is that it is the best way of minimising legal costs.

"There is a responsibility amongst business people to make the right moves from the beginning This is, after all, in the interests of employers and employees, which makes for sound labour relations"

Retainers

Those in the smaller businesses that do not fall under employer federations can pay retainers to labour lawyers

"It is not widely known, but a small company could be on retainer for as little as R150 per month with some legal firms," he says

Mr Harper adds that employers should be alert to a number of methods being used

"Some consultants are going to naive employers and quoting case law purportedly supporting their client's case — when in many instances the case law is irrelevant to the issue in dispute," he says

He says another problem that has arisen is that persons claiming to represent "trade unions" are making demands on behalf of dismissed workers

Mr Harper says it is important to check that these "unions" are registered as such, because some appear to be "businesses operating under the guise of trade unions"

"Unfortunately, this tends to destroy the goodwill of proper trade unions in the eyes of certain employers," he says

Professor Adolph Landman, of the law faculty of the University of SA, says there is no controlling body which has any say over the way in which consultants operate

"Free market forces operate and there is nothing to stop a consultant reaching an agreement with a dismissed employee to split up the settlement given by the employer

"Some consultants are doing good work, maybe some others are not"

Mr Moll says that, with the introduction of a SLC, at least part of the problem will disappear

"It will cut down on costs and the process will be quicker At the moment it takes about 12 months for a case to be heard in the industrial court An employee can be temporarily reinstated and remain on the payroll while you wait for the case to be heard. At least that will be eliminated," he says

National Manpower Commission (NMC) acting chairman Frans Barker says the restructured NMC will meet in January

He says "We'll be looking at the restructuring of the Labour Relations Act, and the proposed SLC will be part of it."

The SLC is expected to cover issues including suspensions and individual dismissals

Some employers are concerned that even with a SLC there could still be leeway for a choice of the industrial court if it is so wished — which they feel could be a "move back to square one"

Dr Barker says it is important in terms of rights that some form of choice be offered.

Clarity

"It is likely that in simple, straightforward cases the choice of using the higher court will be discouraged In more complex cases the presiding officer of the SLC may refer it to the higher court," he says

Dr Barker says the problems small businesses are having is understood "It is possible that more clarity on rules — for example, on dismissals — could be issued, which could introduce a far greater degree of certainty in the SLC relating to it"

Dr Barker says many countries in the world are moving away from rigid legislation on job security

"Some of these laws hamper job creation It is necessary that we have laws which encourage employers to take on workers"

Employers who face mounds of red tape when having to dismiss are likely to turn to more capital intensive methods of operation.

Lawyer slates agreement

BDAY 21/12/92 DIRK HARTFORD (165)

THE recently promulgated industrial council agreement for the iron, steel and metal industry conflicts with government's undertaking to respect international labour standards, says Edward, Nathan & Friedland director and labour lawyer Hilgard Bell

Among the international norms the new deal violates is freedom of association, says Bell The agreement states that the industrial council will be the only forum for negotiating matters covered by the agreement.

In addition, no employer, employee or union which operates in the industry may negotiate on issues covered by the agreement other than in the industrial council

Bell says this will make any employer, employee or their organisations guilty of a criminal offence if they negotiate with each other outside the industrial council on conditions of employment and wages

This makes the industrial council, itself a voluntary organisation, the sole arbiter of conditions of employment in a major part of the manufacturing sector.

This is a blatant infringement of the freedom of association of participants in the industry and flies in the face of International Labour Organisation (ILO) commission recommendations, says Bell

The ILO commission stressed the importance of "voluntary bargaining" between parties and said government should refrain from "any interference in order to modify the contents of freely concluded agreements"

Let's talk about it

W/Mail 23/12-29/12/92 (165)

For a while it was musical chairs in the Department of Manpower but Leon Wessels has returned some stability and sanity to this vital area

By **FERIAL HAFFAJEE**

MANPOWER Minister Leon Wessels is the kind of guy you could just call "Leon" — laid-back and without a trace of the grey-suited unapproachability of the old South Africa

You can easily picture him jogging down the streets of Pretoria with his wife or negotiating with his children when they want more spending money

Wessels has done a lot of negotiating in the seven months he s been in office — so much so that "let's talk about it' has become his favourite phrase

His adversaries have ranged from the suave negotiators of the Congress of South African Trade Unions to defensive farmers fearful of looming labour legislation

"Those who have not been here are on our schedules," says Wessels of the organisations which have not yet sat in his air-conditioned office

"I am not a captive of anybody, I want to do what is just and fair for labour," he told a recent National Party Transvaal congress

So one can expect delegations from the National Council of Trade Unions and troops of white workers, no longer protected in closed shops or guaranteed places in racially imbalanced training boards, to meet him

He can also expect the captains of industry to come knocking at his door, demanding a place at the table when accords like the one concluded with Cosatu in November are signed

That accord negotiated a mountain of minefields and in one fell swoop the minister showed what a little decisiveness can do

He set dates for the passage of legislation for domestic workers, for farmworkers and for public servants and he stuck to them By the close of parliament this year, draft legislation had been signed, sealed and delivered

Starting dates for the restructured National Manpower Commission and the National Training Board were set Other troublesome obstacles like the industrial courts and the Labour Appeal Court will be dealt with by influential but balanced task forces

Unlike his predecessors there will be no backtracking for Wessels even if faced with pouting farmers and hysterical housewives who have long resisted regulation for their workers

"Reform is a serious matter and you have to be punctual about it," he says This view is perhaps what makes him a prized negotiator in the government's camp

Leon Wessels He might survive a change in government

With an eye on the influence of the labour movement and the expectation of the pragmatism he will bring to political negotiations, Wessels has been relieved of his local government and housing portfolios

"It wasn't really possible to do justice to labour with the composition of the old portfolio But constitutional negotiations and labour complement each other," he says

Wessels is one of President FW de Klerk s prized New Nats a young, Stellenbosch University graduate, committed to reform and familiar with the popular lexicon, he is assured of the respect of the government's main negotiating adversary, the African National Congress and of Cosatu, the biggest player in the labour movement

The bargaining skills he has been forced to hone in monthly meetings with a broad spectrum of labour are likely to be useful in political negotiations

"Trade unions and the department spend hours in each other's company," he says, adding that the Manpower Department will not experience the same problems other ministries may have in "levelling the playing fields" under an interim government

Wessels has taken the department from one of the most contested and controversial to one of the most productive in the short time he's been in office

He wistfully remembers his second day on the job on June 2 this year

"I had my first meeting with the sub-committee of the National Manpower Commission (NMC) and there were 13 different points of view "

He suggested they "start a two-month honeymoon", at the end of which the department would publish a response to demands on the restructuring of the NMC

The process was successful and the new-look body will start work at the end of January

Then on his first day in parliament, he inherited the draft Bill for farmworkers legislation and its absolutely inherited time frame" which dictated that the legislation had to be piloted throught parliament that same week

Instead, he offered regular meetings with the parties until consensus was achieved

All has not been plain sailing with Cosatu and the minister has shown he can give as good as he gets

Recently he broke off a crucial meeting with Cosatu, charging that the federation was "not bargaining in good faith", that it was "shifting the goalposts" and sending negotiators without mandates to meet him

His appropriation of the federation's tactics (and its talk) won its respect and it quickly issued a conciliatory statement, soon further negotiations yielded the November accord

"I will not be the captive of anybody, be it the department, employer organisations or employee organisations The best arguments should carry the day, not because of the institutions or personalities involved," he says

Wessels is enjoying the post and is invigorated by the "sharp thinkers" he meets "They all have an acute awareness of the economy and the whole society "

Although Wessels is new to the labour field, having started his political career in the foreign affairs and law and order ministries, he has won the respect of labour players across the spectrum

It could mean that he will survive a change in government and be asked to remain minister of manpower — an appointment he would accept graciously, no doubt.

Govt proposal on farm pay levels

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DIRK HARTFORD

THE Manpower Department has prepared a working document which suggests the Wage Board should have the power to recommend guidelines for minimum wages in the agricultural sector

According to Manpower Minister Leon Wessels, the document is a result of recommendations from the National Manpower Commission and discussions with Cosatu and the SA Agricultural Union

But, his statement gives no indication that SAAU and Cosatu agree with the working document proposals Wessels indicated the Wage Board should only issue "guidelines" on minimum wages, rather than prescribe minimum rates, as is the case with industrial workers, reports our Political Staff BDAY 24/12/92

The draft legislation aimed at amending the Wages Act recommends that "special circumstances" in the agricultural sector be taken into account by the Wage Board when it makes recommendations

These considerations could be similar to guidelines already contained in the Wages Act. The current Act instructs the Wage Board to consider the ability of employers to do business successfully when making recommendations.

Distance from markets, transport costs and other relevant circumstances — like the cost of living in particular areas and the value of board, rations, lodging or other benefits provided for workers — also need to be considered

The working document is the first step taken by government since a set of controversial agreements Wessels reached with Cosatu in November.

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SCHEDULE

A summary of the recommendations of the National Manpower Commission (NMC) as it appeared in the Report on the Influence of Relevant Labour Legislation on the Small Business Sector (July 1991), with reference to the specific paragraph where each recommendation concerned appears, followed by the official comment, is set out below for general information:

A. GENERAL

Recommendation 1

(7.2) Only very small enterprises as defined in paragraph 7.7 1 should be accommodated initially (micro-enterprises).

Comment

1 1 A clear destinction should be made between large-, medium-, small- and micro-businesses.

1.2 Only very small enterprises should, due to their unique business situation, be accommodated.

1.3 This recommendation can be accepted as a starting point, but further development work will be necessary.

1.4 The uniqueness of the various industries should also be considered.

Recommendation 2

(7.5) There will have to be further research into the extent to which the establishment and growth of small businesses will be inhibited by labour legislation

Comment

2.1 There is agreement with this recommendation.

Recommendation 3

(7.6.1) The system of applications for and granting of exemptions should be maintained

Comment

3.1 There is agreement with this recommendation of the NMC.

3 2 Applications for exemption and the handling thereof by the industrial councils should be kept as informal as possible and immediate decision-making should be made possible

3.3 The NMC will be requested to give specific attention to this.

3 4 The Department will investigate the possibility to adapt regulations to allow for oral application for exemption.

3.5 A-one-stop service will be investigated (registration, payment and exemptions).

Recommendation 4

(7.6.2) An office for micro-businesses with a facilitator on a high level should be established within the Department of Manpower

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BYLAE

'n Opsomming van die aanbevelings van die Nasionale Mannekragkommissie (NMK) soos vervat in die Verslag oor die Invloed van Relevante Arbeidswetgewing op die Kleinsakesektor (Julie 1991), met verwysing na die spesifieke paragraaf waar elke betrokke aanbeveling voorkom, gevolg deur die amptelike kommentaar, word hieronder vir algemene inligting uiteengesit:

A. ALGEMEEN

Aanbeveling 1

(7 2) Slegs baie klein ondernemings soos in par 7 7 1 omskryf moet aanvanklik geakkommodeer word (mikro-ondernemings)

Kommentaar

1.1 Duidelike onderskeid moet gemaak word tussen groot-, middelslag-, klein- en mikro-ondernemings.

1 2 Slegs baie klein ondernemings moet a g v hul besondere sakeomstandighede geakkommodeer word.

1.3 Hierdie aanbeveling kan as 'n wegspringpunt aanvaar word, maar verdere ontwikkelingswerk sal nodig wees

1.4 Die uniekheid van verskillende bedrywe sal ook oorweeg moet word.

Aanbeveling 2

(7 5) Verdere navorsing oor die mate waarin arbeidswetgewing die vestiging en groei van klein ondernemings belemmer, moet gedoen word

Kommentaar

2 1 Daar word met hierdie aanbeveling akkoord gegaan.

Aanbeveling 3

(7.6.1) Die stelsel van aansoeke om en toestaan van vrystellings moet gehandhaaf word en meer toeganklik vir mikro-ondernemings gemaak word

Kommentaar

3.1 Daar word akkoord gegaan met die aanbeveling van die NMK

3.2 Aansoeke om vrystelling en die hantering daarvan deur nywerheidsrade moet so informeel moontlik gemaak word en onmiddellike besluitneming moet moontlik gemaak word

3.3 Die NMK sal versoek word om spesifiek hieraan aandag te gee.

3.4 Die Departement sal ondersoek instel om regulasies so aan te pas dat mondelinge aansoeke om vrystelling gedoen kan word

3.5 'n Eenstopdiens sal ondersoek word (registrasie, betalings, vrystellings)

Aanbeveling 4

(7 6 2) 'n Kantoor vir mikro-ondernemings met 'n fasiliteerder op hoe vlak moet binne die Departement van Mannekrag gevestig word

(165)

Comment

4 1 A unit to assist small businesses has already been established within the Department of Trade and Commerce.

4 2 The Department already have regional offices that deal with labour relations complaints Their functions can be adopted to play a facilitating role Exemptions from general provisions already delegated to a low level, which should accommodate the business problems unique to small businesses reasonably well As far as wage determinations and industrial council agreements are concerned, broad general exemptions have already been granted

Recommendation 5

(7 6 3) The system of exemptions on application only should be supplemented by administrative and other concessions that will be granted automatically.

Comment

5.1 There is agreement with the recommendation of the NMC.

5.2 "Small businesses" should be defined by the industrial councils and automatic exemptions should be considered

Recommendation 6

(7 9) Red-tape and formalities should be minimised for all businesses by for example using one departmental address for all returns

Comment

6 1 There is agreement with the recommendation of the NMC.

6 2 An auditing firm has already been appointed to advise the Department on this issue, to investigate the practical implementation thereof and to address the cost-effectiveness aspect

B. LABOUR RELATIONS ACT, 1956 (LRA)

Recommendation 7

(7.11) Micro-businesses should not be excluded from the LRA.

Comment

7 1 There is agreement with the recommendation of the NMC.

Recommendation 8

(7 11 1) Guidelines on a code of conduct and procedural codes could be drafted by the NMC, in consultation with the Industrial Court and other interested parties and should be taken into account as evidence

Comments

8 1 There is agreement that there should be codes

Kommentaar

4.1 Daar is reeds 'n eenheid by die Departement van Handel en Nywerheid gevestig om kleinsake behulpsaam te wees

4 2 Die Departement beskik reeds oor streekkantore wat klagtes rakende arbeidsverhoudinge kan hanteer en wie se funksies aangepas kan word om die fasiliteringsrol te vervul. Vrystellings van algemene bepalings is reeds tot 'n lae vlak gedelegeer, wat die besigheidseiesoortige probleme van klein ondernemings redelik goed behoort te ondervang. Wat loonvasstellings en nywerheidsraadooreenkomste betref, is daar ook reeds bree algemene vrystellings verleen.

Aanbeveling 5

(7.6.3) Die stelsel van vrystellings slegs op aansoek moet aangevul word deur administratiewe en ander toegewings wat outomaties toegestaan moet word.

Kommentaar

5 1 Daar word akkoord gegaan met die NMK aanbeveling.

5.2 Nywerheidsrade moet "kleinsake" definieer en outomatiese vrystelling oorweeg

Aanbeveling 6

(7.9) Rompslomp en formaliteite vir alle ondernemings moet verminder word deur bv een departementele adres vir alle opgawes.

Kommentaar

6.1 Daar word akkoord gegaan met die NMK-aanbeveling.

6.2 'n Ouditeursfirma is reeds aangestel om die Departement van Mannekrag hieroor te adviseer, praktiese implementering te ondersoek en die aspek van koste-effektiwiteit aan te spreek

B. WET OP ARBEIDSVERHOUDINGE, 1956 (WAV)

Aanbeveling 7

(7.11) Mikro-ondernemings moet nie van die WAV uitgesluit word nie

Kommentaar

7.1 Daar word akkoord gegaan met die NMK se aanbeveling.

Aanbeveling 8

(7 11.1) Riglyne ten opsigte van gedrags- en prosedurekodes kan deur die NMK in oorleg met die Nywerheidshof en ander belanghebbende partye opgestel word en moet as getuienis kan dien

Kommentaar

8 1 Daar word akkoord gegaan dat daar wel kodes moet wees.

(165)

8 2 The NMC should submit guidelines on possible codes to the Minister of Manpower for consideration and publication

8.3 Further investigation into the evidence value of the code, as well as the method of enforcing it should be undertaken and should be announced within the guide-lines for financial provision.

Recommendation 9

(7.11 1) The guidelines should be published and also be made available to small businesses

Comment

9.1 There is agreement with the NMC recommendation

Recommendation 10

(7 11 1) The guidelines should be drafted on a national basis with provision for sectoral differences.

Comment

10 1 An investigation should be undertaken to provide that guidelines on sectoral basis can differ from guidelines on national basis.

Recommendation 11

(7 11 2) Parties to a dispute where a small business is involved, should be encouraged to negotiate before referral to an industrial council or a conciliation board.

Comment

11 1 There is agreement with the NMC recommendation.

11 2 Industrial councils should make a person available to assist in the settlement of disputes within the Industrial Council and to make facilities for meetings available

Recommendation 12

(7 11 2) Outside assistance in the initial negotiations is set off against no outside assistance

Comment

12 1 There is agreement with the majority recommendation that parties to a dispute can make use of outside assistance

Recommendation 13

(7 11 3) If a dispute cannot be settled through negotiation, it should be referred for mediation or arbitration or to an industrial council or for the establishment of a conciliation board, which procedure should be compulsory before strikes, lock-outs or reference to the Industrial Court may take place

Comment

13 1 Actions such as strikes and lock-outs can, in accordance with present legislation, only be taken after the industrial council or conciliation board options have been exercised

8 2 Die NMK moet aanbevelings oor moontlike gedragskodes aan die Minister van Mannekrag voorlê vir oorweging en publisering

8.3 Oor die bewyswaarde van die kode moet verder ondersoek ingestel word asook oor die wyse van afdwinging en moet binne die riglyne vir finansiele voorsiening bekend gestel word

Aanbeveling 9

(7.11.1) Die riglyne moet gepubliseer word en ook aan klein ondernemings beskikbaar gestel word

Kommentaar

9.1 Daar word akkoord gegaan met die NMK-aanbeveling

Aanbeveling 10

(7 11 1) Die riglyne moet op nasionale grondslag met voorsiening vir sektorale verskille opgestel word

Kommentaar

10 1 Ondersoek moet ingestel word om voorsiening te maak dat riglyne op sektorale grondslag van riglyne op nasionale grondslag kan verskil

Aanbeveling 11

(7.11 2) Partye in 'n geskil waarby 'n klein onderneming betrokke is moet aangemoedig word om te onderhandel voor verwysing na 'n nywerheidsraad of versoeningsraad.

Kommentaar

11 1 Daar word akkoord gegaan met die NMK-aanbeveling

11 2 Nywerheidsrade behoort 'n persoon beskikbaar te stel om bystand te verleen om geskille binne die Nywerheidsraad te skik en vergaderingsfasiliteite beskikbaar te stel.

Aanbeveling 12

(7.11.2) Buite bystand in aanvanklike onderhandeling word gestel teenoor geen buite inmenging

Kommentaar

12.1 Daar word akkoord gegaan met die meerderheidsaanbeveling dat geskilvoerende partye wel van buitebystand gebruik kan maak

Aanbeveling 13

(7.11.3) Indien onderhandeling nie 'n geskil oplos nie, moet dit vir bemiddeling of arbitrasie of na 'n nywerheidsraad of vir die instelling van 'n versoeningsraad verwys word, welke prosedure verpligtend moet wees voordat stakings, uitsluitings of verwysing na die Nywerheidshof mag plaasvind

Kommentaar

13.1 Aksies soos stakings en uitsluitings kan ingevolge bestaande wetgewing eers geneem word nadat die nywerheidsraad- of versoeningsraadopsie uitgeoefen is

13 2 Arbitration is the final step in the process

13.3 As one is dealing here with the micro-businesses the cost involved in mediation and arbitration can have an inhibiting effect on the process and should not be made a condition

Recommendation 14

(7 11 3) Magistrates, local legal practitioners and possibly officials of the Department of Manpower should be available to act as arbitrators

Comment

14 1 According to the NMC report there are roughly 1,2 million small businesses, of which the number will increase dramatically when the LRA is extended to houseworkers and the agricultural sector. The number of potential disputes could therefore pose logistic problems as far as trained arbitrators, finances, venues, workload, etc. are concerned

14 2 Labour relations are based on the sound relationship between employer and employee, which continuously needs adjustments People that are proposed as arbitrators would need continuous training The question that has not been answered in the report is the source of arbitration

14.3 Limited training can lead to poor judgements which can have an implication for the credibility of the people involved

14 4 With the inclusion of domestic workers and farm workers under the Act, most disputes will originate in the rural areas and the work generated will be of such an extent that the Department might be faced with large financial implications where local legal practitioner's services are to be utilised

14 5 The magistrates might also be faced with an unacceptably high workload in the already overloaded legal system

14 6 As far as the Department of Manpower is concerned, the following problem areas exist

(i) The Department does not have offices in the smaller towns

(ii) Accommodation and transport problems can arise.

(iii) The smaller offices that do exist, are mainly manned by junior personnel who possibly do not have sufficient experience and who would possibly only be able to handle the more elementary cases

(iv) There is a big demand for people trained in labour relations and departmental officers are, due to low salary structures in the public sector, lured to the private sector, which aggravates the staff turnover, which sometimes leads to a shortage of experience

13 2 Arbitrasie is die finale stap in die proses

13 3 Omdat mens hier te doen het met mikro-ondernemings kan die koste van mediasie of arbitrasie inhiberend inwerk op die proses en moet nie as 'n voorwaarde gestel word nie

Aanbeveling 14

(7 11 3) Landdroste, plaaslike regspraktisyns en selfs moontlik beamptes van die Departement van Mannekrag moet beskikbaar wees om as arbiters op te tree

Kommentaar

14 1 Volgens die NMK-verslag is daar ongeveer 1,2 miljoen klein ondernemings en wanneer die WAV ook na huisbediendes en die landbousektor uitgebrei word, sal hierdie getal geweldig toeneem Die getal potensiele geskille kan derhalwe logistieke probleme skep wanneer dit by opgeleide arbiters, finansies, lokale, werklading, ens kom

14 2 Arbeidsverhoudinge berus op die "goeie" verhouding tussen werkgewer en werknemer, wat voortdurende aanpassings verg Persone wat as arbiters voorgestel word sal deurlopende opleiding moet ondergaan Die vraag wat dus onbeantwoord gelaat is in die verslag is die bron van arbiters

14 3 Beperkte opleiding kan moontlik tot swak uitsprake lei wat die geloofwaardigheid van die betrokke mense in gedrang kan bring

14 4 Met die insluiting van huisbediendes en plaaswerkers onder die Wet sal meeste geskille op die platteland ontstaan en die werk hieraan verbonde aansienlike afmetings aanneem wat groot finansiele implikasies vir die Departement kan inhou waar plaaslike regspraktisyns se dienste gebruik moet word

14 5 'n Onaanvaarbare hoe werklading kan ook vir landdroste geskep word waar die regstelsel reeds oorbelaai is

14 6 Wat die Departement van Mannekrag betref bestaan die volgende knelpunte

(i) Die Departement het nie kantore op kleiner dorpe nie

(ii) Akkommodasie en vervoerprobleme kan ontstaan.

(iii) Kleiner kantore wat wel bestaan word hoofsaaklik deur junior personeel beman, wat moontlik nie oor voldoende ervaring beskik nie en wat moontlik slegs eenvoudiger gevalle sal kan hanteer

(iv) Opgeleide mense in arbeidsverhoudinge is in groot aanvraag en weens salarisstrukture in die Staatsdiens, word departementele beamptes met ervaring graag deur die privaatsektor in diens geneem wat die personeelomset verhoog en soms tot 'n gebrek aan ervaring lei

(v) The financial implications of the proposal should be investigated thoroughly

14 7 In view of the above-mentioned, the opinion is that legal practitioners, magistrates, small employers, etc , have a responsibility to improve their level of expertise regarding labour relations The matter is being investigated further and other solutions are also considered.

Recommendation 15

(7.11 3) The guidelines should stipulate that parties must endeavour to agree on the person used to mediate or arbitrate the dispute, rather than to refer it to a conciliation board if this involves travelling over long distances and high costs

Comment

15 1 Arbitration proceedings can be expensive and in out of the way places it might not be possible for small employers to make use of arbitrators or mediators to settle disputes A further problem is that there is usually only one attorney in the smaller places, who has to do all the legal work for that area and who normally has relatively little expertise in labour relations

15.2 It is agreed that training should be done, but the question is who should finance it The Department of Manpower is continuously busy with the training of its officials to enable them to officiate succesfully as arbitrators

15.3 It is agreed that arbitrators should have legitimacy but it is a long process to accomplish

Recommendation 16

(7 11 4) A party will be disqualified from any further action through non-attendance of a conciliation board or industrial council meeting

Comment

16 1 There is agreement with the recommendation of the NMC

16 2 This aspect should be addressed in the consolidation of the LRA.

Recommendation 17

(7 11 5) Mediation and arbitration as alternative dispute settlement mechanisms should be encouraged

Comment

17 1 There is agreement with the recommendation provided that the parties involved are responsible for their own costs as far as mediation and arbitration are concerned

Recommendation 18

(7 11 5) Arbitration should be subsidized by the State

(v) Die finansiele implikasies van die voorstel sal deeglik ondersoek moet word

14 7 Na aanleiding van die voorafgaande is die mening wat regsiui, landdroste, klein werkgewers, ens self 'n verantwoordelikheid het om hul vlak van kundigheid betreffende arbeidsverhoudinge te verbeter Die aangeleentheid word verder ondersoek en daar word na ander oplossings ook gekyk

Aanbeveling 15

(7.11.3) Die riglyne moet bepaal dat partye moet poog om eerder oor 'n persoon om die geskil te besleg of te arbitreer, ooreen te kom as verwysing na 'n versoeningsraad indien dit 'n reis oor 'n lang afstand en hoe koste behels.

Kommentaar

15 1 Arbitrasieverrigtinge kan duur kos en in verafgelee plekke is dit moontlik nie haalbaar vir klein werkgewers of werknemers om arbiters of bemiddelaars vir geskilbeslegting te gebruik nie 'n Verdere probleem is dat daar op klein plekkies gewoonlik net een prokureur is wat almal se regswerk doen en wat gewoonlik relatief onkundig is betreffende arbeidsverhoudinge

15 2 Daar word saamgestem dat opleiding moet plaasvind maar die vraag is wie moet dit finansier Die Departement van Mannekrag is deurlopend besig met opleiding van beamptes om suksesvol as arbiters op te tree

15 3 Daar word akkoord gegaan dat arbiters legitimiteit behoort te hê maar dit is 'n langsame proses om dit te bewerkstellig

Aanbeveling 16

(7 11 4) Nie-bywoning van 'n versoenings- of nywerheidsraadvergadering diskwalifiseer 'n party van verdere optrede

Kommentaar

16 1 Daar word akkoord gegaan met die NMK-aanbeveling

16 2 Hierdie aspek behoort in die konsolidasie van die WAV aangespreek te word

Aanbeveling 17

(7 11 5) Bemiddeling en arbitrasie as alternatiewe geskilbeslegtingsmeganismes moet aangemoedig word

Kommentaar

17 1 Daar word akkoord gegaan met die aanbeveling met die voorbehoud dat die partye verantwoordelik is vir hulle eie onkoste wanneer dit by bemiddeling of arbitrasie kom

Aanbeveling 18

(7 11 5) Arbitrasie moet deur die Staat gesubsidieer word

165

Comment

18 1 Due to the immense proliferation of labour dispute cases (in the period 1986 to 1990 conciliation board applications, for example, increased from 1 200 to 8 461 and industrial council disputes from 1 983 to 3 657 respectively), it will be very difficult to project the impact of expenditure in regard to subsidies and it is therefore not advisable for the Department of Manpower to enter this field Subsidies will have to be quite high to ensure a high level of arbitrators The action of controlling of claims can also be problematic in terms of the volume of work involved in arbitration as the level of difficulty of the dispute is unknown Unscrupulous parties may stretch simple disputes over days in order to milk the system, which will be very difficult to control It is for example not difficult to imagine that 8 000 arbitration applications may have to be submitted, considered and controlled annually

Recommendation 19

(7 11.5) The LRA should be amended to provide for mediation as an alternative formalized dispute resolution mechanism *vis-a-vis* on industrial council or conciliation board.

Comment

19 1 There is agreement with the recommendation of the NMC

19.2 The matter should be addressed in the consolidation of the LRA.

Recommendation 20

(7.11 5) Parties must have followed the guidelines to qualify for a state subsidy during arbitration

Comment

20 1 In the light of the position of the treasury, it will not be possible to grant subsidies at this stage.

20 2 The principle of state subsidies may lead to unnecessary arbitration

20.3 Since the Department of Manpower may be subjected to revision actions if it uses its discretion to determine whether or not parties adhered to the provisions of the code and in the light of the large number of controlling actions needed, the Department is of the opinion that the execution of this recommendation will not be advisable

Recommendation 21

(7 11.5) Application must be made for arbitration subsidies and it should be a fixed amount per arbitration

Comment

21 1 The arbitration process is expensive and the level of difficulty of the dispute will also determine the seniority of the arbitrator that must be used

Kommentaar

18.1 Vanwee die geweldige proliferasie in arbeidsgeskilsake (vir die tydperk 1986 tot 1990 het versoeningsraadaansoeke byvoorbeeld van 1 200 tot 8 461 en nywerheidsraadgeskille van 1 983 tot 3 657 respektiewelik toegeneem) sal dit baie moeilik wees om die impak van uitgawes ten opsigte van subsidies vooraf te beraam en gevolglik word dit nie raadsaam geag dat die Departement van Mannekrag hom op hierdie terrein begewe nie. Om goeie arbiters te verseker, sal die subsidie redelik hoog moet wees Die aksie van eisekontrolering kan ook problematies wees in terme van die hoeveelheid werk verbonde aan arbitrasie, aangesien die ingewikkeldheidsgraad van die geskil onbekend is Gewetenlose partye kan eenvoudige geskille oor dae rek om sodoende die stelsel te melk, wat baie moeilik gekontroleer sal kan word. Dit is bv nie ondenkbaar dat 8 000 arbitrasie-aansoeke jaarliks voorgelê, oorweeg en gekontroleer sal moet word nie.

Aanbeveling 19

(7 11 5) Die WAV moet gewysig word om vir bemiddeling as 'n alternatiewe geformaliseerde geskilbeslegtingsmeganisme *vis-a-vis* nywerheidsrade of versoeningsrade voorsiening te maak

Kommentaar

19.1 Daar word akkoord gegaan met die NMK-aanbeveling

19 2 Die aangeleentheid behoort in die konsolidasie van die WAV aangespreek te word

Aanbeveling 20

(7 11 5) Om met arbitrasie vir 'n staatsubsidie te kwalifiseer moes partye riglyne gevolg het

Kommentaar

20.1 In die lig van die toestand van die fiskus kan staatsubsidies nie op hierdie stadium toegestaan word nie

20.2 Die beginsel van staatsubsidies kan tot onnodige arbitrasie lei.

20 3 Aangesien die Departement van Mannekrag hom aan 'n hersieningsaksie kan blootstel as hy 'n diskresie uitoefen om vas te stel of partye die bepalings van die kode nagekom het, al dan nie en in die lig van die groot kontroleringsaksies wat nodig sal wees meen die Departement dat uitvoering aan hierdie aanbeveling nie raadsaam sal wees nie

Aanbeveling 21

(7.11 5) Aansoek moet vir arbitrasie subsidie gedoen word en dit moet 'n vasgestelde bedrag per arbitrasie wees

Kommentaar

21 1 Arbitrasieverrigtinge is duur en die ingewikkeldheidsgraad van die geskil bepaal ook die senioriteit van die arbiter wat gebruik moet word.

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21 2 Due to the extent of the work in the more complicated cases, in comparison with the extent of work in the more elementary disputes, in practice it is difficult to determine an amount for subsidy purposes and therefore it is virtually impossible to budget for future expenses.

21 3 Proposals also have personnel and financial implications which will have to be provided and which at present would be difficult to finance

Recommendation 22

(7.11 6) Chairpersons of the industrial councils and conciliation boards should play a more facilitating role.

Comment

22.1 There is agreement with the recommendation of the NMC.

Recommendation 23

(7.11.6) The role of mediator can be performed with the consent of both parties to the dispute

Comment

23.1 There is agreement with the recommendation of the NMC

Recommendation 24

(7.11.6) A chairperson should be able to make non-binding recommendations if requested thereto by all the parties to the dispute.

Comment

24.1 The proposal has various personnel and financial implications which should be further investigated The affordability of the proposal should especially be investigated thoroughly

24 2 There is agreement with the proposal that this should be a dispute-settling mechanism, and that it should not be a decision

Recommendation 25

(7.11.6) Training should be provided to chairpersons of the conciliation boards

Comment

25.1 A variety of actions in this regard such as the conducting of training seminars and the supplying of suitable manuals are executed on a continuous basis.

25.2 Training efforts are to a certain trivialised extent by the big staff turn-over especially in the field of junior officials and also because it is difficult to attract the ideal quality personnel with the salaries being paid at present.

25.3 Most of the officials are young and inexperienced, which put an extra burden on the system

Recommendation 26

(7 11 7) Office-bearers/officials of trade unions/employers may act as representatives of the parties, while legal practitioners may only act as representatives with the consent of every other party to the dispute. If no agreement is reached, the chairman should give a ruling

21 2 Vanwee die omvang van die werk in meer ingewikkelde sake, teenoor die omvang van die werk in meer eenvoudige geskille, is dit in die praktyk moeilik om 'n bedrag vir subsidiedoeleindes te bepaal en derhalwe is dit ook bykans onmoontlik om vir uitgawes vooruit te begroot

21 3 Voorstelle het personeel en finansiele implikasies waarvoor voorsiening gemaak moet word en wat tans moeilik befonds sal kan word

Aanbeveling 22

(7 11 6) Nywerheidsraad- en versoeningsraadvoorsitters moet 'n groter fasiliterende rol speel

Kommentaar

22.1 Daar word akkoord gegaan met die NMK-aanbeveling.

Aanbeveling 23

(7 11 6) Rol van bemiddelaar kan vertolk word met albei geskilvoerende partye se instemming.

Kommentaar

23 1 Daar word akkoord gegaan met die NMK-aanbeveling

Aanbeveling 24

(7 11 6) 'n Voorsitter moet nie-bindende aanbevelings kan maak indien daartoe versoek deur al die partye tot die geskil.

Kommentaar

24 1 Die voorstel het verskeie personeel en finansiele implikasies wat verder ondersoek sal moet word Veral die bekostigbaarheid van die voorstel sal deeglik ondersoek moet word

24 2 Daar word akkoord gegaan met die voorstel dat hierdie 'n geskilbeslegtingsmeganisme behoort te wees en dat dit nie 'n beslissing moet wees nie

Aanbeveling 25

(7 11 6) Opleiding moet aan versoeningsraadvoorsitters gegee word.

Kommentaar

25 1 Verskeie aksies in hierdie verband soos die hou van opleidingseminare en die daarstelling van gepaste handleidings word op 'n deurlopende basis uitgevoer.

25 2 Opleidingspogings word egter tot 'n mate verydel deur die hoe personeelomset onder veral die junior beamptes en ook omdat dit moeilik is om die regte gehalte personeel te trek met die salarisse wat betaal word

25 3 Die meeste van die beamptes is ook nog jonk en onervare wat 'n verdere las op die stelsel plaas.

Aanbeveling 26

(7 11 7) Ampsdraers/beamptes van vakbonde/werkgewers mag partye verteenwoordig, terwyl regpraktisyns slegs met die instemming van elke ander party, partye mag verteenwoordig Indien geen ooreenkoms bereik word nie, gee die voorsitter uitspraak

(165)

Comment

26 1 There is agreement with the recommendation of the NMC, but it may be that office-bearers/officials may be well-trained and may even be lawyers which could unfairly affect the small employer

Recommendation 27

(7 11 8 1) The autonomy of industrial councils should not be prejudiced but they should be encouraged to grant exemptions on merit, where the size of the business will be one important factor

Comment

27 1 There is agreement with the recommendation of the NMC.

Recommendation 28

(7 11 8 2) The Minister may decline to promulgate an agreement which regulates wages unless the council has endeavoured upon request to accommodate the needs of small businesses or unless the council has called for and considered representations by non-parties

Comment

28.1 There is agreement with the recommendation of the NMC

Recommendation 29

(7 11 8 3) Copies of all applications for exemption from industrial council agreements that have been refused, should be forwarded for the information of the facilitator

Comment

29.1 See previous comment regarding the facilitator

Recommendation 30

(7 11 8.4) The administrative burden in respect of industrial council obligations should be alleviated

Comment

30 1 There is agreement with the recommendation of the NMC

30.2 This matter should be addressed in the consolidation of the LRA

Recommendation 31

(7 11 8.4) Industrial councils should advise micro-businesses on a regular basis concerning moneys due and streamline the system to alleviate the burdens on micro-businesses

Comment

31.1 There is agreement with the recommendation of the NMC

31 2 This matter should be addressed in the consolidation of the LRA

Kommentaar

26 1 Daar word akkoord gegaan met die NMK-aanbeveling, maar dit mag wees dat ampsdraers/beamptes goed opgelei en selfs regsgeleerders mag wees wat onbillik kan werk teenoor die kleinwerkgewer

Aanbeveling 27

(7 11 8) Nywerheidsrade se selfbestuur moet nie aangetas word nie, maar hulle moet aangemoedig word om vrystellings op meriete toe te staan, veral aan klein ondernemings waar die grootte van die onderneming een belangrike faktor moet wees.

Kommentaar

27 1 Daar word akkoord gegaan met die NMK-aanbeveling.

Aanbeveling 28

(7 11 8 2) Minister kan weier om loonreelende ooreenkomste te promulgeer tensy die nywerheidsraad op versoek van klein ondernemings akkommodeer, of vertoe deur nie-partye aangevra en oorweeg het.

Kommentaar

28.1 Daar word akkoord gegaan met die NMK-aanbeveling.

Aanbeveling 29

(7 11 8 3) Afskrifte van aansoeke om vrystelling van nywerheidsraadooreenkomste wat geweier is moet ter inligting aan die fasiliteerder gestuur word

Kommentaar

29 1 Kyk vorige kommentaar ten opsigte van die fasiliteerder

Aanbeveling 30

(7 11 8 4) Die administratiewe las met betrekking tot nywerheidsraadverpligtinge moet verlig word

Kommentaar

30 1 Daar word akkoord gegaan met die NMK-aanbeveling

30 2 Die aangeleentheid behoort in die konsolidasie van die WAV aangespreek te word.

Aanbeveling 31

(7 11 8 4) Nywerheidsrade moet mikro-ondernemings gereeld inlig oor gelde betaalbaar en stelsels stroomlyn om die las op mikro-ondernemings te verlig.

Kommentaar

31 1 Daar word akkoord gegaan met die NMK-aanbeveling

31 2 Die aangeleentheid behoort in die konsolidasie van die WAV aangespreek te word.

Recommendation 32

(7 11 9) Parties to disputes regarding dismissals should have the choice of referring the dispute to the Industrial Court or to the proposed Small Labour Court

Comment

32 1 There is agreement with the recommendation of the NMC

32 2 The NMC should be requested to conduct a further investigation into the operation of the Small Labour Court (a Special Labour Court)

Recommendation 33

(7 11 9) The Small Labour Court should also be available in the outlying places

Comment

33 1 There is agreement with the recommendation of the NMC

33 2 The Department is of the opinion that this recommendation may have financial implications which might not be attainable

33 3 There is agreement that with the principle that Special Labour Courts should be available in all large towns, on condition that—

- They are implemented according to needs,
- there should be adequate demand for such a court,
- the availability of facilities, manpower and funds should be kept in mind,
- the possibility of a link between the courts and the manpower offices should be kept in mind, and
- provision will have to be made for circuit courts

33 4 The initial aim should possibly be to implement for example twenty Special Labour Courts within the first two years, after which additional courts can be considered It must be kept in mind that the NMC made this recommendation specifically with the mediation of disputes in the agricultural sector in mind, where the Special Labour Court will also be utilized by industry This will probably contribute to ease the existing burden of the Industrial Court

Recommendation 34

(7 11 9) Presiding officers of the Small Labour Court should receive special training

Comment

34 1 The composition and the powers of the Special Labour Court should first be finalised before meaningful comment can be given

34.2 Whether the Department of Manpower will be able to conduct the training and the extent of the training required, will depend on the funds available

Aanbeveling 32

(7 11 9) Partye by ontslaggeskille moet 'n keuse hê om die geskil na die Nywerheidshof of die voorgestelde Klein Arbeidshof te verwys

Kommentaar

32 1 Daar word akkoord gegaan met die NMK-aanbeveling

32 2 Die NMK moet versoek word om die werking van die Klein Arbeidshof ('n Spesiale Arbeidshof) verder te ondersoek

Aanbeveling 33

(7 11 9) Die Klein Arbeidshof moet in afgelee gebiede beskikbaar wees.

Kommentaar

33 1 Daar word akkoord gegaan met die NMK-aanbeveling

33 2 Die Departement is van mening dat hierdie voorstel finansiele implikasies inhou wat heel moontlik nie haalbaar is nie

33 3 Daar word wel saamgestem met die beginsel dat Spesiale Arbeidshowe in al die groot dorpe beskikbaar moet wees, onderhewig aan die volgende

- Dit moet volgens behoefte ingestel word,
- daar moet voldoende vraag na sodanige howe wees;
- die beskikbaarheid van fasiliteite, bemanning en fondse moet in gedagte gehou word,
- daar moet gekyk word na die moontlikheid van 'n skakeling tussen die howe en Mannekragsentrums, en
- daar moet voorsiening gemaak word vir rondreisende howe

33 4 Moontlik moet die aanvanklike oogmerk wees om bv. binne twee jaar twintig klein arbeidshowe in die belangrikste sentra daar te stel, waarna verdere uitbreiding oorweeg kan word. Dit moet egter in gedagte gehou word dat die NMK die aanbeveling gedoen het met die beslegting van geskille in die landbou in gedagte, waar die Spesiale Arbeidshof ook deur die nywerheid benut sal word Dit sal waarskynlik veel kan bydra om die bestaande las op die Nywerheidshof te verlig

Aanbeveling 34

(7 11 9) Voorsittende beamptes van die Klein Arbeidshof moet spesiale opleiding ontvang

Kommentaar

34 1 Die samestelling en bevoegdhede van die Spesiale Arbeidshowe moet eers finaal uitgesorteer word voordat sinvol hiervoor kommentaar gelewer kan word

34 2 Of die Departement van Mannekrag die opleiding sal kan hanteer en die mate van opleiding wat verlang word, sal afhang van die beskikbare fondse.

Recommendation 35

(7 11 9) There should be no right to appeal nor to legal representation in the Small Labour Court.

Comment

35 1 There is agreement with the recommendation of the NMC.

Recommendation 36

(7 11 9) It should be possible for the Small Labour Court to refer any matter to the Industrial Court.

Comment

36 1 There is agreement with the recommendation of the NMC

C. THE WORKMEN'S COMPENSATION ACT, 1941

Recommendation 37

(7 12 1) All employers in micro-businesses should also be covered under the Workmen's Compensation Act.

Comment

37 1 The recommendation of the NMC is not possible within the present structure of the Workmen's Compensation Act

37 2 To provide protection in terms of the Act to employees of mico-businesses will mean that in such cases no distinction can be made between employer and workman This implies that the principle according to section 43 cannot be applied in these cases (increased compensation if an employee is injured owing to the negligence of an employer)

Recommendation 38

(7.12.2) Registration of micro-businesses should be simplified.

Comment

38 1 The principle is accepted and is being investigated

Recommendation 39

(7.12.2 2) Record of prescribed particulars to be kept by micro-businesses in terms of section 97 should be simplified.

Comment

39 1 There is agreement with the recommendation of the NMC.

Recommendation 40

(7 12 2.3) Wage records should be simplified

Comment

40 1 There is agreement with the recommendation of the NMC.

Aanbeveling 35

(7.11.9) Daar moet geen reg tot appel of regsverteenwoordiging in die Klein Arbeidshof wees nie

Kommentaar

35.1 Daar word akkoord gegaan met die NMK-aanbeveling.

Aanbeveling 36

(7 11 9) Die Klein Arbeidshof moet op enige stadium enige aangeleentheid na die Nywerheidshof kan verwys.

Kommentaar

36.1 Daar word akkoord gegaan met die NMK-aanbeveling.

C. ONGEVALLEWET, 1941

Aanbeveling 37

(7 12.1) Alle werkgewers in mikro-ondernemings moet ook deur die Ongevallewet gedek word

Kommentaar

37 1 Die NMK aanbeveling is nie binne die huidige struktuur van die Ongevallewet moontlik nie

37 2 Deur aan die werkgewers van "mikro-ondernemings" beskerming kragtens die Wet te verleen, sal veroorsaak dat daar in dié gevalle nie 'n onderskeid tussen werkgewer en werksman getref kan word nie Dit impliseer dat die beginsel volgens artikel 43 in hierdie gevalle nie toegepas sal kan word nie (verhoogde skadeloosstelling indien 'n werknemer as gevolg van 'n werkgewer se nalatigheid 'n besering opdoen).

Aanbeveling 38

(7 12 2) Registrasie van mikro-ondernemings moet vereenvoudig word.

Kommentaar

38 1 Die beginsel word ondersteun en word verder ondersoek

Aanbeveling 39

(7 12.2 2) Voorgeskrewe aantekeninge wat ingevolge artikel 97 bygehou moet word ten opsigte van mikro-ondernemings moet vereenvoudig word

Kommentaar

39 1 Daar word akkoord gegaan met die NMK-aanbeveling.

Aanbeveling 40

(7 12 2 3) Loonopgawes moet vereenvoudig word

Kommentaar

40 1 Daar word akkoord gegaan met die NMK-aanbeveling.

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Recommendation 41

(7.12.2.4) Formalities for the payment of benefits should be simplified.

Comment

41 1 Simplification is being investigated, but oversimplification may lead to misuse

Recommendation 42

(7.12.2.5) The requirements as far as the rendering of first aid is concerned, should be adapted for micro-businesses.

Comment

42.1 There is agreement with the recommendation of the NMC and the matter is being investigated

Recommendation 43

(7 12 3) Micro-businesses should pay a fixed annual amount per worker to the Accident Fund

Comment

43.1 The implementation of this recommendation will have the effect that certain employers will pay an exceptionally low amount in relation to the accident risk in their businesses while others will pay an exceptionally high amount.

43 2 It should also be borne in mind that the cost resulting from an accident will not be less, because the injured person worked for a "micro-business"

43.3 Owing to the fact that the present system is straightforward and just and does not put a very high burden on the employers, the recommendation cannot be supported.

D. THE UNEMPLOYMENT INSURANCE ACT, 1966

Recommendation 44

(7.13.1) The Act should be compulsary for all employees of all micro-employers

Comment

44.1 There is agreement with the recommendation of the NMC.

Recommendation 45

(7 13 2) Micro-businesses should pay fixed annually or quarterly amounts per worker to the Fund and should be exempted from keeping records or the submission of monthly returns.

Comment

45.1 The possibility of paying annually or quarterly, as well as the financial implications thereof for the Fund, is already being investigated.

45.2 Every employer must keep record of wages paid which implies that the recommendation will not constitute an administrative relief.

Aanbeveling 41

(7 12 2.4) Die formaliteite vir die uitbetaal van voordele moet vereenvoudig word

Kommentaar

41 1 Vereenvoudiging word ondersoek maar oorvereenvoudiging kan tot misbruik aanleiding gee

Aanbeveling 42

(7 12 2.5) Die vereistes ten opsigte van die lewering van eerstehulp moet vir mikro-ondernemings aangepas word.

Kommentaar

42.1 Daar word akkoord gegaan met die NMK-aanbeveling en die aangeleentheid word ondersoek

Aanbeveling 43

(7 12.3) Mikro-ondernemings moet 'n vasgestelde bedrag per werker jaarliks aan die Ongevallefonds betaal.

Kommentaar

43.1 Die implementering van hierdie aanbeveling sal tot gevolg hê dat sommige werkgewers in verhouding tot die ongeluksrisiko by hul ondernemings buitegewoon min sal betaal terwyl ander weer buite verhouding baie sal betaal

43.2 Dit moet ook in gedagte gehou word dat die koste wat uit 'n ongeval voortspruit, nie minder gaan wees omdat die beseerde vir 'n "mikro-onderneming" gewerk het nie.

43.3 Aangesien die huidige stelsel eenvoudig asook regverdig is en nie 'n buitensporige las op werkgewers plaas nie, word die betrokke aanbeveling nie gesteun nie.

D. WERKLOOSHEIDVERSEKERINGSWET, 1966

Aanbeveling 44

(7 13.1) Die Wet moet verpligtend wees vir alle werknemers van mikro-werkgewers

Kommentaar

44 1 Daar word akkoord gegaan met die NMK-aanbeveling

Aanbeveling 45

(7.13.2) Mikro-ondernemings moet 'n vaste jaarlikse of kwartaallikse bedrag per werker aan die Fonds betaal en vrygestel word van die hou van rekords of die voorlegging van maandelikse opgawes

Kommentaar

45 1 Om jaarliks of kwartaalliks te betaal word reeds ondersoek, ook die finansiele implikasies daarvan vir die Fonds

45 2 Elke werkgewer moet rekord hou van lone wat betaal is en daarom sal die aanbeveling nie 'n administratiewe verligting wees nie

45.3 The implementation of the recommendation of the NMC can lead to unfairness with regard to the amounts payable to individual beneficiaries

(165)

Recommendation 46

(7 13.3) The Act should be simplified to reduce the administrative burden on micro-businesses.

Comment

46.1 There is agreement with the recommendation of the NMC

E THE WAGE ACT, 1957

Recommendation 47

(7 14) Record-keeping requirements for micro-businesses should be simplified.

Comment

47.1 There is agreement with the recommendation of the NMC

47.2 All employees do in any case have to keep wage records of some kind.

F. THE BASIC CONDITIONS OF EMPLOYMENT ACT, 1983 (BCEA)

Recommendation 48

(7.15 1) The Act should be simplified, especially as far as record-keeping is concerned.

Comment

48.1 There is agreement with the recommendation of the NMC.

48.2 It is recommended that the Basic Conditions of Employment Act, 1983, is referred to the NMC for simplification.

Recommendation 49

(7 15 2) Guidelines for the granting of exemptions should be drawn up

Comment

49.1 The excercising of administrative legal discretion by way of guidelines could lead to revisable decisions. Broad guidelines based on the objects of the Act are made available to officials, but the exercising of discretion should be based on the facts of each case.

49 2 As the BCEA does not prescribe minimum wages, very few problems are experienced by small businesses with regard to exemptions and the recommendation is therefore already obviated by existing procedures

49 3 The consolidation of prescriptions and guidelines in this regard should be investigated

45.3 Die implementering van die NMK-aanbeveling kan onbillikheid met betrekking tot die bedrae wat aan individuele voordeeltrekkers betaal word, tot gevolg hê

Aanbeveling 46

(7.13 3) Die Wet moet vereenvoudig word om die administratiewe las op mikro-ondernemings te verlig

Kommentaar

46.1 Daar word akkoord gegaan met die NMK-aanbeveling.

E. LOONWET, 1957

Aanbeveling 47

(7 14) Die byhou van aantekeninge deur mikro-ondernemings moet vereenvoudig word

Kommentaar

47 1 Daar word akkoord gegaan met die NMK-aanbeveling.

47 2 Alle werkgewers hou in elk geval een of ander vorm van loonrekord

F. WET OP BASIESE DIENSVOORWAARDES, 1983 (WBD)

Aanbeveling 48

(7.15 1) Die Wet moet vereenvoudig word veral t.o.v. rekordhouding.

Kommentaar

48 1 Daar word akkoord gegaan met die NMK-aanbeveling.

48.2 Daar word aanbeveel dat die Wet op Basiese Diensvoorwaardes, 1983, na die NMK verwys word vir vereenvoudiging.

Aanbeveling 49

(7.15.2) Riglyne vir die verlening van vrystellings moet opgestel word

Kommentaar

49 1 Die uitoefening van 'n administratiefregtelike diskresie aan die hand van riglyne, kan tot hersienbare besluite lei Bree riglyne aan die hand van die oogmerke van die Wet word tot die beskikking van amptenare geplaas, maar die diskresie-uitoefening moet aan die hand van die feite van elke geval geneem word.

49 2 Omdat die WBD nie minimum lone voorskryf nie, word daar min probleme deur klein werkgewers met vrystellings ondervind en die aanbeveling word derhalwe reeds deur bestaande prosedures ondervang.

49.3 Die konsolidering van voorskrifte en riglyne in die verband moet ondersoek word

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G. THE MACHINERY AND OCCUPATIONAL SAFETY ACT, 1983

Recommendation 50

(7 16 1.1) Micro-businesses should be exempted from the General Administrative Regulations 15, 15A and 15B

Comment

50 1 There is agreement about exemption from General Administrative Regulations 15 (registration of factories) and 15A (numbering of rooms) but not as far as 15B is concerned The latter merely authorises an employer to use symbolic signs instead of written notice boards.

Recommendation 51

(7.16.2.1) The General Safety Regulations should be streamlined for micro-businesses by only demanding reasonable measures.

Comment

51.1 There is agreement with the recommendation of the NMC.

Recommendation 52

(7.16.3.1) Micro-businesses should provide only the most basic facilities.

Comment

52.1 There is agreement with the recommendation of the NMC.

Recommendation 53

(7.16.4) The NMC should conduct further investigation into the exemption of micro-businesses from the other regulations.

Comment

53.1 There is agreement with the recommendation of the NMC.

Recommendation 54

(7.16.6) The Act and the regulations are too technical and should be simplified further.

Comment

54.1 The Act and the Regulations deal with highly technical subjects. Although it is attempted to make the text as user-friendly as possible, it must be borne in mind that it should be legally correct and should be able to stand its ground in a court of law These two objectives are not always reconcilable

H. MANPOWER TRAINING ACT, 1981

Recommendation 55

(7.17.1) No special dispensation is necessary for micro-businesses.

G. WET OP MASJINERIE EN BEROEPSVEILIGHEID, 1983

Aanbeveling 50

(7.16.1.1) Mikro-ondernemings moet vrygestel word van die Algemene Administratiewe Regulasies 15, 15A en 15B

Kommentaar

50 1 Daar word saamgestem met die vrystelling van Algemene Administratiewe Regulasies 15 (registrasie van fabrieke) en 15A (nommering van kamers) maar nie 15B nie Laasgenoemde magtig bloot 'n werkgewer om in plaas van geskrewe kennisgewingborde aan te bring, gebruik te maak van simboliese tekens.

Aanbeveling 51

(7 16.2 1) Die Algemene Veiligheidsregulasies moet gestroomlyn word vir mikro-ondernemings deur slegs redelike maatreëls te vereis

Kommentaar

51.1 Daar word akkoord gegaan met die NMK-aanbeveling.

Aanbeveling 52

(7.16.3.1) Mikro-ondernemings moet slegs verplig word om die mees basiese fasiliteite te voorsien.

Kommentaar

52 1 Daar word akkoord gegaan met die NMK-aanbeveling.

Aanbeveling 53

(7.16.4) Verdere ondersoek moet deur die NMK gedoen word oor vrystelling van mikro-ondernemings van die ander regulasies.

Kommentaar

53.1 Daar word akkoord gegaan met die NMK-aanbeveling.

Aanbeveling 54

(7.16.6) Die Wet en regulasie is te ingewikkeld en moet verder vereenvoudig word

Kommentaar

54 1 Die Wet en regulasies handel oor hoogstegniese onderwerpe. Alhoewel deurgaans gepoog word om die teks so gebruikersvriendelik as moontlik te maak, moet dit ook so geskryf word dat dit regstegnies korrek is en in 'n hof kan staande bly. Hierdie twee doelwitte is nie altyd met mekaar versoenbaar nie

H. WET OP MANNEKRAGOPLEIDING, 1981

Aanbeveling 55

(7 17.1) Geen spesiale bedeling vir mikro-ondernemings is nodig nie.

Comment

55.1 There is agreement with the recommendation of the NMC

163

Recommendation 56

(7 12 2) Micro-businesses should be made more aware of the necessity and availability of training

Comment

56.1 This point of view is seen as ideal, because it also enables the small employer to provide training according to his ability.

56 2 Training boards should strive to provide training opportunities to smaller employers on a wider scale as for example in the German speaking countries in Europe In fact, that is where the responsibility of the training boards as co-ordinating bodies lies

56 3 Training within industries should be structured in such a way that employers could form a training network for the industry, register training credits centrally and recognise certification on a national basis Small business undertakings should form the core of such training opportunities

56.4 Closely related to this is the responsibility that training boards have when it comes to the planning of career paths for trainees Such career paths should be directed at industry, as well as nationally through the mutual recognition of qualifications by the industries This means that, irrespective of whether a qualification was obtained through a large or small business, the individual should still have the opportunity to optimise and mobilise his career opportunities horizontally and vertically It cannot be stressed enough that a micro-business should receive preferencial treatment.

56.5 The primary, but still oustanding element to give effect to implement to the above, is a nationally recognised qualification structure Such a structure cannot be implemented alone, but should be implemented throug co-operation, on the initiative of the private sector

56.6 There is agreement that training is important but subsidization cannot be afforded.

Recommendation 57

(7 17 3) Micro-businesses should not be subsidised to do training themselves, but rather registered trainers.

Comment

57 1 As far as training of unemployed persons is concerned it is becoming clearer that training for the informal sector should to a larger extent be aimed at the industry's requirements, also because there is

Kommentaar

55 1 Daar word akkoord gegaan met die NMK-aanbeveling

Aanbeveling 56

(7 12 2) Mikro-ondernemings moet meer bewus gemaak word van die noodsaaklikheid en beskikbaarheid van opleiding

Kommentaar

56.1 Hierdie benaderingswyse word wenslik geag, juis ook om die klein werkgewer in staat te stel om opleiding aan te bied volgens sy vermoe.

56 2 Opleidingsrade behoort hulle te beywer vir die wyer aanbieding van opleidingsgeleenthede by kleiner werkgewers, soos byvoorbeeld in die Duitssprekende lande in Eupora Juis daarin lê die opleidingsrade se verantwoordelikheid as *koordinerende* strukture

56.3 Opleiding binne nywerhede behoort sodanige gestruktureer te word dat werkgewers 'n opleidingsnetwerk vir die nywerheid vorm, opleidingskrediete sentraal geregistreer en sertifisering nasionaal erken kan word Kleinsakeondernemings sal die kern van sodanige opleidingsgeleenthede moet vorm

56 4 'n Saak wat nou hierby aansluit, is dat opleidingsrade 'n besonder groot verantwoordelikheid het as dit by die beplanning van loopbaanroetes vir opleidelinge kom Sodanige loopbaanroetes moet nywerheids-, sowel as nasionaal gerig word, deurdat kwalifikasies ook tussen nywerhede erkenning sal kry Dit beteken, ongeag of 'n kwalifikasie in 'n groot onderneming of 'n klein onderneming bewerkstellig of verwerf is, dat die individu steeds in staat sal wees om dit nasionaal aan te wend ten einde sy loopbaanaangeleenthede horisontaal en vertikaal te kan optimeer en mobiliseer Dit kan nie genoegsaam beklemtoon word dat die klein onderneming 'n buitengewoon hoe prioriteit behoort te geniet nie

56 5 Die primêre, maar steeds ontbrekende element om aan bogenoemde uitvoering te gee, is 'n nasionaal erkende kwalifikasiestruktuur So 'n struktuur kan nie alleen daargestel word nie, maar sal alleen deur samewerking met die inisiatiefneming deur die privaatsektor (opleidingsrade kan geskied)

56 6 Daar word akkoord gegaan dat opleiding belangrik is maar subsidiering is nie bekostigbaar nie

Aanbeveling 57

(7 17 3) Mikro-ondernemings moet nie gesubsidieer word om self opleiding te verskaf nie, eerder geregistreerde opleiers

Kommentaar

57 1 Wanneer dit dan gaan oor opleiding van werklose persone, begin dit duideliker word dat opleiding vir die informele sektor tot 'n groter mate toegespits sal moet word op nywerheidsvereistes,

such a large number of informal entrepeneurs from what is known as the "lost generation" and lost opportunities should in effect be overcome The question then is whether competency modules should not rather be based on the same format as for the formal sector

57 2 This matter should urgently be investigated further to determine the applicability thereof in industries (as well as their reaction thereto)

(24 December 1992)

NOTICE 1154 OF 1992

DEPARTMENT OF TRADE AND INDUSTRY

Notice is hereby given that the following warrant voucher issued by the Department of Trade and Industry to Reach Africa as set hereunder, has been mislaid

Warrant voucher issued to Reach Africa

Warrant Voucher No	Date of issue	Due date	Face value (R)
00003175	16 June 1992	1 April 1993	15 994

The above-mentioned warrant voucher will after the date of publication be regarded as cancelled Should the warrant voucher be retrieved, it must please be returned to the Department of Trade and Industry, Private Bag X84, Pretoria, 0001.

(24 December 1992)

NOTICE 1158 OF 1992

CO-OPERATIVE TO BE STRUCK OFF THE REGISTER UMHLALI HOME INDUSTRIES CO-OPERATIVE LIMITED

Notice is hereby given that the name of the abovementioned co-operative will, at the expiration of 60 days from the date of this notice, be struck off the register in terms of the provisions of section 45 (2) of the Co-operatives Act, 1981, and the co-operative will be dissolved unless proof is furnished to the effect that the co-operative is carrying on business or is in operation

Any objections to this procedure which interested persons may wish to raise, must together with the reasons therefor, be lodged with this office before the expiration of the period of 60 sixty days

REGISTRAR OF CO-OPERATIVES

Office of the Registrar of Co-operatives
Kingsley Building
481 Church Street
Private Bag X237
PRETORIA
0001

(24 December 1992)

ook omdat 'n groot getal informele entrepreneurs uit die sogenaamde "verlore generasie" bestaan en verlore geleenthede as't ware ingehaal moet word Dan is die vraag, of vaardigheidsmodules nie eerder op dieselfde lees geskoei moet word as vir die formele sektor nie.

57 2 Hierdie saak behoort dringend verder ondersoek te word ten einde toepasbaarheid binne nywerhede (en hul reaksie daarop) te bepaal.

(24 Desember 1992)

KENNISGEWING 1154 VAN 1992

DEPARTEMENT VAN HANDEL EN NYWERHEID

Hiermee word kennis gegee dat die volgende promesse uitgereik deur die Departement van Handel en Nywerheid aan Reach Africa soos hieronder uiteengesit, verlore geraak het

Promesse uitgereik aan Reach Africa

Promesse No	Uitreikingsdatum	Vervaldatum	Sigwaarde (R)
00003175	16 Junie 1992	1 April 1993	15 994

Na datum van publikasie word bogenoemde promesse as gekanselleer beskou Indien die promesse gevind sou word, moet dit asseblief aan die Departement van Handel en Nywerheid, Privaatsak X84, Pretoria, 0001, teruggestuur word

(24 Desember 1992)

KENNISGEWING 1158 VAN 1992

KOOPERASIE VAN DIE REGISTER GESKRAP TE WORD. UMHLALI HOME INDUSTRIES CO-OPERATIVE LIMITED

Hiermee word bekendgemaak dat die naam van genoemde kooperasie na verloop van die 60 dae met ingang vanaf die datum van hierdie kennisgewing van die register geskrap sal word ooreenkomsig die bepalings van artikel 45 (2) van die Kooperasiewet, 1981, en die kooperasie sal ontbind word tensy bewys gelewer word dat die koöperasie handel drywe of in werking is

Enige besware wat belanghebbende persone teen hierdie prosedure wil inbring, moet met vermelding van redes voor verstryking van die tydperk van 60 dae by hierdie kantoor ingedien word

REGISTRATEUR VAN KOOPERASIES

Kantoor van die Registrateur van Kooperasies
Kingsleygebou
Kerkstraat 481
Privaatsak X237
PRETORIA
0001

(24 Desember 1992)

Comment invited on Labour Act

PRETORIA — A working document on the extension of the Labour Relations Act to the agricultural sector has been published in the Government Gazette and comment has been invited

Manpower Minister Leon Wessels said the document flowed from a report by the National Manpower Commission recommending the extension of the Labour Relations Act to the agricultural sector

It entailed the extension of the Act to agriculture, the establishment of a special labour court, and mechanisms to create labour codes for the agricultural sector

"Based on the comment received from interest groups on the working document, as well as further deliberations in this regard, the government will decide whether existing legislation should be extended or alternatively whether a single act to regulate labour relations in agriculture should be promulgated," Wessels said

All interested persons and organisations were invited to submit comment on the working document, before February 26 1993, to the Department of Manpower, Private Bag X117, Pretoria 0001

Copies of the working document are obtainable from the government printer — Sapa 31/12/92

NOTICE 1176 OF 1992

DEPARTMENT OF AGRICULTURE

AGRICULTURAL PRODUCT STANDARDS ACT, 1990 (ACT No. 119 OF 1990)

REGULATIONS RELATING TO DAIRY PRODUCTS AND IMITATION DAIRY PRODUCTS· PROPOSED AMENDMENT

The Executive Officer· Agricultural Product Standards intends to request the Minister of Agriculture to further amend the Regulations relating to Dairy Products and Imitation Dairy Products, published by Government Notice No R 2581 of 20 November 1987, as amended by Government Notice No R. 2141 of 6 October 1989

The proposed amendments are available for inspection and copies can be obtained from the Executive Officer· Agricultural Product Standards, Private Bag X258, Pretoria, 0001, Telephone (012) 206-3259, Fax (012) 206-3267

Interested parties who wish to comment on the proposed amendments are invited to forward their comments in writing to the above address by not later than 31 January 1993

D. P. KEETCH,

Executive Officer· Agricultural Product Standards

(31 December 1992)

KENNISGEWING 1176 VAN 1992

DEPARTEMENT VAN LANDBOU

WET OP LANDBOUPRODUKSTANDAARDE, 1990 (WET No. 119 VAN 1990)

REGULASIES BETREFFENDE SUIWELPRODUKTE EN NAGEMAAKTE SUIWELPRODUKTE VOORGESTELDE WYSIGING

Die Uitvoerende Beampte Landbouprodukstandaarde is voornemens om die Minister van Landbou te versoek om die Regulasies betreffende Suiwelprodukte en Nagemaakte Suiwelprodukte, gepubliseer by Goewermentskennisgewing No R 2581 van 20 November 1987, soos gewysig deur Goewermentskennisgewing No R 2141 van 6 Oktober 1989, verder te wysig

Die voorgestelde wysigings is ter insae beskikbaar by en afskrifte kan bestel word vanaf die Uitvoerende Beampte Landbouprodukstandaarde, Privaatsak X258, Pretoria, 0001, Telefoon (012) 206-3259, Faks (012) 206-3267.

Belanghebbendens wat kommentaar op die voorgestelde wysigings wil lewer word genooi om dit skriftelik voor of op 31 Januarie 1993 by bovermelde adres in te dien.

D. P. KEETCH,

Uitvoerende Beampte Landbouprodukstandaarde

(31 Desember 1992)

NOTICE 1177 OF 1992

DEPARTMENT OF MANPOWER

PROPOSED AMENDMENT OF THE LABOUR RELATIONS ACT, 1956

1. A draft Amendment Bill, set out in the Schedule hereto is published as a working document for general information and comment

2. (a) All interested parties are invited to submit **written** comment on the Draft Amendment Bill as soon as possible Such comment should be forwarded to the Director-General. Manpower, Private Bag X117, Pretoria, 0001, or Fax No (012) 320-0799 for the attention of Mr P Viljoen [Tel No (012) 310-6427]

(b) Comment should reach the Director-General by not later than 26 February 1993

(c) The name, telephone number, fax number and address of a person who may be contacted in regard to the comment should also be stated clearly

3. The final Amendment Bill will be submitted by the Department of Manpower to the Government after the comment received on the working document appearing in the Schedule has been processed

4. The working document must be read against the following background

(a) Provision is made for a special labour court and negotiations are taking place to create the infrastructure for such a special labour court but it may take a considerable time before it becomes operational

KENNISGEWING 1177 VAN 1992

DEPARTEMENT VAN MANNEKRAG

VOORGESTELDE WYSIGING VAN DIE WET OP ARBEIDSVERHOUDINGE, 1956

1. 'n Konsepwysigingswetsontwerp wat in die Bylae hieronder verskyn, word as 'n werksdokument vir algemene inligting en kommentaar gepubliseer

2. (a) Alle belanghebbendes word versoek om so spoedig moontlik **skriftelik** kommentaar op die Konsepwysigingswetsontwerp te lewer Die kommentaar moet gestuur word aan die Direkteur-generaal· Mannekrag, Privaatsak X117, Pretoria, 0001, of Faksno (012) 320-0799 vir die aandag van mnr P Viljoen [Tel. No. (012) 310-6427].

(b) Kommentaar moet die Direkteur-generaal nie later nie as 26 Februarie 1993 bereik

(c) Die naam, telefoonnommer, faksnommer en adres van 'n persoon met wie oor die kommentaar geskakel kan word, moet ook duidelik gemeld word

3. Die finale Wysigingswetsontwerp sal deur die Departement van Mannekrag aan die Regering voorgelê word nadat kommentaar wat op die werksdokument wat in die Bylae verskyn, verwerk is

4. Die werksdokument moet gelees word teen die volgende agtergrond

(a) Daar word vir 'n spesiale arbeidshof voorsiening gemaak en onderhandelings is aan die gang om die infrastruktuur vir so 'n spesiale arbeidshof te skep maar dit kan 'n geruime tyd neem voordat dit operasioneel sal wees

agreement, as is presently the case of some industrial councils Provision is also made for the possibility of a non-strike or non-lock-out agreement The definition of "an agreement" in the Act is extended to give legal force to this recommendation of the NMC At this point in time the suggestion is limited to agriculture, as the investigation by the NMC was limited to agriculture only (165)

(h) The NMC has made divergent recommendations regarding reinstatement orders The Department recommends that, if a party chooses to follow the normal process, he can obtain such a reinstatement order from the industrial court If a party, however, chooses to speedily finalise the matter at the special labour court, it is recommended that the special labour court be limited to awarding compensation and not reinstatement. This recommendation by the Department is also limited to agriculture as the investigation by the NMC only dealt with agriculture

(i) In view of the viewpoints taken on the NMC that it is expedient that a dispute should be settled at the lowest possible level, a new section 42 (1A) is proposed in which a conciliation board will play an important role in the settlement of disputes It will also enable employers and employees in agriculture to achieve this object with the settlement of disputes by means of collective labour codes, as referred to in the proposed section 51B(4)

SCHEDULE

GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

——— Words underlined with a solid line indicate insertions in existing enactments

BILL

To amend the Labour Relations Act, 1956, so as to define certain expressions; to make the Act applicable to farming activities; to provide for the establishment of a special labour court; to provide for labour codes and to provide for matters connected therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows.

Amendment of section 1 of Act 28 of 1956, as amended by section 1 of Act 41 of 1959, section 1 of Act 104 of 1967, section 1 of Act 94 of 1979, section 1 of Act 95 of 1980, section 1 of

tans die geval is by sommige nywerheidsrade Daar word ook die moontlikheid vir geen stakings- of -uitsluitingsooreenkoms voorsiening gemaak Die definisie van " 'n ooreenkoms" in die wet word uitgebrei om regskrag aan hierdie aanbeveling van die NMK te gee Op hierdie tydstip word die voorstel beperk tot die landbou, aangesien die ondersoek van die NMK slegs tot die landbou beperk was

(h) Die NMK het uiteenlopende aanbevelings oor herindiensstellingsbevele gemaak Die Departement beveel aan, dat indien 'n party verkies om deur die gewone proses te gaan, hy wel so 'n herstelbevel by die nywerheidshof kan kry Indien 'n party egter kies om die saak spoedig gefinaliseer te kry by die spesiale arbeidshof, dan word aanbeveel dat die spesiale arbeidshof beperk word tot die toeken van kompensasie en nie herindienstelling nie Hierdie aanbeveling van die Departement is ook slegs beperk tot die landbou omdat die ondersoek van die NMK slegs oor die landbou gehandel het

(i) In die lig van die standpunte op die NMK dat dit wenslik is dat 'n geskil op die laagste moontlike vlak besleg behoort word, word 'n nuwe artikel 42 (1A) voorgestel waarin 'n versoeningsraad 'n belangriker rol sal speel in die beslegting van geskille Dit sal ook vir werkgewers en werknemers in die landbou moontlik wees om hierdie oogmerk met geskilbeslegting deur middel van kollektiewe arbeidskodes, soos in die voorgestelde artikel 51(B)(4) bedoel, te bereik.

BYLAE

ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan

——— Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan

WETSONTWERP

Tot wysiging van die Wet op Arbeidsverhoudinge, 1956, ten einde sekere uitdrukkings te omskryf; om die Wet op boerderybedrywighede van toepassing te maak; om voorsiening te maak vir die instelling van 'n spesiale arbeidshof; om vir arbeidskodes voorsiening te maak en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg

Wysiging van artikel 1 van Wet 28 van 1956, soos gewysig deur artikel 1 van Wet 41 van 1959, artikel 1 van Wet 104 van 1967, artikel 1 van Wet 94 van 1979, artikel 1 van Wet 95 van 1980, artikel 1 van Wet 57 van 1981, artikel 1

(b) The establishment of rights without a structured mechanism to enforce such rights, is still problematic

(c) Consensus between employers and especially between the South African Agricultural Union and the employees who served on the National Manpower Commission, could not be reached on the following matters—

- whether guidelines on codes should be published together with the draft bill;
- the manner in which the code should be drafted and by whom;
- the manner in which an order for reinstatement should function,
- the procedures to settle disputes,
- time limits to settle disputes,
- quite a number of aspects regarding the special labour court,
- certain aspects concerning non-strike and lock-out agreements, and
- the manner in which the extension of the Labour Relations Act to agriculture should take place

(d) The NMC recommended that the Act should be flexible, clear and certain In order to achieve this, it was recommended that a code should be drafted The Department agrees with this approach and would recommend to Goverment that a code is a prerequisite to achieve the objective suggested by the NMC An acceptable code should therefore exist at the time the amendments become law It will be unfair towards both employers and employees to expect from them to be au fait with the principles set out in the numerous decisions of the various courts

(e) Consensus could also not be reached by the NMC whether a labour code should be of a sectoral or national nature. As the present investigation was only in respect of agriculture, the Department suggests that both sectoral and national codes for agriculture should be possible The different sectors of agriculture are so diverse that it should be possible for that specific sectors to also bring about a code Whether this principle should be extended to the other sectors of the economy is a matter which could be further investigated

(f) The NMC has recommended that the labour codes should have legal force By making the labour code part of the definition of an unfair labour practice, legal force is given thereto by the envorcement of the rights and liabilities linked to the compliance of this definition

(g) The principle of self-governance which was recommended by the NMC, is also included in the enabling provision for a code (proposed section 51B) It is possible for parties to also bring about the guidelines for a code by means of a collective

(b) Die daarstelling van regte sonder 'n gestruktureerde meganisme om sodanige regte af te dwing is nog problematies

(c) Konsensus tussen werkgewers en in besonder tussen die Suid-Afrikaanse Landbou-unie en die werknemers wat op die Nasionale Mannekragkommissie gedien het, kon nie oor die volgende aangeleenthede bereik word nie—

- of riglyne oor kodes saam met die wetsontwerp gepubliseer moet word of nie,
- die wyse waarop die kode saamgestel moet word en deur wie,
- die wyse waarop 'n bevel vir herindiensstelling behoort te funksioneer,
- die prosedures om dispute te besleg,
- tydlimiete om geskille te besleg,
- 'n hele aantal aspekte rakende die spesiale arbeidshof,
- sekere aspekte betreffende geenstakings- en -uitsluitingsooreenkomste; en
- die wyse waarop die uitbreiding van die Wet op Arbeidsverhoudinge na die landbou moet plaasvind

(d) Die NMK het aanbeveel dat die Wet soepel, duidelik en seker moet wees Ten einde dit te bereik, is aanbeveel dat 'n kode opgestel word. Die Departement stem met hierdie benadering saam en sal by die Regering aanbeveel dat 'n kode 'n voorvereiste is om die doel wat deur die NMK voorgestel is, te bereik 'n Aanvaarbare kode moet derhalwe bestaan wanneer die wysigings wet word Dit sal onregverdig teenoor werkgewers en werknemers wees om te verwag dat hulle vertroud moet wees met die beginsels soos uiteengesit in vele beslissings van die onderskeie howe

(e) Daar kon ook nie konsensus op die NMK bereik word of 'n arbeidskode sektoraal of nasionaal van aard moet wees nie Omdat die huidige ondersoek slegs ten opsigte van die landbou was, stel die Departement voor dat sektorale sowel as nasionale kodes vir die landbou moontlik moet wees Die verskillende sektore van die landbou is so uiteenlopend dat dit moontlik moet wees om vir daardie bepaalde sektore ook 'n kode daar te stel Of hier dieselfde beginsel na die ander sektore van die ekonomie uitgebrei moet word, is 'n aangeleentheid wat verder ondersoek kan word

(f) Die NMK het aanbeveel dat die arbeidskodes regskrag moet hê Deur die arbeidskode deel van die definisie van 'n onbillike arbeidspraktyk te maak, word daaraan regskrag verleen deur die afdwinging van die regte en verpligtinge verbonde aan die nakoming van hierdie definisie

(g) Die beginsel van selfbestuur wat die NMK aanbeveel het, is ook vervat in die magtigende bepaling vir 'n kode (voorgestelde artikel 51B) Dit is moontlik vir partye om by wyse van kollektiewe ooreenkoms ook die riglyne vir 'n kode daar te stel, soos

'farming activity' means any activity on a farm in connection with agriculture, including stockbreeding, horticulture and forestry,"

(d) by the insertion in subsection (1) after the definition of "labour broker's office" of the following definition

" 'labour code', a labour code brought into existence in terms of section 51B","

(e) by the insertion in subsection (1) after the definition of "Minister" of the following definition

" 'non-strike or non-lock-out agreement', any written agreement which contains a provision which prohibits a strike or lock-out between the parties to such an agreement for a period of not more than 12 months and which may also not be extended for periods of more than 12 months,",

(f) by the insertion in subsection (1) after the definition of "secretary" of the following definition

" 'special labour court', a court established by section 17E,", and

(g) by the addition to the definition of "unfair labour practice" in subsection (1) of the following words·

" Provided that where an employer or employee has acted in accordance with the provisions of a section 51B labour code and the Basic Conditions of Employment Act, 1983 (Act No 3 of 1983), such action shall be deemed to be fair until the contrary has been proven and that any action contrary to a non-strike or non-lock-out agreement shall be deemed to be unfair until the contrary has been proven,"

Amendment of section 2 of Act 28 of 1956, as amended by section 2 of Act 57 of 1981, section 2 of Act 81 of 1984, section 2 of Act 83 of 1988 and section 2 of Act 9 of 1991

2. Section 2 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) This Act shall not apply to persons in respect of their employment **[in arming operations or]** in domestic service in private households, nor to officers of Parliament in respect of their employment as such, nor, subject to the provisions of subsections (3) and (9), to persons employed by the State in respect of their employment as such, nor to any employee of any local authority designated by such authority in terms of any law as chief administrative officer of the local authority, in so far as it concerns the determination of remuneration and other service benefits provided for in the Remuneration of Town Clerks Act, 1984 (Act No 115 of 1984), nor to

(e) groep van een werkgewer en een of meer werkgewersorganisasie; of

(f) groep werkgewers en een of meer werkgewersorganisasies,

aan die een kant en enige—

(g) groep werknemers;

(h) vakvereniging;

(i) groep vakverenigings,

(j) groep van werknemers en een of meer vakverenigings,

aan die ander kant,

ten aansien van 'n boerderybedrywigheid,",

(f) deur in subartikel (1) na die omskrywing van "perseel" die volgende omskrywing in te voeg

" 'plaas', ook varswater en seewater vir sover boerderybedrywighede daarin of daarop beoefen word;",

(g) deur in subartikel (1) na die omskrywing van "regspraktisyn" die volgende omskrywing in te voeg

" 'regtegeskille', geskille wat uit 'n ooreenkoms of arbeidskode voortspruit ten aansien van boerderybedrywighede en die onbillike diensbeeindiging van 'n werknemer in diens in verband met boerderybedrywighede,", en

(h) deur in subartikel (1) na die omskrywing van "skeidsregter" die volgende omskrywing in te voeg·

" 'spesiale arbeidshof', 'n hof ingestel by artikel 17E,"

Wysiging van artikel 2 van Wet 28 van 1956, soos gewysig deur artikel 2 van Wet 57 van 1981, artikel 2 van Wet 81 van 1984, artikel 2 van Wet 83 van 1988 en artikel 2 van Wet 9 van 1991

2. Artikel 2 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang·

"(2) Hierdie Wet is nie van toepassing op persone ten opsigte van hul diens **[in boerderybedrywighede of]** in huishoudelike diens in private huishoudings nie, nog op amptenare van die Parlement ten opsigte van hul diens as sodanig, nog, behoudens die bepalings van sub-artikels (3) en (9), op persone in diens van die Staat ten opsigte van hul diens as sodanig, nòg op enige werknemer van 'n plaaslike owerheid wat deur daardie owerheid as administratiewe hoofamptenaar van die plaaslike owerheid ingevolge een of ander wetsbepaling aangewys is, vir sover dit die vasstelling van beloning en ander diensvoordele waarvoor voorsiening in die Wet op die Besoldiging van Stadsklerke, 1984 (Wet No 115 van 1984), gemaak is, betref, nog op die

Act 57 of 1981, section 1 of Act 51 of 1982, section 1 of Act 2 of 1983, section 1 of Act 83 of 1988 and section 1 of Act 9 of 1991

1. Section 1 of the Labour Relations Act, 1956 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution in subsection (1) for the definition of "agreement" of the following definition

" 'agreement' means an agreement entered into or deemed to have been entered into by parties to an industrial council or conciliation board under this Act **[: Provided that for the purposes of an unfair labour practice, it shall include]** and also any agreement **[enforceable in terms of this Act and]** entered into between any - **[an employer and a trade union or any group of employees in the employment of such employer]**

(a) employer,

(b) group of employers,

(c) employers' organisation,

(d) group of employers' organisations,

(e) group of one employer and one or more employers' organisation, or

(f) group of employers and one or more employers' organisations,

on the one hand and any—

(g) group of employees,

(h) trade union,

(i) group of trade unions, or

(j) group of employees and one or more trade unions,

on the other hand,

with regard to farming activities,";

(b) by the insertion in subsection (1) after the definition of "Director-General" of the following definition

" 'disputes of rights', disputes arising from an agreement or labour code with regard to farming activities and the unfair dismissal of an employee in employment in connection with farming activities,",

(c) by the insertion in subsection (1) after the definition of "employers organization" of the following definitions

" 'farm' includes fresh water and sea water in so far as farming activities are carried on therein or thereon;

van Wet 51 van 1982, artikel 1 van Wet 2 van 1983, artikel 1 van Wet 83 van 1988 en artikel 1 van Wet 9 van 1991

1. Artikel 1 van die Wet op Arbeidsverhoudinge, 1956 (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur in subartikel (1) na die omskrywing van "arbeidsappèlhof" die volgende omskrywing in te voeg.

" 'arbeidskode', 'n arbeidskode wat ingevolge artikel 51B tot stand gebring is,",

(b) deur in subartikel (1) na die omskrywing van "beloning" die volgende omskrywing in te voeg

" 'boerderybedrywighede', enige bedrywigheid op 'n plaas in verband met die landbou, met inbegrip van veeteelt, tuinbou en bosbou";"

(c) deur in subartikel (1) na die omskrywing van "gebied" die volgende omskrywing in te voeg·

" 'geenstakings- of -uitsluitingsooreenkoms', enige skriftelike ooreenkoms wat 'n bepaling bevat wat 'n staking of uitsluiting tussen die partye by so 'n ooreenkoms vir 'n tydperk van nie langer as 12 maande nie verbied en wat ook nie vir tydperke van langer as 12 maande verleng mag word nie,",

(d) deur in subartikel (1) by die omskrywing van "onbillike arbeidspraktyk" die volgende woorde by te voeg.

": Met dien verstande dat waar 'n werkgewer of werknemer ooreenkomstig die bepalings van 'n artikel 51B arbeidskode en die Wet op Basiese Diensvoorwaardes, 1983 (Wet No 3 van 1983), opgetree het, sodanige optrede as billik geag word totdat die teendeel bewys is en dat enige optrede in stryd met 'n geenstakings- of -uitsluitingsooreenkoms geag word onbillik te wees totdat die teendeel bewys is,",

(e) deur in subartikel (1) die omskrywing van "ooreenkoms" deur die volgende omskrywing te vervang.

" 'ooreenkoms', 'n ooreenkoms wat deur partye by 'n nywerheidsraad of versoeningsraad kragtens hierdie Wet aangegaan is of wat geag word aldus aangegaan te gewees het **[: Met dien verstande dat by die toepassing van 'n onbillike arbeidspraktyk dit]** en ook enige ooreenkoms **[insluit wat ingevolge hierdie Wet afdwingbaar is en]** wat aangegaan is deur enige - **['n werkgewer en 'n vakvereniging of enige groep werknemers in diens by so 'n werkgewer]**

(a) werkgewer;

(b) groep werkgewers,

(c) werkgewersorganisasie,

(d) groep werkgewersorganisasies;

the performance of work in a charitable institution for which the persons performing it receive no remuneration, nor to persons who teach, educate or train other persons at any university, technikon, college, school or other educational institution maintained wholly or partly from public funds "

Amendment of section 17 of Act 28 of 1956, as substituted by section 8 of Act 94 of 1979 and amended by section 5 of Act 95 of 1980, section 18 of Act 57 of 1981, section 5 of Act 51 of 1982, section 2 of Act 2 of 1983, section 1 of Act 81 of 1984, section 5 of Act 83 of 1988 and section 4 of Act 9 of 1991

3. Section 17D of the principal Act is hereby amended by the insertion of the following paragraphs after paragraph (aA) of subsection (11)

"(aB) to make a determination in respect of a matter referred to it in terms of section 17E (2) (a) (iii);

(aC) to consider an application in terms of section 17D (1A) and to make an order which the industrial court deems to be fair under the circumstances,".

Amendment of section 17D of Act 28 of 1956, as inserted by section 5 of Act 9 of 1991

4. Section 17D of the principal Act is hereby amended by the insertion of the following subsection after subsection (1)

"(1A) Notwithstanding any provision of this Act, an employer or employee who is engaged in farming activities, may apply to the industrial court, for an explanatory order that a strike or lock-out shall be unacceptable for a specified period where the strike or lock-out—

(a) has caused or is liable to cause serious damage to the property of an employer or endanger or is liable to endanger the health and safety of persons,

(b) could reasonably lead to the destruction of an employer's business or the viability of such a business, unless the strike or lock-out is functional to the collective bargaining process;

(c) is conducted in a violent manner, or is accompanied by threats of violence, or

(d) is or shall not be in accordance with a non-strike or non lock-out agreement or labour code.".

Insertion of section 17E in Act 28 of 1956

5. The following section is hereby inserted in the principal Act after section 17D

"Establishment and functions of special labour court.

17E (1) (a) A special labour court can by notice in the *Gazette* be established by the Minister and shall consist of persons

verrigting van werk in 'n liefdadigheidsinrigting waarvoor die persone wat dit verrig geen beloning ontvang nie, nòg op persone wat ander persone onderrig, opvoed of oplei aan enige universiteit, technikon, kollege, skool of ander opvoedkundige inrigting wat geheel en al of gedeeltelik uit staatsfondse onderhou word "

Wysiging van artikel 17 van Wet 28 van 1956, soos vervang deur artikel 8 van Wet 94 van 1979 en gewysig deur artikel 5 van Wet 95 van 1980, artikel 18 van Wet 57 van 1981, artikel 5 van Wet 51 van 1982, artikel 2 van Wet 2 van 1983, artikel 1 van Wet 81 van 1984, artikel 5 van Wet 83 van 1988 en artikel 4 van Wet 9 van 1991

3. Artikel 17D van die Hoofwet word hierby gewysig deur die volgende paragrawe na pargraaf (aA) van subartikel (11) in te voeg

"(aB) om 'n vasstelling te maak ten opsigte van'n aangeleentheid wat ingevolge artikel 17E (2) (a) (iii) na hom verwys is,

(aC) om 'n aansoek ingevolge artikel 17D (1A) te oorweeg en so 'n bevel te maak as wat die nywerheidshof in die omstandighede billik ag;".

Wysiging van artikel 17D van Wet 28 van 1956, soos ingevoeg deur artikel 5 van Wet 9 van 1991

4. Artikel 17D van die Hoofwet word hierby gewysig deur die volgende subartikel na subartikel (1) in te voeg:

"(1A) Ongeag enige bepaling van hierdie Wet, mag 'n werkgewer of werknemer wat by boerderybedrywighede betrokke is, die Nywerheidshof naaer vir 'n verklarende bevel dat 'n staking of uitsluiting onaanvaarbaar is vir 'n spesifieke tydperk wat die staking of uitsluiting—

(a) ernstige skade aan die eiendom van 'n werkgewer veroorsaak het of kan veroorsaak, of die gesondheid en veiligheid van persone in gevaar stel of kan stel,

(b) redelikerwys kan lei tot die vernietiging van 'n werkgewer se besigheid of die lewensvatbaarheid van so 'n besigheid, tensy die staking of uitsluiting funksioneel tot die kollektiewe bedingingsproses is,

(c) op 'n geweldadige wyse geskied, of gepaard gaan met dreigemente van geweld, of

(d) nie ooreenkomstig 'n geenstakings- of -uitsluitingsooreenkoms of arbeidskode is of sal wees nie."

Invoeging van artikel 17E in Wet 28 van 1956

5. Die volgende artikel word hierby in die Hoofwet na artikel 17D ingevoeg

"Instelling en werksaamhede van spesiale arbeidshof.

17E (1) (a) 'n Spesiale arbeidshof kan deur die Minister by kennisgewing in die *Staatskoerant* ingestel word en sal bestaan uit

who, in the opinion of the Minister, have experience of the administration of justice or skill in any matter which may be considered by the special labour court and can also be members of the industrial court

(b) Members of the special labour court shall be appointed on the conditions determined by the Minister.

(c) The registrar of the special labour court shall be appointed by the Minister.

(d) A special labour court shall have jurisdiction in the magisterial district determined by the Minister by notice in the *Gazette*

(e) The functions of the special labour court shall be performed by the persons appointed in terms of paragraph (a).

(f) (i) Subject to the provisions of subparagraph (ii), the proceedings in a special labour court shall take place in open court

(ii) A special labour court may in the interest of the administration of justice or of good order or of public morals or at the request of the parties to the proceedings for reasons considered sufficient by the special labour court, order that the proceedings shall be held behind closed doors or that specified persons shall not be present thereat

(iii) If any person present at the proceedings of a special labour court disturbs the order of the court, the special labour court may order that such person be removed and detained in custody until the court adjourns, or the special labour court may, if in its opinion order cannot be otherwise maintained, order that the court room be cleared and that the public shall not be present at the proceedings.

(g) If evidence is given in a language with which one of the parties is in the opinion of the special labour court not sufficiently conversant, a competent interpreter may be called by the special labour court to interpret that evidence into a language with which that party appears to be sufficiently conversant, irrespective of whether the language in which the evidence is given is one of the official languages.

(h) When by reason of absence or incapacity a presiding officer of the special labour court is unable to complete the hearing of a dispute, the hearing of the dispute shall be commenced *de novo* before another presiding officer

persone wat na die oordeel van die Minister ondervinding van die regspleging het of bedrewe is in 'n aangeleentheid wat deur die spesiale arbeidshof oorweeg mag word en kan ook lede van die nywerheidshof wees

(b) Lede van die spesiale arbeidshof word aangestel op die voorwaardes wat die Minister bepaal

(c) Die griffier van die spesiale arbeidshof word deur die Minister aangestel

(d) 'n Spesiale arbeidshof sal jurisdiksie hê in die landdrosdistrik wat die Minister by kennisgewing in die *Staatskoerant* bepaal.

(e) Die werksaamhede van die spesiale arbeidshof word verrig deur die persone kragtens paragraaf (a) aangestel

(f) (i) Behoudens die bepalings van subparagraaf (ii) vind die verrigtinge in 'n spesiale arbeidshof in die ope hof plaas

(ii) 'n Spesiale arbeidshof kan in belang van die regspleging of die goeie orde of op versoek van die partye by die verrigtinge om redes wat die spesiale arbeidshof voldoende ag, gelas dat die verrigtinge agter geslote deure moet plaasvind of dat bepaalde persone nie daarby aanwesig mag wees nie

(iii) Indien iemand wat by die verrigtinge van 'n spesiale arbeidshof aanwesig is, die orde van die hof versteur, kan die spesiale arbeidshof gelas dat so iemand verwyder en in bewaring aangehou word totdat die hof verdaag, of kan die spesiale arbeidshof, indien na sy oordeel die orde nie anders gehandhaaf kan word nie, gelas dat die hofsaal ontruim word en dat die publiek nie by die verrigtinge aanwesig mag wees nie

(g) Indien getuienis afgelê word in 'n taal waarmee een van die partye na die mening van die spesiale arbeidshof nie genoegsaam vertroud is nie, kan die spesiale arbeidshof 'n bevoegde tolk inroep om die getuienis te vertolk in 'n taal waarmee daardie party genoegsaam vertroud blyk te wees, ongeag of die taal waarin die getuienis afgelê word een van die amptelike tale is

(h) Wanneer die voorsittende beampte van die spesiale arbeidshof weens afwesigheid of onvermoe nie in staat is om die verhoor van 'n geskil te voltooi nie, moet die verhoor van die geskil *de novo* voor 'n ander voorsittende beampte 'n aanvang neem

(i) The messenger of the court appointed under the Magistrates' Courts Act, 1944 (Act No 32 of 1944) for the magistrates' court of a district, shall act as messenger of the court for a special labour court in that part of the said district falling within the area of jurisdiction of that court

(2) (a) The special labour court—

(i) may, at the request of an employer or employee engaged in farming activities, give a hearing to a dispute of rights;

(ii) shall not be a court of record but the presiding officer shall take minutes or cause minutes to be taken of the judgment or award and sign it,

(iii) may at any time refer a matter submitted to it to the industrial court for a decision,

(iv) may only hear cases referred to it within 180 days from the date on which the dispute commenced or ceased,

(v) may not order reinstatement in the event of unfair dismissal but allow compensation at a rate of two weeks' wages for every completed year of employment with the employer concerned to a maximum of 30 weeks.

(vi) may in the case of disputes of rights, other than an unfair dismissal, make such an order which the court under the circumstances may deem to be fair

(b) (i) No person may represent another in the special labour court

(ii) If the presiding officer of the special labour court is of the opinion that justice shall not be done without representation, he shall refer the matter to the industrial court in terms of paragraph (a) (iii)

(c) A judgment or an award of the special labour court shall be final and there shall be no right of appeal

(d) The special labour court cannot make any order for costs.

(e) The Minister may, on advice of the Rules Board as contemplated in section 17 (22) (a), make rules for the special labour court in accordance with section 17 (22) (c) (i), (ii), (iii), (v), (vii) and (ix) and (d).

(i) Die geregsbode wat kragtens die Wet op Landdroshowe, 1944 (Wet No 32 van 1944), vir die landdroshof van 'n distrik aangestel is, tree op as geregsbode vir 'n spesiale arbeidshof in daardie deel van genoemde distrik wat binne die regsgebied van dié hof val

(2) (a) Die spesiale arbeidshof—

(i) kan op versoek van 'n werkgewer of werknemer betrokke by boerderybedrywighede 'n regtegeskil aanhoor,

(ii) sal nie 'n hof van rekord wees nie maar die voorsittende beampte moet die uitspraak of toekenning notuleer of laat notuleer en dit onderteken,

(iii) kan ter enige tyd 'n aangeleentheid wat by hom aanhangig gemaak is na die nywerheidshof vir 'n beslissing verwys,

(iv) kan slegs sake wat binne 180 dae, vanaf die datum waarop die geskil 'n aanvang geneem of ten einde geloop het, by hom aangemeld is, verhoor

(v) kan in die geval van onbillike ontslag, nie herindiensneming gelas nie maar skadevergoeding toestaan teen 'n skaal van twee weke se loon vir elke een voltooide jaar van diens by die betrokke werkgewer tot 'n maksimum van 30 weke

(vi) kan in die geval van 'n regtegeskil, anders as onbillike ontslag, so 'n bevel maak as wat die hof in die omstandighede billik mag ag

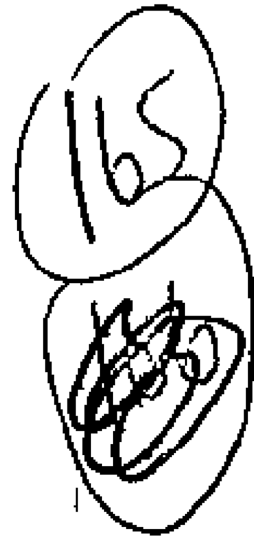
(b) (i) Geen persoon mag 'n ander in die spesiale arbeidshof verteenwoordig nie.

(ii) Indien die voorsittende beampte van 'n spesiale arbeidshof van mening is dat reg en geregtigheid nie sal geskied sonder verteenwoordiging nie, moet hy die saak kragtens paragraaf (a) (iii) na die nywerheidshof verwys

(c) Die spesiale arbeidshof se uitspraak of toekenning is afdoende en daar sal geen reg op appèl wees nie.

(d) Die spesiale arbeidshof kan geen kostebevel maak nie.

(e) Die Minister kan op advies van die Reelsraad soos bedoel in artikel 17 (22) (a) reels ooreenkomstig artikel 17 (22) (c) (i), (ii), (iii), (v), (vii) en (ix) en (d) vir die spesiale arbeidshof uitvaardig



(3) (a) Subject to the provisions of this section, the rules of the law of evidence shall not apply in respect of the proceedings in a special labour court, and a special labour court may ascertain any relevant fact in such manner as it may deem fit

(b) Evidence to prove or disprove any fact in issue, may be submitted in writing or orally

(c) A party shall not question or cross-examine any other party to the proceedings in question or a witness called by the latter party, but the presiding officer shall proceed inquisitorially to ascertain the relevant facts, and to that end he may question any party or witness at any stage of the proceedings Provided that the presiding officer may in his discretion permit any party to put a question to any other party or any witness.

(4) (a) Subject to the provisions of paragraph (b), a party may call one or more witnesses to prove his side of the dispute

(b) The provisions of paragraph (a) shall not affect a special labour court's power to decide that sufficient evidence has been adduced on which a decision can be arrived at, and to order that no further evidence shall be adduced

(5) No person shall testify or be questioned in a special labour court unless the prescribed oath has been administered to him or the prescribed affirmation has been accepted from him by the presiding officer or by the registrar of the special labour court, or any person acting in his place, in the presence of that presiding officer, or, if the person concerned is to give his evidence through an interpreter, by the presiding officer through the interpreter

(6) (a) Any person may at any time, whether before or during the hearing of his action, withdraw his application with the consent of the special labour court and on such conditions as the special labour court may determine, whereupon the proceedings shall be ceased

(b) If proceedings are ceased as contemplated in paragraph (a), an applicant may bring a fresh action with the consent of the special labour court

(3) (a) Behoudens die bepalings van hierdie artikel geld die reels van die bewysreg nie ten opsigte van die verrigtinge in 'n spesiale arbeidshof nie, en kan 'n spesiale arbeidshof hom van enige tersaaklike feit vergewis op die wyse wat hy goed ag

(b) Getuienis om 'n feit in geskil te bewys of te weerlê, kan skriftelik of mondeling aangebied word.

(c) 'n Party mag nie 'n ander party by die betrokke verrigtinge of 'n getuie deur laasgenoemde party geroep, ondervra of kruisverhoor nie, maar die voorsittende beampte moet inkwisitoriaal te werk gaan om die tersaaklike feite te bepaal, en vir dié doel kan hy enige party of getuie op enige stadium van die verrigtinge ondervra· Met dien verstande dat die voorsittende beampte na goeddunke 'n party kan toelaat om 'n vraag aan 'n ander party of enige getuie te stel.

(4) (a) Behoudens die bepalings van paragraaf (b) kan 'n party een of meer getuies roep om sy kant van die geskil te bewys.

(b) Die bepalings van paragraaf (a) raak nie die bevoegdheid van 'n spesiale arbeidshof om te beslis dat voldoende getuienis gelewer is waarop tot 'n beslissing geraak kan word, en om te gelas dat geen verdere getuienis aangebied moet word nie

(5) Niemand mag in 'n spesiale arbeidshof getuienis aflê of ondervra word nie tensy hy die voorgeskrewe eed opgelê is of die voorgeskrewe bevestiging van hom afgeneem is deur die voorsittende beampte of deur die griffier van die spesiale arbeidshof, of iemand wat in sy plek optree, in die teenwoordigheid van die voorsittende beampte, of, indien die betrokke persoon sy getuienis deur 'n tolk gaan aflê, deur die voorsittende beampte deur die tolk.

(6) (a) 'n Persoon mag te eniger tyd, hetsy voor of gedurende die verhoor van sy aksie, met die instemming van die spesiale arbeidshof en op die voorwaardes wat die spesiale arbeidshof bepaal, sy aansoek terugtrek, waarna die verrigtinge beëindig word

(b) Indien verrigtinge beëindig word soos in paragraaf (a) bedoel, kan 'n aansoeker met die toestemming van die spesiale arbeidshof opnuut 'n aksie instel

(7) (a) A special labour court may at any time before determination amend any document in connection with a case Provided that no amendment shall be made if any party other than the party applying for the amendment may be prejudiced thereby in his case

(b) The amendment may be made on such conditions as the special labour court may deem reasonable

(c) In documents before the special labour court the name of any person or place as commonly known may be employed, and the special labour court may, on application, at any time before or after determination substitute the correct name for that name

(8) (a) If a person, upon a document having been served on him—

(i) admits liability and consent to determination in writing, or

(ii) fails to appear before the special labour court on the trial date or on any date to which the proceedings have been postponed,

the special labour court may, on application by the applicant, make a determination

(b) If an applicant fails to appear before the special labour court on the trial date or on any other date to which the proceedings have been postponed, the special labour court may, on application by the respondent—

(i) dismiss the applicant's claim Provided that the applicant may again institute an action for that claim with the consent of the special labour court, and

(ii) with regard to a counterclaim, make a determination

(9) The special labour court may, upon application by any person affected thereby or, in a case contemplated in paragraph (c), *suo motu*—

(a) rescind or vary any determination made it in the absence of the person in respect of whom the determination was made,

(b) rescind or vary any determination made which was void ab origine or was obtained by fraud or as a result of a mistake common to the parties,

(c) correct patent errors in any determination

(7) (a) 'n Spesiale arbeidshof kan te eniger tyd voor vasstelling 'n dokument in verband met 'n aksie wysig Met dien verstande dat geen wysiging aangebring mag word nie indien 'n ander party as die party wat die wysiging aanvra in sy saak daardeur benadeel kan word

(b) Die wysiging kan aangebring word op die voorwaardes wat die spesiale arbeidshof billik ag

(c) In stukke voor die spesiale arbeidshof kan die benaming van 'n persoon of plek soos hy of dit algemeen bekend staan, gebruik word, en die spesiale arbeidshof kan, op aansoek, daardie benaming te eniger tyd voor of na vasstelling deur die korrekte benaming vervang.

(8) (a) Indien 'n persoon, nadat 'n dokument aan hom beteken is—

(i) skriftelik aanspreeklikheid erken en toestemming tot vasstelling verleen, of

(ii) versuim om op die verhoordatum, of op enige datum waartoe die verrigtinge verdaag is, voor die spesiale arbeidshof te verskyn,

kan die spesiale arbeidshof, op aansoek van die applikant 'n vasstelling maak.

(b) Indien 'n aansoeker versuim om op die verhoordatum of enige datum waartoe die verrigtinge verdaag is, voor die spesiale arbeidshof te verskyn, kan die spesiale arbeidshof op aansoek van die respondent—

(i) die aansoeker se eis van die hand wys: Met dien verstande dat die aansoeker weer 'n aksie vir daardie eis met die toestemming van die spesiale arbeidshof kan instel, en

(ii) met betrekking tot 'n teeneis, 'n vasstelling maak

(9) Die spesiale arbeidshof kan, op aansoek van enige persoon wat daardeur geraak word of, in 'n geval in paragraaf (c) bedoel, *suo motu*—

(a) 'n vasstelling deur hom gemaak in die afwesigheid van die persoon ten opsigte van wie die vasstelling gemaak is, nietig verklaar of wysig,

(b) 'n vasstelling wat gemaak is en wat ab origine nietig is of wat deur bedrog of as gevolg van 'n gemene dwaling deur die partye verkry is, nietig verklaar of wysig,

(c) klaarblyklike foute in 'n vasstelling regstel

(10) (a) When a special labour court has made any determination for the payment of money or for the payment of money in instalments, that determination, in the case of failure to pay the money within 10 days, or that order, in the case of failure to pay an instalment at the time and in the manner determined by the special labour court, shall be enforceable by execution against the movable property and, if insufficient movable property is found to satisfy the determination of the special labour court on good cause shown so orders, against the immovable property of the party against whom such determination has been made

(b) Upon failure to pay an instalment in accordance with a determination, execution may be levied in respect of the whole of the judgement debt and costs then still unpaid, unless the special labour court, on application by the party that is liable, orders otherwise

(11) The provisions of section 67 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall apply *mutatis mutandis* in respect of a warrant of execution in terms of this section

(12) Any person against whom a special labour court has made a determination and who has not satisfied in full to that determination, shall, if he has changed his place of residence, business or employment, within 14 days from the date of every such change notify the other party fully and correctly in writing of his new place of residence, business or employment

(13) (a) If a special labour court has made a determination for the payment of a sum of money and the registrar of the special labour court is satisfied that such determination has remained unsatisfied that such determination has remained unsatisfied after the applicant has acted in terms of all the provisions of this section available to him, the registrar of the special labour court shall, upon the written application of the applicant accompanied by an affidavit specifying the amount still owing under the determination and how that amount is arrived at, transmit a certified copy of that determination, together with that affidavit, to the clerk of the magistrate's court of the district in which the respondent resides, carries on business or is employed, or, if the respondent is a juristic person, of the district in which its registered office or main place of business is situated

(10) (a) Wanneer 'n spesiale arbeidshof 'n vasstelling maak vir die betaling van geld of vir die betaling van geld in paaiemente, kan die vasstelling, in die geval van versuim om die geld binne 10 dae te betaal, of die bevel, in die geval van versuim om 'n paaiement te betaal op die tyd en wyse deur die spesiale arbeidshof bepaal, by eksekusie afgedwing word teen die roerende goed en, indien onvoldoende roerende goed gevind word ter voldoening van die vasstelling of die spesiale arbeidshof om 'n gegronde rede aangevoer aldus gelas, teen die onroerende goed van die party teen wie die vasstelling gemaak is

(b) By versuim om 'n paaiement ooreenkomstig 'n vasstelling te betaal, kan tenuitvoerlegging geskied ten opsigte van die hele vonnisskuld en die koste wat dan nog betaalbaar is, tensy die spesiale arbeidshof, op aansoek van die party wat aanspreeklik is, anders gelas

(11) Die bepalings van artikel 67 van die Wet op Landdroshowe, 1944 (Wet No 32 van 1944), geld *mutatis mutandis* ten opsigte van 'n lasbrief tot eksekusie ingevolge hierdie artikel

(12) Iemand teen wie 'n spesiale arbeidshof 'n vasstelling gemaak het en wat nie ten volle daaraan voldoen het nie, moet, indien hy van woon-, besigheids- of werkplek verander het, binne 14 dae vanaf die datum van elke sodanige verandering die ander party skriftelik, volledig en juis van sy nuwe woon-, besigheids- of werkplek in kennis stel

(13) (a) Indien 'n spesiale arbeidshof 'n vasstelling gemaak het vir die betaling van 'n bedrag geld en die griffier van die spesiale arbeidshof oortuig is dat daardie vasstelling onvoldaan gebly het nadat die aansoeker ingevolge al die bepalings van hierdie artikel wat tot sy beskikking is, opgetree het, moet die griffier van die spesiale arbeidshof op die skriftelike aansoek van die aansoeker, wat vergesel moet gaan van 'n beedigde verklaring waarin uiteengesit word wat die bedrag is wat nog kragtens die vasstelling verskuldig is en hoe dit bereken word, 'n gewaarmerkte afskrif van daardie vasstelling, tesame met daardie verklaring, aan die klerk van die landdroshof van die distrik waarin die respondent woon, besigheid dryf of in diens is, of, indien die respondent 'n regspersoon is, van die distrik waarin sy geregistreerde kantoor of hoofbesigheidsplek is, stuur

(b) Upon receipt of the documents referred to in paragraph (a) the clerk of that magistrate's court shall record the details of the determination concerned and the amount owing mentioned in the affidavit, whereupon the applicant may proceed as if it were a judgement granted in that magistrate's court in his favour for the amount mentioned in the affidavit, subject to the right of the judgement debtor to dispute the correctness of the amount

(14) (a) Any person who wilfully insults a presiding officer during the session of his special labour court, or registrar of a special labour court or other officer present at that session, or who wilfully interrupts the proceedings of a special labour court or otherwise misbehaves himself in the place where the session of a special labour court is held, shall be liable to be sentenced summarily or upon summons to a fine not exceeding R500 or to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.

(b) When a presiding officer sentences any person under this subsection he shall without delay transmit to the registrar of the Supreme Court having jurisdiction for consideration and review by a judge in chambers, a statement, certified by him to be true and correct, of the grounds and reasons for the action taken by him, and shall also furnish to the person sentenced a copy of that statement

(15) Subject to the provisions of this section, the special labour court shall have the same jurisdiction as the industrial court to make and enforce a determination made in terms of section 46 (9) "

(b) By ontvangs van die stukke in paragraaf (a) bedoel, moet die klerk van die landdroshof die besonderhede van die betrokke vasstelling en verskuldigde bedrag vermeld in die beedigde verklaring, aanteken, waarna die aansoeker kan optree asof dit 'n vonnis was wat in daardie landdroshof vir hom gegee is vir die bedrag vermeld in die beedigde verklaring, behoudens die reg van die vonnisskuldenaar om die juistheid van die bedrag te betwis

(14) (a) Iemand wat 'n voorsittende beampte gedurende die sitting van sy spesiale arbeidshof, of 'n griffier wat by die sitting aanwesig is, opsetlik beledig of die verrigtinge van 'n spesiale arbeidshof opsetlik onderbreek of hom op 'n ander wyse aan wangedrag skuldig maak in die plek waar die sitting van 'n spesiale arbeidshof gehou word, is summier of na dagvaardiging strafbaar met 'n boete van hoogstens R500 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande, of met daardie gevangenisstraf sonder die keuse van 'n boete.

(b) Wanneer 'n voorsittende beampte iemand kragtens hierdie subartikel vonnis, moet hy sonder versuim aan die griffier van die Hooggeregshof met regsbevoegdheid vir oorweging en hersiening deur 'n regter in kamers, 'n verklaring stuur wat deur hom as waar en juis gesertifiseer is, van die gronde en redes vir sy optrede en ook 'n afskrif van die verklaring aan die gevonniste persoon verstrek.".

(15) Behoudens die bepalings van hierdie artikel het die spesiale arbeidshof dieselfde bevoegdhede as die nywerheidshof om 'n vasstelling kragtens artikel 6 (a) te maak en af te dwing "

Amendment of section 31A of Act 20 of 1956, as inserted by section 3 of Act 81 of 1984

5. Section 31A of the principal Act is hereby amended by the substitution for the word following subparagraph (vi) of paragraph (b) of subsection (1) of the following words.

"on the other hand, shall be enforceable in any court, including the industrial court but excluding the special labour court "

Wysiging van artikel 31A van Wet 28 van 1956, soos ingevoeg deur artikel 3 van Wet 81 van 1984

5. Artikel 31A van die Hoofwet word hierby gewysig deur in subartikel (1) die woorde wat op subparagraaf (vi) van paragraaf (b) volg deur die volgende woorde te vervang

"aan die ander kant, is in enige hof, met inbegrip van die nywerheidshof maar uitgesonderd die spesiale arbeidshof, afdwingbaar nie "

Amendment of section 35 of Act 28 of 1956, as amended by section 4 of Act 18 of 1961, section 6 of Act 95 of 1980, section 27 of Act 57 of 1981, section 3 of Act 2 of 1983, section 9 of Act 83 of 1988 and section 7 of Act 9 of 1991

6. Section 35 of the principal Act is hereby amended by the addition to subsection (1) of the following words.

" Provided that in the case of persons engaged in farming activities, the dispute may be submitted directly by the applicant to the special labour court."

Amendment of section 42 of Act 28 of 1956, as amended by section 14 of Act 83 of 1988

7. Section 42 of the principal Act is hereby amended by the insertion of the following subsection after subsection (1)·

"(1A) (a) Where a report as referred to in subsection (1) (a) relates to a dispute concerning an unfair labour practice between parties engaged in a farming activity, a copy thereof shall also be submitted to the registrar of the industrial court

(b) A member of the Industrial Court to whom the report, referred to in paragraph (a), is submitted, can whether the conciliation board has been discharged or not and notwithstanding any other provision of this Act, refer the dispute concerning an unfair labour practice between the parties engaged in a farming activity back to the conciliation board on such conditions as such a member may deem fair

(c) If a dispute is referred back to a conciliation board, referred to in paragraph (b), the chairman of the conciliation board shall endeavour to expedite the settling of the dispute by agreement between the parties

(d) If a dispute referred to in this section, which was referred back to the conciliation board and according to a certificate, issued finally for this purpose by the chairman of the conciliation board, can not be settled, the industrial court may determine the dispute in terms of section 46 (9) (c) Provided that no determination can be made in favour of a party who did not continuously attended the meetings of the conciliation board "

Insertion of section 51B in Act 28 of 1956

8. The following section is hereby inserted in the principal Act after section 51A

"Labour codes

51B (1) The National Manpower Commission may submit proposals regarding fair or unfair labour practices or subject to the provisions of section 65, strikes or lockouts in respect of farming activities in a particular area in the form of a labour code to the Minister and request that the labour code referred to, be dealt with in accordance with subsection (2)

Wysiging van artikel 35 van Wet 28 van 1956, soos gewysig deur artikel 4 van Wet 18 van 1961, artikel 6 van Wet 95 van 1980, artikel 27 van Wet 57 van 1981, artikel 3 van Wet 2 van 1983, artikel 9 van Wet 83 van 1988 en artikel 7 van Wet 9 van 1991

6. Artikel 35 van die Hoofwet word hierby gewysig deur na subartikel (1) die volgende woorde by te voeg

" Met dien verstande dat in die geval van persone wat by boerderybedrywighede betrokke is, kan die geskil direk deur die applikant na die spesiale arbeidshof verwys word "

Wysiging van artikel 42 van Wet 28 van 1956, soos gewysig deur artikel 14 van Wet 83 van 1988

7. Artikel 42 van die Hoofwet word hierby gewysig deur die volgende subartikel na subartikel (1) in te voeg

"(1A) (a) Waar 'n verslag soos bedoel in subartikel (1) (b) betrekking het op 'n geskil aangaande 'n onbillike arbeidspraktyk tussen partye betrokke by 'n boerderybedrywigheid, moet 'n afskrif daarvan ook aan die griffier van die nywerheidshof gestuur word

(b) 'n Lid van die nywerheidshof aan wie die verslag soos in paragraaf (a) bedoel voorgelê word, kan hetsy die versoeningsraad ontslaan is of nie en ongeag enige ander bepalings van hierdie Wet, die geskil aangaande 'n onbillike arbeidspraktyk tussen partye betrokke by 'n boerderybedrywigheid na die versoeningsraad terugverwys op sodanige voorwaardes as wat so 'n lid billik mag ag.

(c) Indien 'n geskil na die versoeningsraad terugverwys word, soos bedoel in paragraaf (b), moet die voorsitter van die versoeningsraad die beslegting van die geskil deur ooreenkoms tussen die partye probeer bevorder

(d) Indien 'n geskil soos bedoel in hierdie artikel wat na die versoeningsraad terugverwys is en volgens 'n sertifikaat, wat vir hierdie doel finaal is, deur die voorsitter van die versoeningsraad uitgereik is, nie besleg kan word nie, kan die nywerheidshof die geskil ingevolge artikel 46 (9) (c) vasstel Met dien verstande dat geen vasstelling gemaak kan word ten gunste van 'n party wat nie deurlopend by die versoeningsraadverrigtinge aanwesig was nie ".

Invoeging van artikel 51B in Wet 28 van 1956

8. Die volgende artikel word hierby in die Hoofwet na artikel 51A ingevoeg

"Arbeidskodes

51B (1) Die Nasionale Mannekragkommissie kan voorstelle aangaande billike of onbillike arbeidspraktyke of behoudens die bepalings van artikel 65, stakings of uitsluitings ten opsigte van boerderybedrywighede in 'n bepaalde gebied in die vorm van 'n arbeidskode aan die Minister voorlê en versoek dat ooreenkomstig subartikel (2) met die bedoelde arbeidskode gehandel word

(2) After receipt of a labour code in terms of subsection (1), the Minister may—

(a) publish such labour code by way of a notice in the *Gazette* in which all interested persons are requested to submit within a fixed period written comment to the Director-General, and

(b) taking into consideration the comment received in terms of paragraph (a) and if he deems it expedient to do so, publish a notice in the *Gazette* which contains the provisions of that labour code

(3) (a) Subject to the provisions of subsection (2), the Minister may, at the request of the National Manpower Commission, from time to time by notice in the *Gazette*—

(i) as from a date cancel or suspend for a period, or

(ii) as from a date specified in that notice, amend or supersede, as he may deem fit,

any one or more or all the provisions of a labour code which has been published in terms of subsection (2)

(b) Subject to the provisions of paragraph (a), the provisions of a labour code which has been published in terms of subsection (2), shall remain in force until they are cancelled or superseded by a new labour code.

(4) Notwithstanding the provisions of subsection (1), any—

(a) employer,

(b) group of employers;

(c) employers' organisation;

(d) group of employers' organisations,

(e) group of one employer and one or more employers' organisations, or

(f) group of employers and one or more employers' organisations,

on the one hand and any—

(g) group of employees;

(h) trade union;

(i) group of trade unions; or

(j) group of employees and one or more trade unions

and which are representative of the employees of employers referred to in paragraphs (a), (b), (c), (d), (e) or (f) or which represent a certain interest there, on the other hand, which are engaged in farming activities and area, may at any time submit to the Minister proposals in regard to fair or unfair actions in farming activities or subject to the provisions of section 65, strikes or lock-outs in respect of farming activities in a particular area

(2) Nadat hy 'n arbeidskode kragtens subartikel (1) ontvang het, kan die Minister—

(a) sodanige arbeidskode by wyse van 'n kennisgewing in die *Staatskoerant* laat publiseer waarin alle belangstellende persone versoek word om binne 'n bepaalde tydperk kommentaar skriftelik by die Direkteur-generaal in the dien; en

(b) met inagneming van die kommentaar wat ingevolge paragraaf (a) ontvang is, en indien hy dit raadsaam ag, 'n kennisgewing in die *Staatskoerant* laat publiseer wat die bepalings van daardie arbeidskode uiteensit

(3) (a) Behoudens die bepalings van subartikel (2), kan die Minister op versoek van die Nasionale Mannekragkommissie van tyd tot tyd by kennisgewing in die *Staatskoerant* een of meer of al die bepalings van 'n arbeidskode wat ingevolge subartikel (2) gepubliseer is—

(i) vanaf 'n datum intrek of vir 'n tydperk opskort, of

(ii) vanaf 'n datum in daardie kennisgewing vermeld, wysig of vervang soos hy goedvind.

(b) Behoudens die bepalings van paragraaf (a), bly die bepalings van 'n arbeidskode wat ingevolge subartikel (2) gepubliseer is van krag totdat hulle vervang word deur 'n nuwe arbeidskode

(4) Ondanks die bepalings van subartikel (1), kan enige—

(a) werkgewer;

(b) groep werkgewers;

(c) werkgewersorganisasie,

(d) groep werkgewersorganisasies,

(e) groep van een werkgewer en een of meer werkgewersorganisasies; of

(f) groep werkgewers en een of meer werkgewersorganisasies,

aan die een kant en enige—

(g) groep werknemers;

(h) vakvereniging,

(i) groep vakverenigings, of

(j) groep van werknemers en een of meer vakverenigings

en wat verteenwoordigend is van die werknemers van werkgewers soos bedoel in paragrawe (a), (b), (c), (d), (e) of (f) of wat 'n bepaalde belang aldaar verteenwoordig, aan die anderkant, wat in boerderybedrywighede en 'n gebied betrokke is, te eniger tyd voorstelle aangaande billike of onbillike optrede in boerderybedrywighede of behoudens die bepalings van artikel 65, stakings of uitsluitings ten opsigte van boerderybedrywighede in 'n bepaalde gebied in die vorm van 'n arbeidskode of

in the form of a labour code or the amendment of a labour code referred to in subsection (2) and request that the labour code or amendment referred to, be declared binding upon the parties who submitted the labour code or amendment Provided that the provisions of subsections (2) (b) and (3) shall *mutatis mutandis* apply in respect of the publication, suspension or amendment of such labour code or amending labour code

(5) Any labour or amending labour code declared binding in terms of subsection (4) upon all the members of the group or association of employers referred to in subsection (4), shall be binding upon every employer who was a member of such group or association on the date on which the labour code or amending labour code was concluded, or who thereafter became a member, during the whole period, during which such labour code or amending labour code is binding upon the mebers of such group or association, whether he remains a member of such a group or association or not.

(6) The Minister or an officer designated by him for that purpose, may, on application, grant exemption from any provision of a labour code made under subsection (2) or (4) or amending labour code made under subsection (4), to or in respect of any person for such period and subject to such conditions as the Minister or such officer, as the case may be, may determine

(7) Any exemption granted—

(a) by the Minister or any such officer may at any time be withdrawn by the Minister; or

(b) by any such officer may at any time be withdrawn by that officer or by any other officer designated by the Minister for that purpose

(8) An industrial council agreement or a conciliation board agreement or any matter regulated in terms thereof in respect of an employee, shall not be affected by a labour code, but a labour code shall be applicable in respect of such an employee in so far as a provision thereof provides for a matter which is not regulated by or in terms of the agreement referred to, in respect of such an employee ".

Amendment of section 79 of Act 28 of 1956, as substituted by section 26 of Act 83 of 1988 and section 12 of Act 9 of 1991

9. Section 79 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection

"(1) No civil legal proceedings shall be brought in any court of law against any employee, employer, registered trade union or employers' organization, or against any member, office-bearer or official of any such union or organization in respect of any breach of contract, breach of statutory duty or delict (other than defamation) committed by that employee, employer, union or organization, or by that member, office-bearer or official

die wysiging van 'n arbeidskode bedoel in subartikel (2) aan die Minister voorlê en versoek dat bedoelde arbeidskode of wysiging bindend verklaar word vir die partye wat die arbeidskode of wysiging voorgelê het Met dien verstande dat die bepalings van subartikels (2) (b) en (3) *mutatis mutandis* van toepassing is ten opsigte van die publikasie, intrekking of wysiging van sodanige arbeidskode of wysigingsarbeidskode

(5) Enige arbeidskode of wysigingsarbeidskode wat kragtens subartikel (4) bindend is op die lede van die grope of vereniging van werkgewers soos in subartikel (4) bedoel, is bindend op elke werkgewer wat 'n lid was van sodanige groep of vereniging op die datum waarop die arbeidskode of wysiingsarbeidskode aangenaa is, of wat daarna 'n lid geword het, gedurende die hele tydperk waarin sodanige arbeidskode of wysigingsarbeidskode bindend is op die lede van sodanige groep of vereniging, hetsy hy 'n lid van so 'n groep of vereniging bly al dan nie

(6) Die Minister of 'n beampte deur hom vir dié doel aangewys, kan, op versoek, vrystelling verleen van enige bepaling van 'n arbeidskode kragtens subartikel (2) of (4) of wysigingsarbeidskode kragtens subartikel (4) gemaak, aan of ten opsigte van enige persoon vir die tydperk en onderworpe aan die voorwaardes wat die Minister of bedoelde beampte, na gelang van die geval, bepaal

(7) 'n Vrystelling wat toegestaan is—

(a) deur die Minister of so 'n beampte kan te eniger tyd deur die Minister ingetrek word, of

(b) deur so 'n beampte kan te eniger tyd deur die beampte, of deur enige ander beampte deur die Minister vir dié doel aangewys, ingetrek word

(8) 'n Nywerheidsraadooreenkoms of 'n versoeningsraadooreenkoms of 'n aangeleentheid daarkragtens ten opsigte van 'n werknemer gereel, word nie deur 'n arbeidskode geraak nie, maar 'n arbeidskode is ten opsigte van so 'n werknemer van toepassing vir sover 'n bepaling daarvan vir 'n aangeleentheid voorsiening maak wat nie ten opsigte van so 'n werknemer by of kragtens bedoelde ooreenkoms gereel word nie "

Wysiging van artikel 79 van Wet 28 van 1956, soos vervang deur artikel 26 van Wet 83 van 1988 en artikel 12 van Wet 9 van 1991

9. Artikel 79 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang

"(1) Geen siviele geregtelike stappe word in enige geregshof teen 'n werknemer, werkgewer, geregistreerde vakvereniging of werkgewersorganisasie of teen 'n lid, ampsdraer of beampte van so 'n vereniging of organisasie ten opsigte van enige kontrakbreuk, verbreking van 'n statutêre verpligting of onregmatige daad (behalwe laster) deur daardie werknemer, werkgewer, vereniging of organisasie, of deur daardie lid, ampsdraer of

on behalf of that union or organization, in furtherance of a strike or lock-out Provided that this indemnity shall not apply to any act committed in furtherance of any strike or lock-out in which, or in the continuation of which, any employee, employer or other person is by section 65 forbidden to take part, or to any act the commission of which is a criminal offence, or any action contrary to a non-strike or non-lock-out agreement ".

Amendment of the long title of Act 28 of 1956, as substituted by section 20 of Act 94 of 1979, section 61 of Act 57 of 1981, section 10 of Act 2 of 1983 and section 29 of Act 83 of 1988

10. The long title of the principal Act is hereby substituted by the following long title

"To consolidate and amend the law relating to the registration and regulation of trade unions and employers' organizations, the prevention and settlement of disputes between employers and employees, and the regulation of terms and conditions of employment by agreement, **[and]** arbitration and labour codes, to provide for the establishment of a National Manpower Commission and to define its functions, to provide for the establishment of an industrial court and to define its functions, to provide for the establishment of a special labour court and to define its functions, to provide for the establishment of a labour appeal court and to define its functions, to provide for the control of labour brokers and the registration of labour brokers' offices, and to provide for incidental matters "

Short title and commencement

11. (1) This Act shall be called the Labour Relations Amendment Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*

(2) Different dates may be so fixed in respect of the different provisions of this Act

(31 December 1992)

beampte namens daardie vereniging of organisasie ter bevordering van 'n staking of uitsluiting gepleeg, aanhangig gemaak nie Met dien verstande dat hierdie vrywaring nie van toepassing is nie op enige handeling verrig ter bevordering van 'n staking of uitsluiting waaraan, of aan die voortsetting waarvan, enige werknemer, werkgewer of ander persoon deur artikel 65 belet word om deel te neem, of op enige handeling waarvan die verrigting 'n kriminele oortreding is, of enige handeling in stryd met 'n geenstakings- of -uitsluitingsooreenkoms ".

Wysiging van die langtitel van Wet 28 van 1956, soos vervang deur artikel 20 van Wet 94 van 1979, artikel 61 van Wet 57 van 1981, artikel 10 van Wet 2 van 1983 en artikel 29 van Wet 83 van 1988

10. Die langtitel van die Hoofwet word hierby deur die volgende langtitel vervang·

"Tot samevatting en wysiging van die wet met betrekking tot die registrasie en reëling van vakverenigings en werkgewersorganisasies, die voorkoming en beslegting van geskille tussen werkgewers en werknemers, en die reeling van bedinge en voorwaardes van diens deur ooreenkoms, **[en]** arbitrasie en arbeidskodes; om voorsiening te maak vir die instelling van 'n Nasionale Mannekragkommissie en om sy werksaamhede te omskryf, om voorsiening te maak vir die instelling van 'n nywerheidshof en om sy werksaamhede te omskryf, om voorsiening te maak vir die instelling van 'n spesiale arbeidshof en om sy werksaamhede te omskryf; om voorsiening te maak vir die instelling van 'n arbeidsappèlhof en om sy werksaamhede te omskryf; om voorsiening te maak vir beheer oor arbeidsmakelaars en die registrasie van arbeidsmakelaarskantore, en om voorsiening te maak vir bykomstige aangeleenthede "

Kort titel en inwerkingtreding

11. (1) Hierdie Wet heet die Wysigingswet op Arbeidsverhoudinge, 1993, en tree in werking op 'n datum deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal

(2) Verskillende datums kan aldus bepaal word ten opsigte van die verskillende bepalings van hierdie Wet

(31 Desember 1992)

NOTICE 1178 OF 1992

DEPARTMENT OF TRANSPORT

AIR SERVICE LICENSING ACT, 1990
(ACT No. 115 OF 1990)

Pursuant to the provisions of section 15 (1) (b) of Act No 115 of 1990 and regulation 8 of the Domestic Air Services Regulations, 1991, it is hereby notified for general information that the application details of which appear in the Schedule hereto, will be considered by the Air Service Licensing Council

Representations in accordance with section 15 (3) of Act No. 115 of 1990 in support of, or in opposition to, an application, should reach the Air Service Licensing Council, Private Bag X193, Pretoria, 0001, within 21 days of the date of publication hereof

KENNISGEWING 1178 VAN 1992

DEPARTEMENT VAN VERVOER

WET OP DIE LISENSIERING VAN LUGDIENSTE, 1990 (WET No. 115 VAN 1990)

Hierby word ingevolge die bepalings van artikel 15 (1) (b) van Wet No. 115 van 1990 en regulasie 8 van die Regulasies vir Binnelandse Lugdienste, 1991, vir algemene inligting bekendgemaak dat die Lugdienslisensieringsraad die aansoeke waarvan besonderhede in die Bylae hieronder verskyn, sal oorweeg.

Vertoë ingevolge artikel 15 (3) van Wet No 115 van 1990 ter ondersteuning of bestryding van 'n aansoek moet die Lugdienslisensieringsraad, Privaat Sak X193, Pretoria, 0001, binne 21 dae na die datum van publikasie hiervan bereik

LABOUR DEPARTMENT
1993

New Bill heralds a better deal for farmworkers

By SEKOLA SELLO

THE government this week unveiled its long awaited draft bill to bring the working conditions of farmworkers in line with the rest of the country CPress 3/1/93.

The working document on the extension of the Labour Relations Act which includes farmworkers under the Basic Conditions of Employment Act of 1983 is expected to bring about far reaching changes in the farming industry

In terms of the proposals, child labour (15 years and under) at the farms is effectively eliminated, farmworkers are entitled to unionisation and collective bargaining, female workers are entitled to maternity leave, working hours are prescribed and wages determined

The sweeping changes the government proposes are likely to overhaul the lot of farmworkers – generally regarded as the most underpaid overworked and exploited employees in the country

But, as changes begin to take effect the government and trade union federations such as Cosatu and Nactu could find themselves on a collision course with the powerful SA Agricultural Union which is opposed to any changes in the industry

A month ago when the government announced that it was considering extending the Labour Relations Act to farmworkers, the agricultural union expressed its opposition to the envisaged proposals, saying they were unworkable' and that the legislation would not take into account the "unique" circumstances of agriculture

Farmers' representatives subsequently met State President FW de Klerk and Manpower Minister Leon Wessels to express dissatisfaction that there were no proper consultations with farmers on the implications of the Act

To counter the swelling opposition to the envisaged legislation, Wessels proposed further discussions on the issue

Farmers have until the end of February to submit comments to the government

Among the important provisions of the Act is the establishment of a special labour court to listen to disputes between the employer and employee and the appointment of inspectors to monitor the farmworkers' working conditions

If this draft Bill becomes law early next year as seems likely it will be an offence for an employer to hinder an inspector in the execution of his duties It will also be an offence for an employer to dismiss or alter the service conditions of a worker if such an employee has given evidence to an inspector

Farmworkers will in future have the right to belong to trade unions and will also have the right to participate in the union s activities It will be an offence for an employer to prohibit an employee from participation in union activities

Farmworkers will also be entitled to annual leave and sick leave They are also entitled to lunch periods while female workers will enjoy the right to maternity leave In terms of maternity leave, a female worker is not allowed to work four weeks prior to her confinement and eight weeks after giving birth

The summary dismissal of farm workers which is common practice on the farms is prohibited and in future if a worker wants to terminate his services, the farmer cannot keep him against his will However, the worker is expected to serve notice

Farmworkers will also enjoy all public holidays as paid holidays and working on Sunday will be considered overtime

Cosatu has played an important role in drafting the working document Nactu says the proposed legislation is long overdue and has rejected farmers' demands that they be exempted from industrial courts in cases of disputes with workers

While the general thrust of the proposals is to bring about enlightened labour relations on farms, the expected opposition from the farmers could turn these areas into battlefields

NEW DEAL . . .The long awaited draft bill protecting exploited farmworkers will bring about far reaching changes within the ind...

Labour codes could set trend

ALAN FINE

A NEW system of legally enforceable labour codes recommended for the agricultural sector could set a trend for the introduction of a similar system in other parts of the economy

An investigation into the desirability of such a move is proposed in notes to the draft Labour Relations Amendment Bill published in the Government Gazette on Thursday The draft Bill is designed to extend the Labour Relations Act to cover the agricultural sector

In addition to labour codes, it also seeks to establish a special labour court to operate in the sector, legally recognises "no-strike" agreements, clarifies the grounds on which interdicts against strikes may be obtained and attempts to enhance the use of conciliation boards in the sector

The draft Bill is in accordance with the November 6 agreement reached between Manpower Minister Leon Wessels and Cosatu that the department publish for comment draft legislation on the issue "before the end of 1992" The agreement provides that the Bill, based on National Manpower Commission (NMC) recommendations, be passed through Parliament in 1993

Notes to the Bill point out a number of areas where employee and SA Agricultural Union representatives on the NMC were unable to reach consensus, and are likely still to be hotly debated

The Bill authorises the Minister to produce a labour code applicable to agriculture after recommendations have been received by interested parties

The purpose of the code is to introduce clarity and certainty on unfair labour practice issues which have been adjudicated by the industrial and other courts

It is seen as especially necessary for agriculture as "it would be unfair towards

□ To Page 2

Labour codes

□ From Page 1

both employers and employees to expect them to be au fait with the principles set out in the numerous decisions of the various courts".

A novel provision makes it possible for employers and employees — individuals, agricultural sub-sectors, or those in particular regions — to reach agreement on their own, legally binding labour codes

The basis of operation of the special labour court is simplicity and speed.

The court would not, in cases of unfair dismissal, be entitled to order reinstatement (one of the matters of dispute between the unions and the SAAU). It would be able to order compensation only at a rate of two weeks' wages per year of service up to a maximum of 30 weeks If a dismissed employee wanted reinstatement he or she would have to take the case to the Industrial Court.

Decisions of the special labour court would be final and the court would not be permitted to make orders on costs

The Bill recognises contravention of "no-strike" agreements as a particular ground for an Industrial Court interdict

No-strike agreements are designed to recognise the seasonal nature of farming and minimise disruptions during peak farming periods.

Other grounds set down by the Bill for interdicts against strikes (and lockouts) are where the action.

□ Has caused or is liable to cause serious damage to employers' property or could endanger people's health and safety;

□ Could destroy a business's viability, "unless the strike or lockout is functional to the collective bargaining process", or

□ Is conducted in a violent manner or is accompanied by threats of violence

Before an agricultural sector unfair labour practice case is referred to the Industrial Court it will have to follow the usual conciliation board procedures. Once the case has reached the court, the presiding officer will be entitled to refer the matter back to the board prior to hearing the case, instructing the board to attempt to expedite the settling of the dispute.

JOB MARKET

Putting a new face on labour's right to strike

S| Times (BUSS) 10/1/93.

By ADRIAN HERSCH

STRIKE legislation, including the possible provision for no-strike deals, is set to become one of the most vigorously debated issues when the restructured National Manpower Commission (NMC) meets next month.

One of the main tasks of the revamped NMC — which includes representatives of government, business, labour and individual experts — will be to formulate a new Labour Relations Act (LRA)

Many other countries make provision for no-strike agreements to be enforceable. In SA, section 79 of the LRA makes such agreements unenforceable

NMC acting chairman Frans Barker says that despite this "a number of no-strike deals are being concluded"

"Trade unions, in general, want as little interference as possible with the right to strike The problem is that, where agreements that cannot be enforced are concluded, there may be some irresponsible parties that will take advantage of the situation."

But the most hotly debated issue concerning strike legislation is likely to be the International Labour Organisation (ILO) recommendation, in a report on SA, that workers be protected against dismissal when striking legitimately

Dr Barker says, firstly, that many employers disagree with this principle because they believe the industrial court offers enough protection to strikers as matters stand

Secondly, even if the principle is to be accepted, protection from dismissal cannot be "absolute"

Dr Barker says "A number of factors will have to be considered. For example, if violence is involved in the strike, or the strike threatens the viability of the company, then exceptions have to be made.

"Some are in favour of protection from dismissal for a certain period, such as 30 days, but unions often object to this, saying employers can easily get around this by ensuring that — before the strike occurs — they have sufficient stocks for the 30 days"

Dr Barker adds that there are further problems because of "the two sides of the coin aspect"

Many employers believe that if workers enjoy protection from dismissal when on a legitimate strike, then employers should have the automatic right to dismiss when the strike is not legitimate

"But many trade unions object to this," says Dr Barker

Incompatible

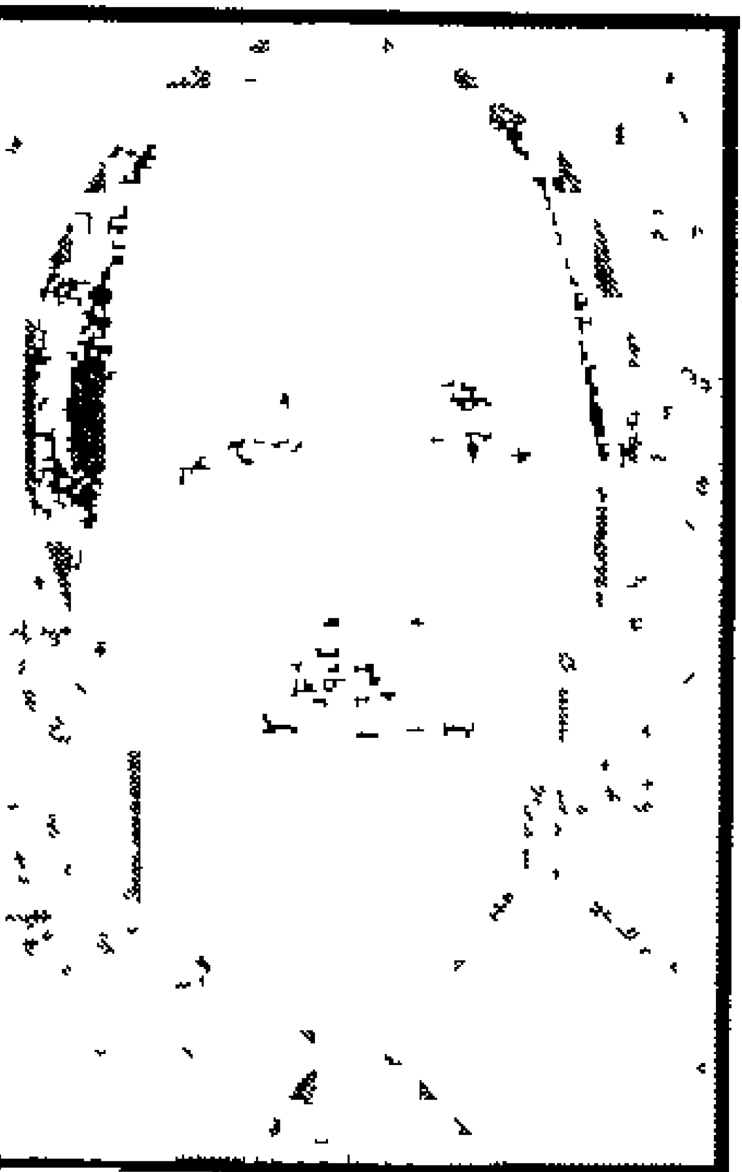
Other ILO recommendations regarding strikes include: widening of the strike definition to allow strikes over economic and social issues, amendment of the strike ballot provision, and provisions regulating strikes — simplification of the pre-strike procedural requirements

"The strike issue is wide open for discussion. There's going to be a lot of discussion and, given all the complexities, it will take some time to resolve," says Dr Barker

The ILO report recommended that full labour rights be extended to agricultural, domestic and public service employees, which is now taking place.

Dr Barker denies speculation that these changes are being made as a result of pressure arising from the report. "The processes were set in motion before the ILO made its investigation"

The ILO report said that labour legislation in each of the 11 homelands was incompatible with the "international principles of freedom of association"



Dr FRANS BARKER

Dr Barker says the NMC has limited influence over this "The future labour legislation in these areas will largely be dependent on what will happen in the constitutional negotiations"

South Africa's regaining of ILO membership will also be dependent on how constitutional talks progress Dr Barker believes that the chances of admittance will be good once an interim government is in place "Should the African bloc view the establishment of an interim government favourably, the door for our readmittance will be open"

But he adds. "I don't think regaining membership should be our first priority. Our priority should be to ensure acceptable labour legislation — and once we've done that we will not, in any case, require that much technical assistance from them"

The restructured NMC will comprise 10 representatives from labour, 10 from business and 10 appointed by the Manpower Minister, all of whom will have voting rights

Original recommendations were for representation to be divided equally between business and labour, with a Department of Manpower representative having one vote.

Dr Barker says the change was made in order to try and accommodate those who are not represented by big business and the major trade unions.

Rules

Those appointed by the Minister will be drawn "from a diverse group of people" They comprise a chairman and deputy chairman, two legal representatives, two Manpower Department representatives and four other experts

Dr Barker says the NMC will hold an informal meeting towards the end of the month in order to promote consensus on who the four experts should be.

The NMC will establish rules of procedure, set up sub-committees, draw up an agenda and decide what interaction there should be with bodies such as the National Economic Forum (NEF)

Crucial year ahead for farm workers

Legislation to be passed in the next few months may usher in a new era on South Africa's farms, writes **Alan Morris:**

HARD LABOUR. Farm workers are set to get a new deal when legislation is passed to extend labour rights to them

SOUTH 16/1 – 20/1/93

THIS year may bear witness to a profound shift in the balance of power in the agricultural sector

For the first time farm workers will have the same legal rights as other workers and their capacity to challenge the unrestricted power of white farmers could be substantially enhanced.

Since the arrival of white settlers in the 17th century, black South Africans stuck in the farming sector have probably been the worst off of all workers.

In 1988, the 906 700 African agricultural workers received on average 15,6 times less than their white counterparts.

According to a survey of the South African Institute of Race Relations, African workers received an average annual income of R799 in 1988 or R66 a month (including rations), while whites employed in the agricultural sector earned on average R12 536 a year or R1 044 a month.

The wretched situation of farm workers is not only reflected in the pay they receive but also in their lack of legal protection.

There are four main acts which provide basic protection for most South African workers — the Wage Act, the Basic Conditions of Employment Act, the Labour Relations Act and the Unemployment Insurance Act.

Not one of these acts has covered farm or domestic workers and this has greatly facilitated the exploitation of farm workers.

However, this will soon change. In the next few months all four acts will be amended to cover farm workers and domestic workers.

- Under the Wage Act minimum wages are set for certain industries and it is an offence to pay less than the minimum Because agricultural workers are not protected by the Wage Act, farmers are able to pay the pitiful wages characteristic of this sector
- The Basic Conditions of Employment Act stipulates how many hours a worker is allowed to work in a day and in a week and makes the payment of overtime mandatory if these limits are transgressed. It also provides for compulsory leave — workers are entitled to two weeks' leave annually on full pay

The act also allows workers 10 days' sick leave a year Another crucial feature of this act is that it makes it an offence to employ children under the age of 15

Studies have shown that on most South African farms the provisions of the Basic Conditions of Employment Act are ignored.

- The Labour Relations Act facilitates trade union organisation in that it makes it an offence to harass or dismiss workers because they belong to a trade union
- The Unemployment Insurance Act provides for the payment of unemployment benefits if a worker is dismissed or retrenched The act provides minimal respite from the ordeals of unemployment

Farm workers, however, are immediately thrown to the wolves if they lose their jobs Often losing their jobs does not only mean losing a regular wage, it also means losing their accommodation, access to land and their livestock.

But the number of Africans employed on white farms has dropped by close on 30 percent in the last 24 years In 1968 there were 1 387 000 African farm workers By 1988 there were 906 700

The lifting of the pass laws in 1986, the more tolerant approach to the erection of informal housing, the harsh conditions on the farms and the drought has ensured that the stream of farm workers moving to the city has continued unabated.

The decision to extend basic legal protection to farm workers is long overdue The key question is whether the legislation will have any effect on the lives of ordinary farm workers.

White farmers are one of the most conservative groups among the population and, not surprisingly, have expressed their virulent opposition to the proposed legislation.

They have accused the government of pandering to Cosatu and ignoring the "special circumstances of agriculture" There is no doubt that this powerful grouping will be lobbying to persuade the government to drop the proposed changes.

In the current context the farmers are unlikely to succeed The government will be hard-pressed to go back on its declaration of intent as regards agricultural workers However, the agricultural unions could issue a directive to its members to simply ignore the legislation

The final question is how Cosatu will respond to the organisational space created by the extension of rights to agricultural workers

Will it move into agriculture in a major way or will agriculture continue to be the Cinderella of the labour movement? — **AIA**

Restructured manpower body to play key role

TIM COHEN

CAPE TOWN — Fundamental restructuring of the National Manpower Commission will make the body the focal point of labour relations negotiations.

Government is likely to announce today the new functions and composition of the body, which will rival the economic forum in representativeness and credibility.

A likely announcement is that the revised commission will be composed of 10 members each from the trade union movement and employer organisations.

Also, 11 experts (including the chairman) will be appointed by government from the fields of labour relations and economics. Their inclusion is considered a major change from the composition of the old body, from which Cosatu withdrew in 1991.

The experts will include lawyers who have represented both labour and business, several high profile economists and representatives from business.

The new body's tasks will be wide-ranging and could include the complete revision of the Labour Relations Act. It is also likely to consider the results of studies on SA labour relations conducted by a fact-finding and conciliation committee of the International Labour Organisation.

It will have the authority to look into any issue on labour policy and practice.

It remains an advisory body and has no power to bind Cabinet or the Budget. However, given the composition of the commission, it will be extremely difficult to ignore its decisions and recommendations.

The exact relationship between the commission and the economic forum has not been discussed in detail, but officials place a high priority on communication between the two.

Manpower Minister Leon Wessels said in Parliament this week the commission's first meeting would take place on February 12.

It was pivotal to a new democratic dispensation that SA have a sound economy which satisfied all the reasonable expectations of the country's citizens. This ideal was not possible without a fair labour dispensation, he said.

Council announces plan to upgrade taxi facilities

BDM 8/2/93

RAY HARTLEY

CITY Council officials announced plans at the weekend to upgrade and increase taxi facilities in the Johannesburg area as wrangling over the taxi protest continued

Johannesburg metropolitan planning official John Clutten said "hundreds of millions of rands" would be spent on new public transport facilities in the next few years

Most of the money would come from the private sector and the council would facilitate the developments

The construction or upgrading of a major terminus could cost up to R300 000, while stopping zones for taxis along city arterials could cost about R35 000 each

Clutten said new or upgraded facilities, which would be available to taxis by the end of the year if everything went according to plan, included·

□ The completion of the Pat Mbatha public transport thoroughfare which would be a dedicated route for buses and minibuses from Soweto to the corner of Sauer and Bree Streets in the Newtownarea,

□ Improved public transport terminuses at Faraday Station, Newtown and Noord Street, and

□ Upgrading of the "holding areas" at Jack Mincer parking garage in the centre of the CBD and along Maritzburg Road.

Work on the Noord Street public transport terminus would cost about R300 000, he said

A department official, who attended talks between taxi drivers and the council during the crisis last week, said areas of Reserve Road, Noord Street, Fraser Street, Loveday Street, Banket Street and Commissioner Street were being considered as stopping zones for taxis.

The official said proposals for the stopping zones had already been approved by shopkeepers, councillors and the city health department and were now being considered by the council's management committee

The zones would be established "in two or three months if everything goes according to plan," he said

The council had already established 51 taxi ranks in the city, the official said

Clutten said private developers had shown much interest in partially financing the new facilities, although the process of attracting investors had not yet been completed

A Metropolitan Planning statement released at the weekend said regular meetings concerning facilities had been held with key players in the taxi industry since 1986

"The department is looking at the feasibility of creating a public transport grid in the CBD which will effectively separate private and public transport vehicles," it said

A study was being conducted into ways of improving transport along Louis Botha Avenue, Jan Smuts Avenue and on the M1 from Booysens Road interchange to Crown interchange, and along Booysens Road

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enhanced'

WILSON ZWANE

cational education and training equired to focus education and fforts on national manpower ch could support national eco- technology development plans ress, however, that the ent policy should not only "deal cial incentives for vocational and training . but it should plemented by recognition sys- xceptional contributions"

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World labour body to field group in SA

DIRK HARTFORD

BDM 8/2/93

THE International Confederation of Free Trade Unions (ICFTU) will establish a permanent co-ordinating group in SA — in conjunction with Cosatu and Nactu — as a contribution to the international forces monitoring the violence

And it plans to call for more international observers in pro-active roles in violence monitoring and peace-making in the country, it said

(165)

The organisation's 27-person delegation (from 15 countries) left SA at the weekend with the feeling that SA was "on the eve of big events" — either the beginning of the end of apartheid or the beginning of a disaster, said ICFTU general secretary Enzo Frizo.

Frizo said it seemed there were people opposed to the democratisation process who were fomenting violence and he had no doubt "some of them are operating within state structures"

The ICFTU was not leaving SA to make judgments, but to use all the means at its disposal to help those working to overcome the violence, he said

Frizo said he found ANC president Nelson Mandela "so serene, full of good sense, without demagoguery, trying to understand the fears of the white minority"

But he feared, he said, that the youth Mandela was able to control today might run out of patience and understanding.

Former unionist appointed to manpower commission

BDay 8/2/93

DIRK HARTFORD

(165)

VETERAN trade unionist and current director of the Anglican Church's justice and reconciliation department for southern Africa, Emma Mashinini, is the surprise appointment to the restructured National Manpower Commission (NMC).

Mashinini, whose appointment as commission vice-chairman was announced at the weekend, said in an interview yesterday she would do her "very best to serve the labour movement"

Mashinini is a former garment worker who founded Cosatu's SA Commercial, Catering and Allied Workers' Union in 1975 and served it as general secretary for 11 years before joining the church.

She said she had the full support of Nactu and Cosatu in her new role

Manpower Minister Leon Wessels said on Friday Frans Barker would continue to chair the commission

Mashinini said yesterday "Although the NMC is there to serve the country, and advise the Minister, I have been a trade unionist at heart all my life and I feel honoured to have their support"

Mashinini said she would miss the first NMC meeting this week as she had a long-standing arrangement to accompany the ANC's foreign affairs director Thabo Mbeki on an overseas visit

Sapa reports only the SA Agricultural Union (SAAU) and the National Council of Trade Unions (Nactu) have not yet named their nominees to the 33-member NMC.

The SAAU had indicated that it would not take up its seat, which it wanted reserved Wessels said he believed administrative — and not policy — reasons explained Nactu's lack of nominees

Wessels said "I believe that the new NMC will stand the test of time of the transitional years, as well as into the new dispensation"

Employer and employee interests each had one-third representation, while one third of the specialist members were appointed by Wessels in consultation with labour and employers

Experts serving on the NMC are legal specialists Halton Cheadle and Willem le Roux as well as economists Rudolf Gouws and Prof Pieter le Roux, top mediator Charles Nupen, Harmful Business Practices Committee chairman Prof Louise Tager and author Prof Francis Wilson

More muscle for NMC

W/Mail 12/2 - 18/2/93 (165)

By FERIAL HAFFAJEE

A SMALL revolution will take place at the first meeting of the new-look National Manpower Commission meeting in Pretoria today, as months of intricate negotiations begin to bear fruit

Established as an advisory body to the Manpower Ministry in 1979, the NMC until recently enjoyed no support from the democratic trade union movement and found it hard to shake off its reputation as something of a sweetheart commission

But late last year, Manpower Minister Leon Wessels rubber-stamped a range of far-reaching changes to make the NMC a meatier tripartite negotiating forum which can now take its place alongside the National Economic Forum (NEF) and the Economic Advisory Council (EAC)

Although the NMC will remain an advisory body to the manpower minister, its new status and representativeness give it great authority over labour policy.

Its constitution is now genuinely tripartite and consists of equal numbers of representatives from labour, business and the state The labour and business representatives also have mandates to speak on behalf of their organisations, instead of being only appointed individuals

The majority view in the commission is that all labour legislation will have to be submitted to the NMC and that it will work closely with the NEF and the EAC In addition, all NMC recommendations will be published for comment in the *Government Gazette.*

Although the NMC will strive for consensus, each member will have a vote, "implying that the points of view of the largest and most important employers and employees organisations will carry the necessary weight", says chairman Frans Barker

But minority and majority views will be reflected in reports to the minister of manpower, who is unlikely to veto the recommendations of the NMC.

The fine balance of interests is reflected in the people who have been appointed to the NMC Barker has served on the NMC for 10 years — since 1985 he has served as chief director and since 1988 as acting chairman

His deputy is Emma Mashinini, a veteran unionist who ended her career in labour with the then Commercial, Catering and Allied Workers Union of South Africa a number of years ago

Manpower deputy director-general Joggie Kastner and the director of labour relations, Dennis van der Walt are the Department of Manpower representatives on the NMC

Halton Cheadle, who acts for many unions, and Willem le Roux, a labour lawyer who represents mainly employers, are the commission's legal experts

They will be joined by economists Rudolph Gouws, Pieter le Roux and Francis Wilson. Also appointed were Charles Nupen, of the Independent Mediation Services of South Africa, as well as Louise Tager from the Law Review Project.

The Congress of South African Trade Unions has appointed three representatives while the National Council of Trade Unions and the Federation of South African Labour Unions each have two representatives

All the major employer associations have appointed members to the commission.

FM 12/2/93 (165)

MANPOWER FM 12/2/93

Up and rolling (165)

The reconstituted National Manpower Commission (NMC) was due to hold its first official meeting this week under Frans Barker, now full-time chairman The new deputy chairman, also appointed by Manpower Minister Leon Wessels, is former garment worker, veteran unionist and founder of the Commercial, Catering & Allied Workers' Union, Emma Mashinini

Aside from having to determine rules of procedure and special committees to be set up, the commission will formulate comment on draft Bills on the rights of farm workers and domestic servants

A minor snag could be the absence of SA Agricultural Union representation The union has decided not to take part in the NMC "at this stage," though it would like its seat reserved because it hopes a separate Act will be forthcoming on farm labour issues This would appear to be unlikely, however, as Manpower last year recommended their inclusion under the Labour Relations Act (LRA)

Among matters the NMC will tackle in the near future are the redrafting of the LRA and the right to strike, dismissal of striking workers, the extension of industrial council agreements, the Labour Court system, union registration and implementing the recommendations of the International Labour Organisation's fact-finding mission to SA last year It criticised the absence of the right to strike — an issue that, more than any other, will test the ability of employer and employee representatives on the NMC to reach consensus

After a certain amount of bad blood, which saw Cosatu pull out of the NMC a year ago, the process of restructuring came to fruition at the end of last year, when the Cabinet gave its approval

First set up in 1979, the reformed NMC is now constituted on a tripartite basis (government, employer and trade union representation) as an advisory body within the framework of the LRA It follows the recommendations of a specially appointed working group drawn from employer and employee bodies as well as other interest groups

The NMC's main tasks are to investigate any labour-related matter, including policy, and to make recommendations to the Minister It is more concerned with structural aspects of the labour market than with day-to-day issues, explains Barker

NMC advice will, as far as possible, be given on the basis of consensus It will thus be a negotiating forum, though it has been agreed that such negotiations will not necessarily bind government It will, however, have substantial influence, says Barker, because it consists of interest groups (rather than individuals as in the past) whose proposals will be difficult to ignore Also, the Department of Manpower is now a full member, which wasn't the case in the past

A potential problem for the employers' side could be the question of mandates, it will be a challenge not only to employer bodies to reach a common position, but to individual employers to participate in their business organisations

All NMC recommendations with economic or financial consequences will be referred to the National Economic Forum or the State President's Economic Advisory Council for consideration, while recommendations from those bodies with labour implications should be referred to the NMC.

The NMC will consist of about 30 members — a third nominated by business, a third by employee organisations, and a third independent members appointed by the Minister after consultation The emphasis has shifted from a body of experts to one that represents interests

All members will have voting rights and all points of view will be reflected in NMC reports to the Minister

Apart from the chairman and deputy, the independent members comprise two legal experts (Halton Cheadle, of attorneys Cheadle, Thompson & Haysom, and Willem le Roux, of Bowman, Gilfillan), two representatives of the Department of Manpower (Deputy DG Joggie Kastner and Labour Relations Director Dennis van der Walt), and five independent experts Rand Merchant Bank's Rudolph Gouws, Western Cape University's Pieter le Roux, Cape Town University's Francis Wilson, executive director of the Law Review Project Louise Tager, and Independent Mediation Services' Charles Nupen

Employer bodies represented include the AHI, Chamber of Mines, civil engineers Safcec and Bifsa, Fabcos, the Federation of Employers' Organisations for Local Government, Nafcoc, Sacob, Seifsa and the SAAU (vacant)

Unions on the NMC are Cosatu, Fedsal, Fitu, Sacol and Nactu — which seems to be having difficulty nominating its representatives ■

Government spending put at R104,87-bn for the year

S1 Times (BUSS) 14/2/93

By CIARAN RYAN

THE budget deficit for 1992/3 will be R29,8-billion, or 9% of gross domestic product, director-general of state expenditure Hannes Smit confirmed on Friday

This is twice the level budgeted at the beginning of the year

The Additional Appropriation Bill, tabled in Parliament on Friday, pushes government spending up by R6,04-billion to R104,87-billion for the year

Of this, R1,04-billion has already been financed through the sale of state assets The additional spending figure includes R479,7-million which was already announced in the main budget, reducing the actual excess to R4,5-billion

The biggest item on the list is R2,4-billion, which will be used to repay farmers' debts to the Land Bank Mr Smit said this amount would have been repaid over three years, but by paying it now, the government saves R107-million in interest

This amount was not put in the main budget when the severity of the drought was already well known to avoid disruption of the capital markets

The total drought relief package is billed at R3,4-billion, as against initial forecasts of R1,4-billion

The interest on state debt has risen by R740-million to R17,04-billion as state revenues undershot expenditure, forcing the government to increase borrowings

An amount of R620-million is earmarked for the SA Rail Commuter Service Corporation and a further amount of R23-million for bus commuter subsidies

Contained

Foreign Affairs asked for an additional R192-million, Finance for R119,2-million, the House of Representatives for R184,7-million, Agriculture R308-million, Regional and Land Affairs for R1,27-billion, Local Government and National Housing for R153,2-million and Public Works for R105-million

Self-governing territories will receive an additional R629,9-million, of which R421-million is for social upliftment

Mr Smit says that other than scrutinising homeland budgets, the government had little further control over how money was spent

He says every effort was made to keep spending increases down

If the unavoidable increases — drought relief, SARCC subsidies and higher interest on state debt — are stripped out of the figures, spending increases were contained to within 1% over the original budget.

Agriculture sets free market plan

(165) By TERRY BETTY

DRAFT labour legislation in agriculture was handed to the Manpower Minister on Friday advocating a free market system and the decriminalising and deregulation of labour law The draft, drawn up by the legal profession and evaluated by the agricultural unions and Nampo, proposes the right of free association, collective bargaining, with the right to negotiate individually, and conditions of service can be adapted to climatic conditions

It also includes proposals that parties try to resolve their own problems or reconcile them at a low level, and that a special labour court will be available in each magisterial district S1 Times (BUSS) 14/2/93

The right of workers to strike and the right of employees to lock out their workers is recognised

A breach of employment condition would not be a punishable offence but may be referred to the special labour court for an order to correct the breach

However, if the court order is ignored then a crime has been committed

Iveco trucks into SA

By DON ROBERTSON

THE Italian-based Iveco truck giant plans to make a "considerable" investment in SA in the next few months

The intention is to expand its operations in SA to meet the local and sub-Saharan markets and slots in with its planned globalisation strategy which has seen it recently move into Turkey, India and China.

Iveco's major shareholders are Fiat and Magirus Deutz and a decision to invest in SA could spark off a flood of interest by other large Italian conglomerates, says Jean Sauvaire, international operations director

Mr Sauvaire is on a short visit to Johannesburg for discussions with Truckmakers, a subsidiary of Automakers, which owns Nissan SA.

Iveco has been represented in SA for more than 15 years, providing technology for the manufacture of the Samil military trucks manufactured by Truckmakers. This association was strengthened in 1989, when Truckmakers began production of Iveco's TurboStar for the commercial market S1 Times (BUSS) 14/2/93

Partner

Iveco has now decided to expand its range of trucks for the local and adjoining markets and is looking for a partner Discussions are continuing with Truckmakers, but no decision has yet been taken An investment of at least R50-million has been suggested

Mossie Mostert, managing director of Truckmakers, says he has been "very comfortable" with the association over the years

The plan to expand its range of trucks "does present certain problems for our group, considering that we already handle the full range of Nissan Diesel products For this reason, it may be more advantageous for Iveco to consider an investment through a third party."

NMC steps in on farms

(165)

THE National Manpower Commission stepped in to attempt to iron out growing conflict surrounding draft legislation for farmworkers.

In its first meeting, the tripartite negotiating forum requested to see the legislation and to comment on it before it is debated in parliament.

W/M ail 19/2 - 25/2/93

Farm labour talks deadlock

GERALD REILLY

THE SA Agricultural Union and Cosatu yesterday failed in an 11th-hour bid to reach agreement on labour legislation for the country's 1-million farm workers

An SAAU spokesman said the deadlock was "absolute"

Both sides were warned last year by Manpower Minister Leon Wessels that if there was no agreement in the 18-month-long negotiations by March 31, government would decide on the issue

The SAAU spokesman said disagreement on the application to farm workers of the Basic Conditions of Employment Act was a major reason for the breakdown. The inflexibility of the 48-hour week provided for in the legislation was unacceptable to the SAAU. BIDAY 24/3/93

The SAAU had pleaded for separate legislation for agriculture because of the "unique conditions in the industry" This was opposed by Cosatu which demanded that the Basic Conditions of Employment Act, the Wage Act and the Labour Relations Act be applied to farm workers

The SAAU spokesman said "We ended up miles apart The break is complete and as the March 31 deadline set by Wessels for an agreement to be reached is only a few days away, government will now obviously have to decide on the issue"

He said the SAAU was not totally opposed to the three Acts being applied to the industry provided they were amended to suit the needs of farming.

The provision in the legislation permitting strikes was unacceptable Strikes at critical times in the farming cycle such as planting and harvesting would have seri-

☐ To Page 2

Deadlock

BIDAY 24/3/93

☐ From Page 1

ous consequences, the spokesman said

Cosatu spokesman Neil Coleman said government had agreed in principle to the three labour Acts being applied to farming

Cosatu's view was that farm workers were entitled to the same basic labour rights and privileges enjoyed by workers in other sectors of the economy

"We have not been blind to the needs of the industry Our approach has been flexible, but at the end of the day the core issue is that of ensuring farm workers have effective bargaining mechanisms and rights, including the right to strike" 24/3/93.

He said the issue had been brewing for months and farm workers could not wait much longer for a settlement

Manpower director-general Joos Fourie, who was at the meeting, said it was regrettable that it ended without consensus Government would have to decide "within the next week or two" what labour legislation would apply to the agricultural industry

RETRENCHMENT

What's fair?

FM 26/3/93

It could be an unfair labour practice and a potential suit for the Industrial Court if a retrenched employee is paid back only his own pension contributions with nominal interest That's the view of Sanlam's employee benefits manager Dries Visagie He says the Industrial Court has jurisdiction with regard to conduct related to retirement funds where the employer had the power to prevent or end alleged unfairness

If Visagie, whose views are supported by several Industrial Court findings, is correct, it fuels the continuous debate about who owns the surpluses in retirement funds It has been widely held that these belong to the funds (specifically those members who reach retirement age)

But Visagie examines the related question of "reasonable expectations" — a concept currently being debated in the retirement industry but for which there is, as yet, no accepted definition

Among the cases quoted by Visagie

☐ Jarvis vs Dano Textile Industries, 1989 "The court was of the opinion that the unfairness was to be found in the rules of the fund and only indirectly in the conduct of the employer," and

☐ Van Coppenhagen vs Shell & BP SA 1991 "The question was whether the Industrial Court had jurisdiction in a case where the employer declined consent to the payment of an early retirement benefit The reasons for the refusal related to the employer's interests as employer and not merely as a participant in the fund "

Visagie says there is a difference of opinion on whether the payment of nominal retirement fund benefits to retrenched employees constitutes an unfair labour practice — yet there seems to be consensus that it is unfair in certain circumstances "In the Jarvis case the court was convinced that it was unfair that the retrenched employee did not receive the benefit of the employer's contributions, especially in view of the fact that the employer's contributions would have been applied to improve the benefits of those who remained in employment until retirement age "

Visagie also quotes the case of the SA Association of Municipal Employees vs Ventersdorp Municipality 1990, where the court perceived that the payment of employee contributions with minimal interest, in a case where an employee could not work because of ill health, was unfair

Employers' contributions, Visagie says, are sometimes deemed to be made only to pay retirement benefits to workers who remain in employment until retirement age But that approach has been attacked by Sephton Cooper & Thompson, in *A Guide to Pension and Provident Funds*, published by the Labour Law Unit of UCT, on two grounds at least.

☐ The employer's contribution is offered as part of a package to an employee Often the precondition, attaining retirement age, is unstated, and

☐ It discriminates among the fund's members, penalising those who do not reach retirement age irrespective of length of service

Yet the matter remains debatable in certain circumstances

Quoting another case involving Bankorp, Visagie notes "The court remarked only that the refusal of the employer to grant a retrenched employee reasonable and adequate compensation for his loss of pension fund benefits could in appropriate circumstances amount prima facie to an unfair labour practice "

Legal intricacies abound

Says Visagie "There is no basis in either the law or in equity on which an employer is compelled to compensate an employee of long standing for the loss of his job It is alleged that if severance pay had not been arranged in the employment agreement, an employee cannot be heard to complain about its non-payment, because at the start of his employment he or his union had been in a position to bargain for such a payment "

Visagie's own view "In my opinion, the Industrial Courts will, in every instance expect from an employer, when making decisions affecting employees' legitimate expectations, to act fairly more or less to the same extent as would be expected from a fiduciary at common law Where an employer does not act accordingly, it will be deemed an unfair labour practice " ■

Labour ruling expected today

Bus Day 31/3/93

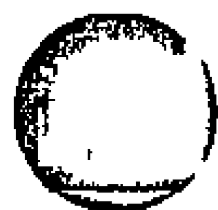
GERALD REILLY

PRETORIA — Cabinet is expected to settle the two-year dispute between Cosatu and the SA Agricultural Union (SAAU) over the extension of the Basic Conditions of Employment Act to farming at its meeting in Cape Town today

Cosatu and the SAAU were given until today to reach a consensus on the content of the Act

As legislation now stands, the Basic Conditions of Employment Act will grant farm workers the right to strike.

The SAAU says strikes could cause chaos during critical farming periods, while Cosatu says farm workers are entitled to the same rights as others



Legal bodies support ANC call on judges

GERALD REILLY

PRETORIA — Legal authorities yesterday supported the ANC's call for more black judges but stressed the dangers of an affirmative action programme which ignored essential qualifications and experience

The ANC this week condemned the present system of appointments to the bench as "racist, sexist, illegitimate and non-representative"

Johannesburg Bar Council chairman Wim Trengrove said the council was encouraging blacks to obtain the needed qualifications to join the ranks of advocates as a background for possible appointment to the bench

He said the number of blacks in the law profession had not kept pace with the substantial black student component at law schools

Association of Law Societies (ASL) director-general Andre van Vuuren said part of the solution lay in granting attorneys the right of audience in the Supreme Court

Concern over new child labour laws

KATHRYN STRACHAN

THE practice of child labour was on the increase in SA and proposed new legislation threatened to exacerbate the problem, the Network Against Child Labour claimed yesterday

Jackie Loffell, the organisation's convenor, said proposed regulations covering the issue of labour in the Child Care Act would further entrench and expand exploitation

She said a storm had broken between the Department of Health and the network, which had been fighting to block the practice and the introduction of new clauses in the Child Care Act

The network comprises a wide range of welfare, legal, labour and church bodies

In terms of guidelines approved by a working group, convened by the Department of Health, employers will be permitted to hire children aged 12 to 15 years for pocket money, subject to a set of restrictions on hours and conditions of work

But the network has contested the clause on the grounds that it would allow too many loopholes

The guidelines were unenforceable and the addition would exempt sectors, such as supermarkets, which had been barred from employing children under 15, Loffell said

The organisation recently disassociated itself from the working group because, despite its objections, the controversial clause was endorsed

By far the most exploited were children working on farms, said Loffell

"Farm children who stood to profit by the recent extension of industrial legislation to cover agriculture, will, if the guidelines come into force, remain completely vulnerable"

The SA Agricultural Union had been actively lobbying government to retain the practice, she said

A Health Department spokesman said he could not comment because the matter was sub judice

Loffell said it was difficult to establish the extent of the problem because employers, parents and children were reluctant to report the practice

But in 1985 the International Labour Organisation reported the figure to be at least 60 000 and it had grown since then

She said the issue of child labour was complicated, because many families depended on the wages brought in by children The network was campaigning for adequate social security grants so that families would not have to depend on child labour, as well as universal free education

Aside from being allocated on racial lines, social security grants were in practice difficult to obtain and only available to the destitute, she said

IX

LIMITED

76/06)

FINANCIAL RESULTS for the year ended 31 December 1992

ip in respect of the year ended 31 December 1992 are as follows:

1992	Eighteen months ended 31 December 1991
(673)	(8 624)
2 763	2 698
3 436)	(11 322)
70	(275)
3 506)	(11 047)
—	(1 431)
3 506)	(9 616)
896	(8 211)
2 610)	(17 827)
(31,2)	(87,4)
1 250	11 000

Consolidated balance sheet

R000's	1992	1991
Capital employed		
Shareholders' interests	17 827	20 493
Long-term liabilities and provisions	10 089	10 419
	27 916	30 912
Employment of capital		
Land and buildings	12 000	12 000
Fixed assets	14 410	16 319
Current assets	16 708	14 988
Current liabilities		
– Interest bearing debt	6 169	5 156
– other	9 033	7 239
	15 202	12 395
Net current assets	1 506	2 593
	27 916	30 912
Net asset value per share (cents)	158,5	182,2
Number of shares in issue (000's)	11 250	11 250

SAP reassigns manpower to aid operations

GERALD REILLY

PRETORIA — Police would strengthen their operational manpower by transferring personnel from purely administrative duties to the operations division, police commissioner Gen Johan van der Merwe said yesterday

He said the basis of a plan to use manpower more efficiently was to achieve a clear division between operational and administrative activities

Operational division members engaged in purely administrative work would be transferred back to the operational division

Civilians would take their place The programme also applied to retired members re-employed as temporary workers They were given the opportunity of transferring to civilian posts

MI agents infiltrated IFP — MP

Sowetan 2/4/93

■ **Agents were used against the ANC:**

By Ismail Lagardien
Political Correspondent

GOVERNMENT was still using Military Intelligence to infiltrate its political opponents and had placed agents provocateurs in the administrations of homelands that were friendly with the ANC, Parliament has heard

The DP MP for Umhlanga, Mr Kobus Jordaan, told Parliament on Wednesday that the covert operation had started during the '80s when it had relative success

The programme was still active, he said

Jordaan said he had anonymously received a "package of information" detailing the placement of certain people, notably Mr Rowan Cronjé of Bophuthatswana and Mr Walter Fellgate of the Inkatha Freedom Party, in homelands that were hostile to Pretoria

Cronjé was first placed in Ciskei, after which he was "sent" to Bophuthatswana where he was an "absolute success" Success was also achieved in KwaZulu, where, it is alleged, Fellgate, a member of the IFP's central committee, had managed to bring Chief Mangosuthu Buthelezi back from closer co-operation with the ANC and towards Pretoria

Jordaan named General Tienie Groenewald, former secretary of the State Security Council, as the person behind the strategy

Jordaan said the State had also paid Professor Albert Blaustein, an American constitutional expert, to write constitutional proposals for Mr John Gogotya's Federal Independent Democratic Association He spoke during the Budget Debate and defended a question he had put to President FW de Klerk last month on the placement of agents in opposition parties

De Klerk was kept informed of developments, he added

Cosatu warns of walkout

Sowetan 2/4/93

■ **Laws for farm workers cause rift:**

THE Congress of South African Trade Unions has threatened to review its participation in negotiation forums with the Government following the Cabinet's decision to defer the promulgation of labour laws for farm workers

"Cosatu is extremely disappointed and angered by the turn of events This move makes a mockery of the entire negotiations process," the union said yesterday

The congress was reacting to Minister of Manpower Leon Wessels' statement that the Cabinet had not decided on the issue of basic rights for farm workers at its regular meeting on Wednesday Wessels gave the assurance, however, that the extension of legislation to agriculture would receive special attention at a Cabinet meeting next week

Cosatu said in terms of an accord signed by Wessels and Cosatu general-secretary Jay Naidoo on November 6, the Basic Conditions of Employment Act for farm workers would be promulgated by April 1

165

Farmworkers to be covered soon

Sowetan 8/4/93 (165)

■ Farmworkers to get set working hours for first time:

THE Basic Conditions of Employment Act will be extended to farmworkers on May 1, Minister of Manpower Mr Leon Wessels said yesterday

The Cabinet decision to implement the Act ends more than two years of wrangling and eventual deadlock between the South African Agricultural Union and Congress of South African Trade Unions

Wessels said the implementation of the Act would not affect the SAAU's approaches to the Government over wage agreements, strike rights and a consolidated labour Act for the country's 1,2 million farm workers

The decision to promulgate the Act immediately was taken at a Cabinet meeting yesterday

Wessels said the Cabinet had reaffirmed the importance of labour legislation for agriculture with a view to creating practical guidelines that took into account the specific conditions of the sector

Commentary on the application of the Wage and Labour Relations Acts to farm workers would be discussed between the main role players It was hoped that maximum support could be achieved for practical guidelines to be introduced in the current Parliamentary session

In terms of the Act, farmworkers will have legally set maximum working and lunch hours, payment for work on Sundays and sick and holiday leave for the first time

Farmers would also be advised how to apply for exemptions during critical periods — *Sapa*

Compensation sum in question

BIDAM 27/4/93 (165)

ERICA JANKOWITZ

THE Labour Appeal Court will resume a case in July concerning excessive compensation for constructive dismissal granted by the Industrial Court.

The amount granted far exceeded the existing standard maximum of six months' salary laid down by the Industrial Court, a legal source said.

The source said the decision suggested liability for compensation was "open-ended", unlike other countries in which the party found to have committed an unfair labour practice was liable for compensation

In the UK, in which similar labour jurisdiction exists, maximum compensation is capped and may not exceed £10 000.

This case was taken to the Industrial Court in September 1992 by a warehouse manager who maintained that Amalgamated Beverage Industries (ABI) had forced him to resign under pressure from the Food and Allied Workers' Union

During his first month of employment, treated as a probationary period in compliance with company policy, the union expressed its unhappiness with his appointment

This stemmed from an incident at a previous employer, involving police action during industrial unrest, for which the manager was acquitted on all charges of complicity after arbitration

The company extended the manager's probationary period by two months with his consent

During this period the union threatened to embark on national strike action if the manager's employment continued.

As a result, the manager was asked to consider resignation.

The Industrial Court found that the manager had been constructively dismissed and looked at the question of compensation

In the calcucation, presiding officer Arthur de Kock examined the plaintiff's prospects of re-employment as well as his past and future loss of earnings

He ordered the company to pay R308 756 — equivalent to more than six years' salary because the manager was in his early 50s and therefore had diminished chances of finding alternative employment.

The source said that ABI would contest the court's finding and the compensation award

The company was prepared to take the case to the Supreme Court if the Labour Appeal Court ruled against it

LABOUR *The extension of the Basic Conditions of Employment Act will benefit farm workers*

May Day joy over farm Act

TAKALANI MADIMA of the Centre for Applied Legal Studies, University of Witwatersrand, focuses on the minimum conditions of employment of agricultural workers now protected by law

THIS YEAR'S Worker's Day is not only the day the ANC-led tripartite alliance launches its mother of all rolling mass action against the Nationalist Government and recalcitrant employers groups

It is also the day agricultural workers' right to decency comes into being The Basic Conditions of Employment Act will be extended to the agricultural industry from May 1

The Basic Conditions of Employment Act makes specific provision for, among others, maximum daily and weekly hours, overtime, Sunday and public holiday work. These are working conditions that most of us take for granted but which were denied farm workers for a long time

The Act prohibits employers from working employees more than 46 hours in any week This prohibition will no doubt have to be adjusted by way of administrative exemptions to the working hours law in the agricultural section in order to accommodate the seasonal nature of the industry

Farm Workers will for the first time in South African labour history be able to be paid the legal rate for working on Sundays and public holidays Overtime work-rate is fixed at not less than ordinary time plus a third an hour

Meal intervals of farm workers will be legally protected as the Act makes provision for rest periods of not less than one hour in any five hours worked This break has to be allowed to workers even where they are not partaking of a meal Failure on the part of the employer to observe the provisions of the Act can result in a criminal prosecution.

Minimum wage

The Act does not, however, make provision for the enforcement of a minimum wage in the industry Minimum wages are regulated by the Wages Act, which for now does not apply to farm workers, although the matter is still under discussion between the labour movement, the Government and the farmers organisations

The Manpower Department is a Government arm that is charged with the responsibility of ensuring that the employer complies with the conditions of employment set out in the Basic Conditions of Employment Act.

■ WORKERS' COMPLAINTS *Graft may prevent serious policing of farmers:*

Each local Manpower Department has its own designated inspectors who perform specific functions which include among others, the right to enter without previous notice, and at all reasonable times, any premises used by an employer, and question any person therein on any matter which relates to any provision of the Basic Conditions of Employment Act

The inspector may have to examine any books, in this case, pay and time sheets or any other documents and demand explanation on any entry on such documents

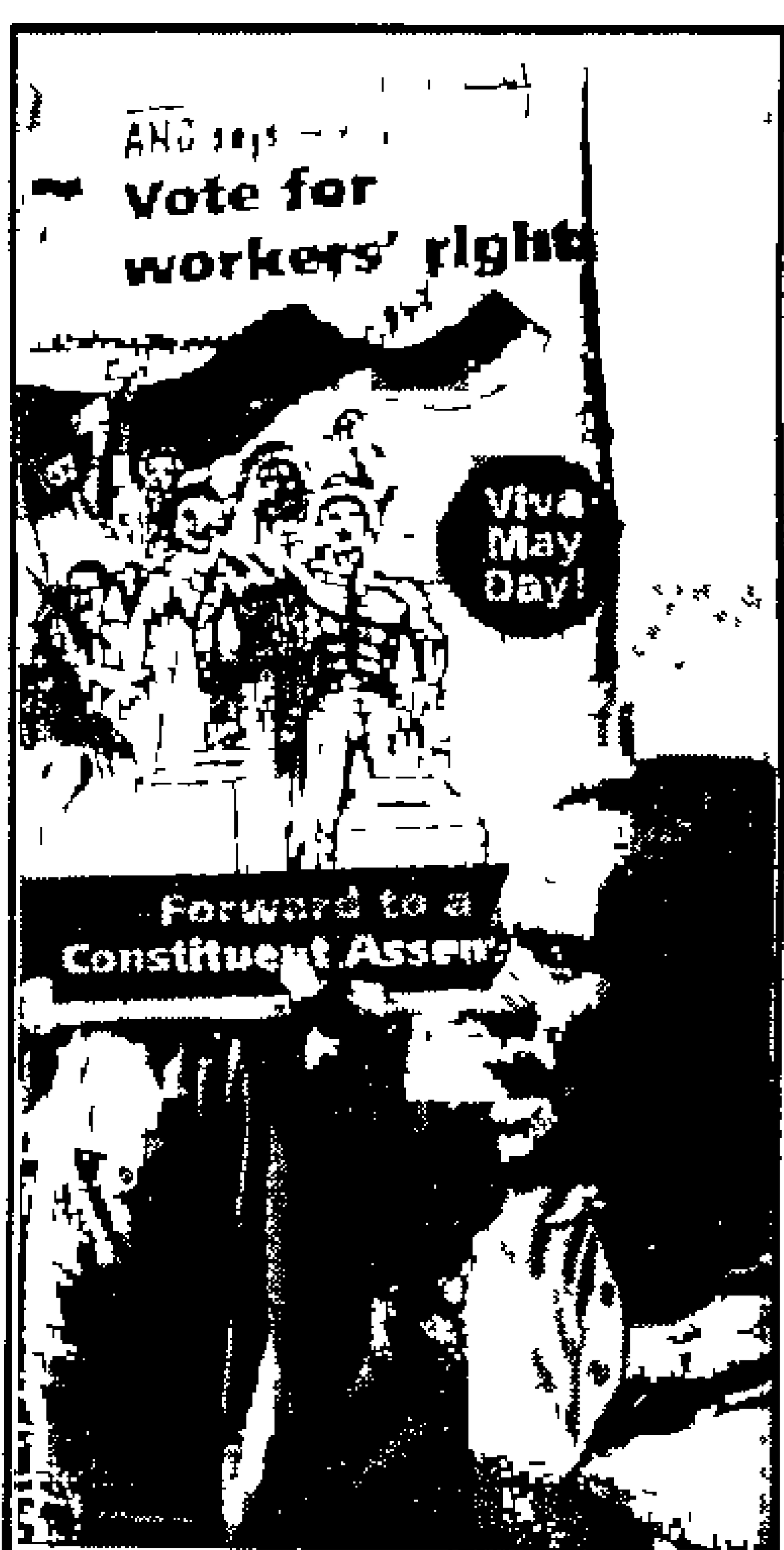
If, in the opinion of the inspector, entries to documents indicate that an offence has been committed, he will seize such documents or books for use as evidence in a subsequent criminal trial of the employer.

Although the inspector has the right to make unannounced routine inspections, empirical research indicates that the majority of these cases are triggered off by complaints made to the Department of Manpower by the workers themselves

From May 1 farm workers, who for example have not been paid their wages or overtime or leave pay will be able to approach their local Manpower Department and report the matter to the inspector

The inspector will then demand an audience with the employer Research again shows us that the majority of employers do not usually dispute the worker's claim This will still have to be seen in the agricultural sector

Where however the claim is disputed, the inspector will seek further clarification from the worker and investigate the issue further This can include the actual summoning of the employer by the inspector and failure to comply has the effect of contempt, although a warrant for his arrest cannot be issued



FLASHBACK ... Workers gather on May 1 last year.

Directive

The failure, refusal or neglect to comply with the inspector's directive is a criminal offence which carries a fine of not more than R1 000 or imprisonment for a period not exceeding 12 months or both

It is only after he is satisfied that the employer has a case to answer that he will be summoned via the industrial criminal prosecutor's office to appear in the industrial criminal court.

There will no doubt be problems at the beginning One cannot help but doubt the efficacy of the implementation of some of the provisions of the Act in remote and conservative areas where the inspector attends weekly braais with the local farmers

Graft will also prevent the bringing to book of erring employers There is however little doubt that the majority of farm workers will benefit from the extension of the Act of their sector.

Sowetan 30/4/93 165

Aspects of labour relations under review

B/DAY 30/4/93 (165)

ERICA JANKOWITZ

THE restructured National Manpower Commission was investigating several aspects of labour relations policy, including minimum wage legislation, commission research and planning director Abe Bardin said yesterday.

Addressing a conference hosted by FSA-Contact, Bardin said present projects included the consolidation of the Labour Relations Act to include a code of conduct and aspects of a Bill of Rights based on the International Labour Organisation (ILO) recommendations presented last year

He said the Act needed to be "totally overhauled" and Manpower Minister Leon Wessels had requested a report on policy considerations underlying the proposed new legislation as well as an assessment of its financial implications

Other investigations included national or regional minimum wage legislation, affirmative action measures, guidelines on dealing with AIDS in the workplace and a policy to promote employer-employee co-operation to boost productivity.

Bardin said productivity improvement was a priority in SA as it was essential for international competitiveness since the end of the isolation era.

He said SA's readmission to the ILO had been discussed by the commission but was not a "burning priority". Cosatu had played a moderating role on this issue, Bardin said.

At the same conference, labour law consultant Prof Nic Wiehahn suggested the establishment of a regional wing of the ILO covering sub-equatorial Africa.

Wiehahn said countries in the region had much in common and could benefit from the setting of regional labour standards and the sharing of information.

Stellenbosch law professor Barney Jordaan said only the broadest collective bargaining rights should be enshrined in a Bill of Rights to limit the role of judges in policy decisions concerning labour relations.

Jordaan said there was already so much uncertainty in Industrial Court decisions that increasing powers vested in civil law practioners would add to the unpredictability of the legal process.

He said the incorporation of a Bill of Rights into the constitution would not have a major effect on the labour relationship as this was regulated by the Industrial Court, which was basically a court of equity

Jordaan said the court tended to use human rights considerations and international labour standards in reaching its decisions and labour jurisprudence was infused with these concepts.

NEWS IN BRIEF

Wiehahn task group

THE Manpower Department has appointed a task group under the chairmanship of labour specialist Prof Nic Wiehahn to investigate the Industrial Court

The group includes employer, trade union, government and Industrial Court representatives and its investigation will cover the administration of the court as well as its presiding officers

The court has had credibility problems — especially as far as unions are concerned — because of the unpredictability of a perception that it is geared to management needs.

Christian TV opens

CHRISTIAN Network, televised on M-Net's spare transmitter, began its first broadcast yesterday with a discussion programme including President F W de Klerk and church leaders

De Klerk said the roles of state and church often overlapped but that the two should not interfere with each other's sovereignty

Freedom in focus

VIOLENCE against journalists in SA in the past three weeks has put Press freedom in "sharp and tragic focus", says International Federation of Journalists general secretary Aidan White

In a message issued to mark the UN's World Press Freedom Day, White said "The brutal and outrageous acts of violence against journalists in SA in recent weeks ( ) illustrate how much has to be done to make the World Press Freedom Day dream come true."

Pringle awards

THE English Academy of Southern Africa has invited submissions for the Thomas Pringle award, sponsored by the Achievement Management group of firms Awards will be made for reviews of plays, books and TV series, educational articles and poetry published in 1991 and 1992 Entries must be submitted by May 31.

REPORTS Business Day Reporters Sapa

SA recovery 'in political hands'

LINDA ENSOR

CAPE TOWN — The gradualist approach towards lowering the exchange rate through fundamental economic reform heightened the risk of the process being sabotaged by politicians, Board of Executors (BoE) senior portfolio manager Rob Lee said in the latest Investment Outlook.

He urged the speedy implementation of the objectives outlined in the normative economic model (NEM) in order to enhance the international competitiveness of SA's economy These objectives included the abolition of exchange control, lower and simpler import tariffs and the abolition of the import surcharge

"Our concerns about the implementation of the NEM boil down to a fear that 'political realities' will prevent an adequate reduction in the size of the public sector and impose a far too gradual timetable for the lifting of exchange control and tariff protection," Lee said

Instead of lowering consumption expenditure's percentage of GDP by merely holding government spending levels in real terms while economic growth resumed, the absolute size of government needed to be cut first.

Lee felt it would be appropriate to implement the economic model within the next few months when the international economy had begun moving into a sustained recovery

While the economy had the potential to grow at rates of 4% and more in 1994/95, this potential was unfortunately in the hands of the politicians. The lack of rapid political progress would probably result in another year of negative growth, while mass action campaigns would also worsen prospects

Lee pointed to several favourable factors, such as the improved prospects for the international economy and commodity prices, the uptick in the dollar gold price, and agricultural recovery A reduction in interest rates before year-end was possible if the capital account improved

He believed a boom in commodity prices would make the economic adjustment process less painful The commodity cycle might be close to its bottom, although slack demand and high levels of stock meant there would not be a significant strengthening in prices until well into 1994

"A sustained uptrend in commodity demand and prices from the mid-90s may yet provide SA with an opportunity to lift itself off its 'low road' economic growth path," Lee said

The dollar gold price had technically broken its long-term bear trend, while fundamentally gold's supply-demand situation was very positive

Delta invests R195m in tooling upgrade

TRACY SCHNEIDER

DELTA Motor Corporation has invested R195m in tooling and improved plant technology for the launch of the new Opel Kadett and Astra

MD Willie van Wyk said Delta had passed the "true test", funding investments solely out of cash reserves without resorting to borrowings

Delta had been profitable for each of the past six years, he said The way forward now was to focus on customer requirements and the elimination of inefficiency and waste

The Astra is Delta's first completely new passenger car

Adam Opel AG chairman and MD David Herman said at the launch of the Astra that Delta played an important role in Opel's global sourcing and development of international export markets An Opel audit of the new Astra and Kadett had endorsed Delta's quality levels as being on a par with those at Opel's European plants

Policy makers need a new body of industrial relations

Blom 5/5/93

JEREMY BASKIN

IN THE field of labour and economic policy SA is fast becoming a corporatist society. But the corporatist goal works at cross-purposes to the existing industrial relations system One or the other will have to give way.

The national economic forum institutionalises a role for business and labour in formulating state economic policy The new National Manpower Commission (NMC) is official acknowledgement that labour law can be changed only with tripartite consent Other established institutions are also changing — from the National Training Board to the Unemployment Insurance Fund. Parallel initiatives can be seen in some industries Talks between unions and managements in the mining, clothing and motor sectors deal with long-term restructuring and go well beyond collective bargaining issues

Love it or hate it — there are detractors on the left and the right — corporatism is the only realistic route forward It is hard to imagine a scenario which excludes major economic actors from a key role in the formulation and regulation of socio-economic policy Keys and De Klerk accept this, as do Manuel and Mandela The corporatist vision proclaims the need for economic restructuring, without leaving this simply to the hidden hand of the market, or relying solely on the heavy hand of the state

But if corporatism is to work it needs a compatible industrial relations system. Deals brokered at the highest level — between union federations, employer organisations and the state — must be reinforced, not undermined, on the ground.

Four aspects of our present industrial relations system are likely to undermine the corporatist endeavour Problem one is the Labour Relations Act (LRA) which says little about how unions and management should relate It grants immunity from prosecutions for certain behaviour (such as a legal strike) But it provides few positive rights SA labour law, like its British counterpart, makes little attempt to define a place for organised labour in society.

Workers are permitted to form unions, but combination is not facilitated Management and labour are allowed to negotiate, but nothing compels them to do so Must an employer recognise a union — who knows? What rights and duties do shop stewards have? Here, too, the LRA is silent Unfair labour practices are contemplated in the LRA, but barely defined. The result is a confusing mish-mash of contradictory Industrial Court decisions

The LRA establishes a passive and voluntarist framework The result? An unstable system, often unnecessary conflict, inconsistent and unfair conditions and more labour lawyers than anyone needs Hardly a foundation for building consensus around socio-economic policy

The second problem is that there is no collective bargaining system in SA For most workers "bargaining" remains a foreign concept, they are paid on a take it or leave it basis In some sectors unions and employers bargain on the basis of recognition agreements or custom In others, industrial councils operate. But these bodies — sometimes national, sometimes regional — cover less than 10% of all employees. In general, only the threat of unrest compels an employer to bargain in a particular forum, or to bargain at all

Even in the industries with centralised bargaining there is little to stop an employer withdrawing from the bargaining forum A mine can withdraw from the Chamber of Mines, or an engineering firm from Seifsa and, hey presto, collective agreements often no longer apply

We have many different bargaining systems Not surprisingly, we have endless disputes about how, where and whether to bargain.

For some, especially free marketeers, this laissez-faire approach to bargaining is not a problem But for those wanting greater consensus around socio-economic policy, the absence of a comprehensive bargaining framework must undermine their efforts. How can difficult national economic deals be reached when the collective bargaining system encourages each employer, union and plant to go its own way?

Third, and relatedly, it is hard to see how deals reached at the national economic forum or NMC can be implemented while employers remain poorly organised. To a lesser extent, the union movement faces the same problem Certainly there are employer bodies in almost every industry, and chambers of commerce in every town But at the national level, where the big issues are thrashed out, there is a confusing array of organisations. It is doubtful whether they can bind their members to any difficult deal. Attempts to avoid last August's stayaway broke down over the question of mandate And during the 1992 metal strike a number of employers broke ranks with Seifsa and went their own way

At present nothing encourages employers to combine, our voluntarist LRA and laissez-faire bargaining system actively discourage combination. Co-operation on socio-economic issues is discouraged by the fact of commercial competition, and there are no incentives to co-operate And the big conglomerates tend to bypass their employer bodies when they have something to say. But if meaningful economic strategies are to emerge (regarding international competitiveness, tariffs, productivity, industrial restructuring and so on) then it will require the existence of strong national employer bodies able to look at the big picture

The flip side of this problem is the lack of union centralisation Even the strongest federation, Cosatu, lacks the muscle to enforce difficult decisions Constitutional and financial power is vested with affiliates, which jealously guard their independence

Could the union movement agree to a plan which promoted one industry at the expense of another? Cosatu and Nactu might agree, say, that Mossgas is a waste of resources and should be closed. But what would the Mossgas workers and their unions say, with their jobs on the line?

Fourth, there is no agreed system of plant-level governance. Some companies recognise shop stewards, others do not Some stewards have extensive rights, others have nothing A few firms grant majority unions exclusive representative rights Most don't. Some companies leave non-unionised workers with little voice Others actively encourage their own employer-employee channels, frequently as a way of bypassing unions

On both sides of the industrial relations fence it is agreed that the plant level is the crucial interface. But the absence of a coherent system encourages adversarialism and sectionalism Each side must be on its guard — protecting its backyard and always on the lookout for attempts to withdraw hard-won rights

Without a strong, well-defined system of industrial relations (from national down to plant level) the corporatist project is unlikely to deliver The existing system encourages protectionism, short-sightedness and needless conflict. Grafting a corporatist head onto an Anglo-Saxon industrial relations system can only lead to grief It is time to review the Wiehahn model of unionism and industrial relations.

□ **Baskin is a former unionist and author of Striking Back — A History of Cosatu. This is the first of two articles based on research conducted for the Centre for Policy Studies.**

Planting the seeds for peace on farms

Wmail 21/5-27/5/93. 165

The country's first-ever farm labour law conference looked at how farmers can adapt to the new legislation and build good relations.

By **GAYE DAVIS**

A STARK choice confronts South African farmers: a future ridden with conflict and insecurity, or one where a system is in place which regulates disputes arising with their farmworkers

This was the strongest message to emerge from the country's first-ever farm labour law conference in Stellenbosch last week. Convened by the Centre for Rural Legal Studies (CRLS) it came days after the extension of the Basic Conditions of Employment Act to 1,5-million farmworkers.

The conference's message was not directed at those farmers who gathered at Potchefstroom recently to bay their defiance of the Act, or any attempts to extend labour legislation to farmworkers Rather, it was aimed at those farmers who are able to change.

The two days of presentations and debate carried messages for other players in the agricultural arena too.

Chief of these was directed at trade unions, industrial relations experts and labour lawyers put simply, it was that the nature of farms — producing highly perishable products and dependent on inconstant factors such as the weather and biological processes — called for a different approach to that used in industry. Strategies that worked for trade unions on the shop floor could not be applied wholesale to farms, while industrial relations specialists and labour lawyers would have to develop new skills to meet the complexities of the agricultural scenario

As Johan Hamman, of the CRLS, put it, farms could not be seen as "factories in fields" that could be switched on and off

This in no way detracted from the need for collective bargaining on farms, Hamman said But instead of a rigid labour relations model, agricultural production demanded levels of flexibility to cope with changing market and production conditions

As Hamman pointed out, it was "a simple demographic reality" that, once all South Africans had the vote, the majority of rural voters would be farmworkers.

"Unresolved grievances ... will constitute fertile ground for political mobilisation Not only will this take labour relations into the political arena, political differences will have an impact on labour-management relations," he said.

For farmers, the message was that labour legislation was neither intended nor constructed to beat them into submission — but rather to set a framework for the regulation and resolution of conflict according to conditions prevailing on specific farms, and which would work to the benefit of both the farmer and his workers

In some sectors, farmers are ahead of the law-makers The deciduous fruit industry supports the extension of labour legislation — which, Unifruco representative David Gant told delegates, would largely formalise practices already in place

In an industry where labour was the largest single production input, economic performance depended heavily on the skills of its estimated 500 000 employees — hence the development of an industry code of conduct adopted a decade ago and expanding corporate social responsibility programmes, Gant said

The Labour Relations Act — which unions want extended to farmworkers while farmers' would rather see a separate act — does not stipulate details of an employment relationship Instead it provides for structures to deal with conflict Discussion should focus on making the Act work, rather than whether it should apply to agriculture, Hamman said in his paper.

But making labour legislation work on farms presents the biggest challenge of all. Congress of South African Trade Unions general secretary Jay Naidoo's claim that the federation had organised 150 000 farmworkers was rebutted by Stellenbosch lawyer Dawie Bosch: "They may be signed up, but are not effectively part of a union which protects and informs them"

Labour legislation could not be extended or enforced without farmers' participation, Bosch said, and while the Department of Manpower was not fulfilling its monitoring role "even in the cities", the state could not be expected to achieve what farmers and their workers could not.

Keynote speaker Baldemar Velasquez, a former migrant worker who founded the Farm Labour Organising Committee (FLOC) which changed the face of farm labour relations in the American Midwest, offered a way forward.

Battling to win basic rights for migrant workers excluded from US labour law, FLOC took the creative step of focusing not on the farmers, but the multi-national companies who bought their crop. At the bargaining table, tri-partite agreements between farmers, the companies and workers were hammered out.

It took 25 years of organising, strikes and stand-offs — but migrant workers not only won security but a solid alliance arose between them and farmers, who found their bargaining power with the food companies significantly boosted by the agreements

This new co-operation, coupled with incentive clauses, has seen productivity soar Said Velasquez "Unless people are made citizens and empowered around and within the economic institutions that affect their lives, no significant changes of lasting value will occur"

South African agriculture would do well to take his seeds and plant and nurture them.

'Update law on labour relations'

CAPE TOWN — It was urgently important that the current law on labour relations be modernised, Minister of Manpower Leon Wessels said yesterday.

Star 25/5/93

Speaking during debate on the Manpower vote, he said it was desirable that the law be simplified and structured to be easily accessible to all parties.

(165)

A code of fair labour practices was seen by the Government as a necessity to create legal certainty and effectively cut out conflict.

Increased productivity was needed to heighten living standards for all South Africans.

Corrective action on the labour front also needed urgent attention.

The National Manpower Commission had been asked to advise him on policy actions regarding this. — Sapa.

JOBS

Council faces R2,5m claim from a prize-winning firm

By CIARAN RYAN

A WINNER of the 1992 Entrepreneur of the Year award, Annie's Creations of East London, plans to sue an industrial council for R2,5-million in lost profits, claiming unlawful harassment

The managing director of the baby-clothing manufacturer, Tom Cawood, says he was forced to lay off 160 workers after the Port Elizabeth Industrial Council for the Clothing Industry (Eastern Province) extended its jurisdiction to East London He says it sent fictitious applications by East London factories to the Industrial Registrar

"I am one of the lucky ones," says Mr Cawood "I survived Two other budding entrepreneurs in the East London area, employing more than 1 000, were forced into liquidation because of the industrial council. Our three factories supported 15 000 dependants"

Industrial councils, in terms of the Labour Relations Act, regulate conditions of employment, minimum wages and other employee benefits and provide for the resolution of disputes They are private organisations made up of employer and trade union representatives Membership is voluntary, but agreements are binding on non-members

The industrial-council system was given a shot in the arm two weeks ago when the Cape Supreme Court confirmed that agreements are binding on non-members Twelve employers contested the right of the National Industrial Council for the Iron, Steel and Metallurgical Industries to extend its agreements to non-members They were ordered to comply with the council's agreements

Enough

Mr Cawood moved Annie's Creations from Rustenburg to East London because the Cape city had no industrial council for the clothing industry and wage rates were lower But last year the council extended its jurisdiction to East London It sent a representative to Mr Cawood's offices last August.

"In a very abrupt manner he demanded to see my books, so I threw him out. He returned with the police We were treated like criminals I was told that I was underpaying my staff and we had a criminal case pending against us

"We considered closing our business I have had to delay buying more equipment because of the uncertainty about my business"

Mr Cawood alleges that Port Elizabeth-based clothing firms, jealous of his lower labour costs, instituted the action Of the six employer representatives on the council, two are related and two are from the same company, says Mr Cawood

Applications to the Industrial Registrar and former Manpower Minister Eli Louw for exemption from the industrial council agreements failed

The council's records show its members are in the minority and therefore not representative of the industry, says Mr Cawood In spite of publication of a notice in the Government Gazette by the Industrial Registrar that the council was no longer sufficiently representative, its agreements are still imposed on non-members

Mr Cawood says. "I decided enough was enough I decided to go to war with the industrial council. I should have employed 800 people by now to fulfil the orders that were coming in, but I am down to 100 I know what it must have been like to own your own business in Russia

"Now we are instituting legal action against the council"

Brian Topic, who runs a car valet service on the East Rand, says an industrial council official arrived at his premises to inspect the wage book He was told some of his workers were underpaid

"The official called all staff members into my office and told them that they would receive pay increases of 18% Later, another inspector told me my original pay rates were correct."

Mr Topic says he may be forced to close his business after being summonsed to the industrial court for refusing to reinstate a driver found drunk at work.

Unfair

"Two months after firing this driver he turned up at my premises with a union official, claiming unfair dismissal because he was not given 24 hours' notice of the hearing I was told to reinstate him as a driver, even though he was frequently drunk and a risk to life and property I refused and must appear in court, placing my business and 33 jobs at risk."

Several employer federations blame industrial councils for strangling job creation because agreements are binding on non-members, regardless of their ability to meet the cost of compliance The number of industrial councils declined from 104 in 1981 to 91 in 1990 The number of employees covered by industrial council agreements fell from 1,27-million in 1981 to 800 000 in 1990

"The system is blatantly undemocratic and immoral," says Hein van der Walt, director of the Confederation of Employers of Southern Africa, which has 120 000 members employing 2,4-million workers

"The industrial council system has a total disregard for the trade freedom of employers and the right to work."

TOM and ANNIE CAWOOD Enough's enough, we're going to war to save our business

New Industrial Court head faces daunting task

Buss. Day 7/6/93

ERICA JANKOWITZ

ADOLPH Landman, whose appointment to the key position of Industrial Court president was announced on Friday, likes to think of himself as a bland legal practitioner. But, in reality, there is much more to the person than the mild-mannered image he likes to project.

And he will have his work cut out tackling the tasks this post entails, especially in the current political climate. His priority will be to reduce the huge backlog of cases currently frustrating would-be users of the court, a daunting prospect for someone assuming the presidency after an eight-month period in which the post was left vacant.

"At the moment the court is about nine to 10 months behind in its workload, which is an untenable situation," Landman says. "I intend to extend the bench of ad hoc members tremendously so as to speed up litigation and make the process more efficient."

(165)

Now that the political climate has changed, Landman believes more legal practitioners will be willing to serve on the bench. In the past, many of the most talented labour lawyers opposed to the apartheid system were unwilling to do duty because of the stigma of the court as a state institution.

Landman will need to make appointments soon to clear the backlog and to cover two potential growth areas of labour litigation. If, as is planned, public service workers are covered by the court, this will substantially increase the case load. Another change which may have an impact on the load would be the reincorporation of the TBVC states. The court does not have the jurisdiction to hear cases in these territories.

Landman has been seconded for three years from Unisa where he is head of the mercantile law department. He succeeds Dawie de Villiers who vacated the post of court president eight months ago.

However, Landman's association with the court goes back to his appointment as additional member in 1983. Since then he has handed down many ground-breaking decisions, including the 1984 case involving the Chamber of Mines and Council for Mining Unions. This case overturned the common law supposition that workers, by striking, end their contracts of employment. It ended the era when employers could automatically dismiss strikers.

However, in his new capacity as president, Landman's function will be largely administrative: allocating work to ensure the smooth functioning of the court. But, more important, he will have a say in the appointment of permanent and additional members, the main players charged with creating a body of labour-related jurisprudence. There have been regular complaints in the past about the calibre of some court members.

Landman says he will appear on the bench occasionally and all judgments will pass over his desk. But, he says, he will act only in an advisory capacity and will not change members' decisions.

Landman's appointment coincides with two separate commissions investigating the functioning of the court. The National Manpower Commission and a committee under the chairmanship of Nic Wiehahn are currently hearing evidence in this regard and will be making recommendations to Manpower Minister Leon Wessels concerning changes.

LANDMAN

Landman will be involved in the implementation of these recommendations — mainly looking at efficiency and communications problems.

Landman also has plans to involve users of the court much more closely in its functioning. He suggests shortages of court accommodation could be redressed by employers and unions making space available on their premises.

On the procedural side he plans to work very closely with the rules board on the subject of precedent and the relationship between the Labour Appeal and Industrial Courts.

He also hopes to see the early establishment of a small labour court which will hear cases only concerning individual dismissals. This court would be run on a more inquisitorial basis rather than the present adversarial approach. Landman feels the small labour court may be introduced by changes being made to the rules of the court, rather than requiring the rewriting of the Labour Relations Act.

All in all, Landman would appear to have a busy three-year stint ahead as he is involved in many other functions apart from his court position. He is an arbitrator on the Independent Mediation Service of SA panel, but feels this may fall by the wayside as court pressure takes precedence. He is also involved in the NMC technical subcommittee which is rewriting the Labour Relations Act.

BOOKS

Maids' rights defined

Star 12/6/93

CHRIS WHITFIELD
Political Correspondent

CAPE TOWN — Domestic workers' working hours and leave rights have been defined in a Bill.

The Basic Conditions of Employment Act was tabled in Parliament yesterday after three years of negotiation and controversy.

It provides for live-in domestic workers to work a maximum daily "spread-over" of 14 hours.

The ordinary working hours of a full-time domestic worker may, by means of a written agreement by the employer, conditionally be extended by not more than four hours a week.

Meal breaks may be shortened by means of an agreement with the employer. In terms of a memorandum attached to the Bill, a domestic worker who takes care of children, the aged or the sick may not work more than 14 hours' overtime a week.

A "regular day worker" — as opposed to a casual employee — would be entitled to one working day's leave and one working day's sick leave on full pay for every 26 days worked.

Termination of service would require a month's notice from employers, who would be exempted from keeping records on time worked and pay if written agreement were drawn up with workers.

'Victory' for domestic workers

Bus Day 15/6/93

ERICA JANKOWITZ

COSATU has described the proposed amendment of the Basic Conditions of Employment Act to include domestic workers, as tabled in Parliament last week, as "a victory for all those who have been struggling for basic rights for domestic workers over the past years".

Cosatu said some wording problems and "inappropriate provisions" on working hours existed in the present proposal, but it believed that these could be sorted out.

It said the amendments are largely in line with what Cosatu proposed.

It also called for the extension of the Labour Relations and Wage Acts to domestic workers as present legislation "was very limited" in securing their rights.

Sapa reports that Cosatu said this was the first step in implementing the agreement made between general secretary Jay Naidoo and Manpower Minister Leon Wessels to extend full labour rights to domestic workers by the end of 1993.

Cosatu said it was important that the Bill be steered through Parliament and implemented urgently.

"Although a significant advance, it must be borne in mind, however, that the provisions contained in the Basic Conditions of Employment Act are very limited and way below the standard achieved where workers have organisational rights.

"This underlines the importance of extending the Labour Relations Act and Wage Act to domestic workers and others, including farm workers who have been excluded from protection by these Acts," the Cosatu statement said.

Farm labourers' rights must be given some meat

Farm labourers will b[illegible] their long awaited rights But an effective system needs to be set up to ensure that they are enforced

By GAYE DAVIS

ONCE farmworkers are accorded rights under law, what system should be in place to ensure they are enforced? As Congress of South African Trade Unions general secretary Jay Naidoo pointed out at the country's first farm-labour law conference in Stellenbosch recently, unless farmworkers' rights are enforceable, "they won't be worth anything"

Yet, as the conference — convened by the Centre for Rural Legal Studies — heard, the Department of Manpower is already unequal to the task of carrying out its monitoring duties even in urban centres

Stellenbosch attorney Dawid Bosch told how a mere 136 people had been appointed in addition to the department's 4 000 employees "to deal with every aspect of labour legislation in agriculture".

This represented a three percent increase in the department's labour force, while agricultural workers accounted for 15 percent of South African employees

"We will have to have much more resources regarding enforcement agencies We need people coming in from outside, as in rural areas the existing establishment is very close to the farmer," Bosch said

Dismissing the notion of a separate court to deal with agricultural disputes — something organised agriculture has been pushing for — as "unaffordable and nonsensical", Johannesburg attorney Paul Benjamin argued in favour of using the industrial court system

While criticism of the industrial court was justified — it was "bogged down" and took too long to do its work — there was nevertheless consensus on its ills, Benjamin said

Set up in 1979 to achieve the swift resolution of industrial disputes, by 1990 the industrial court was dealing with 6 000 cases a year, mostly concerning individual unfair dismissal cases Despite its problems, it had helped transform industrial relations. For example, it was now standard practice to hold a hearing after an alleged unfair dismissal, Benjamin said

Individual dismissals would fuel most agricultural actions and these could be dealt with by the industrial court a relatively simple amendment to the Act could bring farmworkers' under its aegis

However, the system needed to change More officials needed to be trained and mediation mechanisms set up which required a commitment to deploying more resources, Benjamin said

Aninka Claassens, of the Centre for Applied Legal Studies, stressed the need for a court process

"In the rural areas, people are evicted for going to a lawyer The local policeman is often the prosecutor and the magistrate a farmer

"Only when farmworkers can take a farmer to court can that arena be opened up "

Peter Harris, who worked as a labour relations officer in Zimbabwe, described the system operating in that country Labour relations officers bypassed the need for lawyers and were thus "less threatening for someone who is under-educated or illiterate"

They were empowered to start investigating a case "within the hour" and could freeze the status quo, providing an effective, easily imposed fetter on a farmer's power to dismiss and then summarily evict a worker

It was a "quick and easy" system, according to Harris labour relations officers could collect facts, gather evidence and call additional witnesses Dissatisfaction over any outcome could be referred, by way of appeal, to another court

But, in order to bring about any real changes to their living and working conditions, farmworkers would have to be informed of their rights — which raised the thorny issue of access to farms

"The Trespass Act blocks trade unions and paralegals from access to farms," Pane Moshounyane, of the Orange Free State Rural Committee, told the conference "Our call is that the government must scrap this and other laws hindering the enforcement of rights extended to farmworkers "

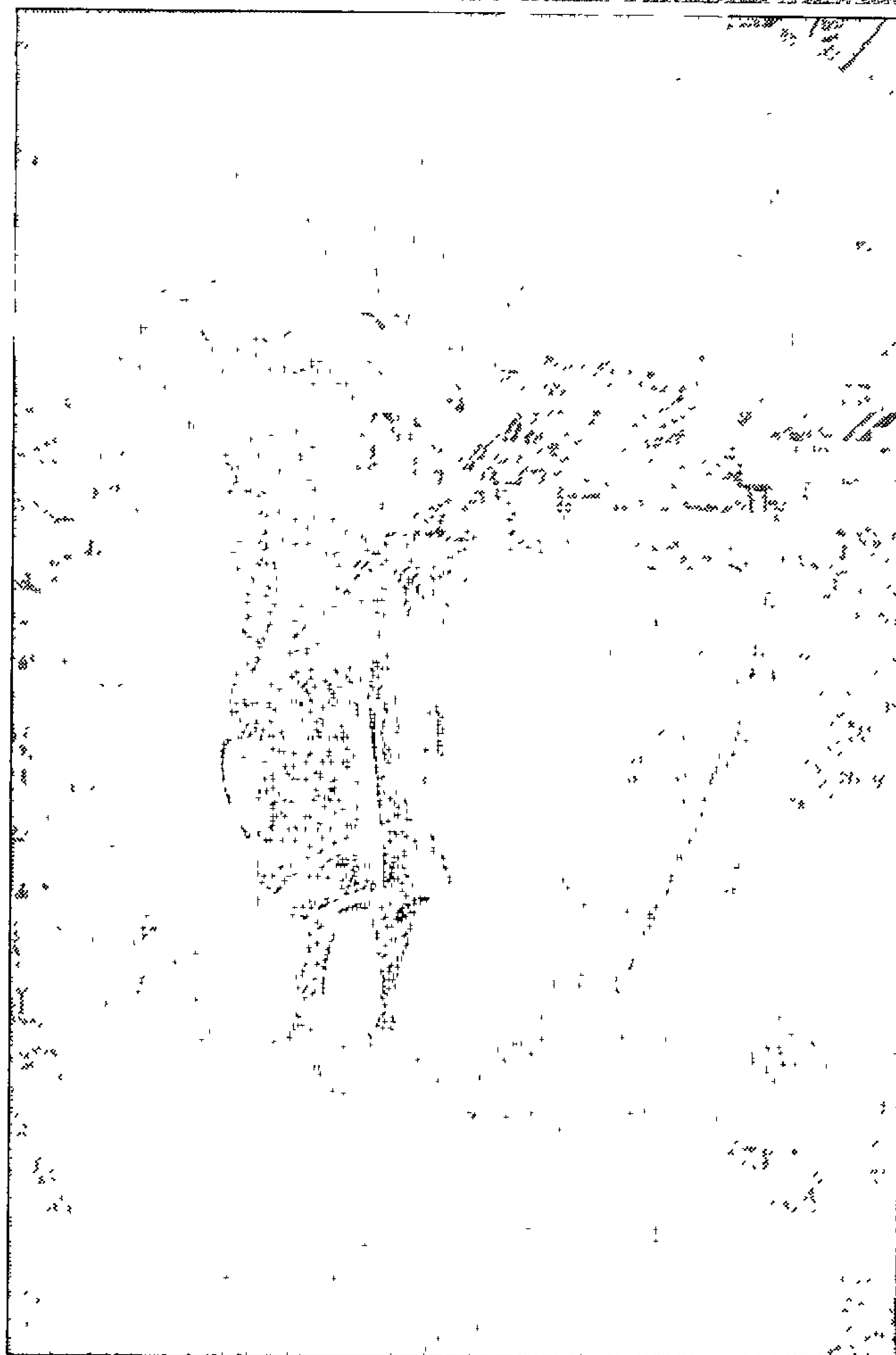
Organised agriculture's standpoint on this seems unyielding

According to the South African Agricultural Union's (SAAU) Kobus Kleynhans "Trade unions should earn their welcome on the farms."

While SAAU members supported the notion of a workers having access to a fair court, in a context where farms were being attacked at the rate of one a day, there was "no way" farmers would agree to the Trespass Act being scrapped.

"Legislation alone won't change attitudes," Kleyhans said.

"We still won't make headway if we remove the law and don't win the confidence of farmers "



Farm workers have little legal protection at present. But another problem exists. How to enforce their rights once they get them?

Supplement to THE WEEKLY MAIL, June 18 to 24 1993

Trio of works explains labour law

LABOUR AND EMPLOYMENT LAW *by Malcolm Wallis* (Butterworths, R169,86), **A GUIDE TO SOUTH AFRICAN LABOUR LAW** *by Alan Rycroft and Barney Jordaan* (Juta, R105), **RIEKERT'S BASIC EMPLOYMENT LAW** *by John Grogan* (Juta, R60)

LEGAL publisher Juta & Co has rather dominated labour law publishing in South Africa with a number of important titles including two new ones, *A Guide to South African Labour Law* and *Riekert's Basic Employment Law*. Butterworths, Juta's rival, was left in the cold, with its labour law volume in Joubert's *The Law of South Africa* series, curiously absent. The imbalance in this field is now somewhat remedied by Butterworths' publication of the first section of Malcolm Wallis' loose-leaf work, *Labour and Employment Law*.

The three new works under review have been written for different audiences and with different aims in mind. Wallis' book is undoubtedly the most substantial, intended as an authoritative point of reference to aid judges, presiding officers of the industrial court and practising labour lawyers who must grapple with complex labour and employment law issues.

Malcolm Wallis SC is well placed to write such a labour law text. He has vast experience and knowledge of the field, having represented employers, and sometimes employees or trade unions, in many of the major labour disputes presented to our courts for decision.

He provides a comprehensive analysis of the origins, content and controversies in our labour law. So far only the first section of his project has been published, that dealing with the individual employment contract between employer and employee — the relationship of subordination and domination — in which the worker must obey the reasonable requirements of the employer. His work in progress, yet to be published, concerns the collective relationship between employers and workers represented by trade unions — a relationship of relative equality.

Some labour lawyers regard labour law as beginning with the reforms to legislation which followed the Wiehahn Commission report and the introduction of the industrial court. Few texts have adequately analysed the common law heritage to which our unfair labour practice jurisdiction has been grafted. Wallis provides a detailed study of the common law contract of employment. He explains the impact of statutory provisions on the common law contract and how the contractual basis of the employment relationship has been varied by legislation.

While labour lawyers are often tempted to describe what the law should be rather than what it is, Wallis is careful to give readers a clear and unbiased explanation of what it is — even when he disagrees with a decision — before he presents his view of how and why it should be improved. His book is accessible with a structure that makes for easy reading. The index is rather sparse, however, and more specific information could be provided with forthcoming replacement pages.

This is currently perhaps the most comprehensive exposition of South African employment law, a superb book of reference, written in clear prose. Essential for labour lawyers, it is also highly recommended to all who have an interest in the law of employment.

Rycroft & Jordaan have produced an excellent second edition. The book has a less lofty purpose than Wallis'. It is designed to introduce students in particular to the issues of labour law. It covers the individual employment relationship and issues of collective bargaining. Although the facets of labour law are not considered in all their complexity, the book provides an ideal overview. It is the best work of first reference available.

Grogan's book is the first of a proposed trilogy. Like Wallis, he has started with the individual employment contract. This first book carefully sets out the state of the law concerning the employment relationship. The second volume will deal with industrial relations or the collective bargaining relationship between employers and workers, and the third is to be a book of law cases and materials, which is sorely needed in this growing field of the law.

The first volume lacks the weight of references which Rycroft & Jordaan provide to support their ideas.

However, Grogan provides a solid basic overview of the state of our employment law with a particularly extensive and helpful index. The work will be of benefit as a textbook to students, particularly students of industrial relations who would not want the rigour of a legal textbook.

●**The reviewer, who asked not to be named for professional reasons, is a labour lawyer who sits on the industrial court.**

Arbitration, Mediation & Dispute Resolution

New & forthcoming titles from Juta Legal & Academic Publishers

PRACTICAL PEACEMAKING – A MEDIATOR'S HANDBOOK *by Mark Anstey*

This book is intended as a quick reference for practitioners and for use in the training of negotiators, mediators, peacemakers and facilitators in labour and community work. In the climate of political repression which prevailed through the 1980s, the introduction of alternative dispute resolution methods in the labour field was a difficult process. Nevertheless, remarkable progress was achieved in institutionalising collective bargaining and processes of mediation and arbitration as vehicles for labour-management dispute resolution. Work in the community field is more complicated and research indicates that mediation in communities may have quite different characteristics to that in the labour field, but it also has many process similarities. Practical Peacemaking explores some of the differences and

ARBITRATION IN SOUTH AFRICA: LAW AND PRACTICE *by David Butler & Eyvind Finsen*

This book sets out and discusses principles of current South African arbitration law and practice in the light of recent trends in other countries, particularly England. The process of arbitration is systematically explained, from the conclusion of the arbitration agreement to the delivery and enforcement of the arbitrator's award, with practical advice to the arbitrator on dealing with problems which are likely to arise in the course of the proceedings. In discussing arbitration practice, the emphasis is on using the flexibility of the arbitration process to ensure that it achieves its object of resolving a dispute refereed to arbitration in a just and cost-effective manner, with the minimum of unnecessary delay. The book is intended particularly for arbitrators, lawyers and other professional ad[illegible]

Assessing the role of assessors

Review/Law in W/Mail 18/6-24/6/93 (165)

By CARMEL RICKARD

AN important Appellate Division judgment coming out of a Perskor labour dispute raises serious ethical problems for many lawyers. Late last year, the AD overturned a decision of Mr Justice Spoelstra on the function of assessors in the Labour Appeal Court.

The key question was whether, under the Labour Relations Act, assessors should help decide if there had been an unfair labour practice. Sitting as chairman of the Labour Appeal Court, Judge Spoelstra ruled they had no role in deciding what the AD later called "the ultimate question".

When the case came to the AD on appeal, the court found that, contrary to Judge Spoelstra, assessors are "full members of the court" for the purpose of deciding whether there has been an unfair labour practice

Although the AD judgment has been widely praised for acknowledging the important role of assessors in the Labour Appeal Court, the new recognition of their responsibility has brought with it what a number of lawyers regard as a serious dilemma. They feel uneasy at the idea that they could sit today as full members of the Labour Appeal Court to decide a case in which the issues could have an impact on a matter they would contest on behalf of a client in the industrial court the following week.

After last year's BTR Sarmcol judgment, labour lawyers are well aware how easily a decision can be overturned if one side has a "reasonable perception" that a member of the court is biased. They predict it will not be long before Labour Appeal Court decisions are contested on the grounds that an assessor is not impartial; not necessarily because the assessor may be biased, but because the assessor is perceived to have a vested interest in the outcome of the case

On the other hand, labour lawyers make an invaluable contribution to the development of labour law in this country If they were to stop sitting as assessors it could severely affect the labour courts

Some lawyers say the problem raised by the Perskor judgment is "more perceived than real", and that it should make no difference to labour lawyers who sit in the Labour Appeal Court "They must just do their job as they have always done," said one.

Others, however, are so concerned about the implications of the judgment that they are considering whether to stop sitting as assessors: they hesitate to risk the conflict of interests which may arise or expose themselves to allegations of bias or unprofessional behaviour.

The chairman of the Natal bar, Malcolm Wallis SC, takes the problem seriously and it is on the agenda for the AGM of the General Council of the Bar "The new situation presents a very clear

● **Continued on PAGE 3**

P.T.O.

Judge raps lawmaker

25/6 - 1/7/93. w/mail 165

Nic Wiehahn has found himself on the receiving end of legislation he helped create. By **GAYE DAVIS**

THE architect of South African labour reform, Professor Nic Wiehahn, has been rapped over the knuckles by a Labour Appeal Court judge for conduct during negotiations which constituted an unfair labour practice

The court found that Wiehahn, acting on behalf of Clinic Holdings Limited, had adopted "a rather superior and haughty attitude" during meetings with the National Council of Trade Unions' National Union of Public Service Workers (NUPSW) "This conduct constituted an unfair labour practice," Mr Justice J Joffe said in a judgment handed down last month.

While Clinic Holdings had told the union Wiehahn had been asked to make himself available for negotiations — leading the union to believe he had authority to negotiate and conclude an agreement on union wage demands — he "on his own evidence ... did not have a mandate", the judge said.

Under cross-examination Wiehahn said he had seen his role as that of a mediator

The criticism is contained in a judgment handed down last month in which the Labour Appeal Court reversed an earlier industrial court decision upholding the dismissal of NUPSW members at Jakaranda Hospital and Nedpark Clinic — both controlled by Clinic Holdings — after a June 1990 work stoppage while wage negotiations were supposedly under way

The company, the judge ruled, had "blown hot and cold" by suggesting negotiations were still in progress while firing workers.

Wiehahn, an *ad hominem* professor at Unisa who now heads a mediation agency called the Resolution Board, chaired a watershed 1977 commission of inquiry into labour legislation. It was on the basis of his reports to government that black trade unions were allowed to register under the Industrial Conciliation Act and that the industrial court, with its unfair labour practice jurisdiction, was created.

He was retained by the Department of Manpower to co-ordinate research into the functioning of the industrial court and was appointed president of the industrial court in Transkei

The NUPSW had accused Wiehahn of delaying tactics and bargaining in bad faith, referring to his assertion that he had no mandate to negotiate, while the union was under the impression that negotiations were under way

The judge found that the initial court findings had been "charitable to the respondent" The NUPSW had put demands on the table and was entitled to expect negotiations would follow after supplying the motivation requested by company.

Wiehahn had rejected this motivation, saying management found it unacceptable as its contents were not substantiated. "The impression is created that like an errant schoolboy, the union was sent home to do 'redo its homework' and produce it in a form acceptable to management," Joffe said

Stating that the strike by union members "would appear to be a reasonable response to the employer's conduct", Joffe ordered the workers' reinstatement.

Cosatu to lobby for more rights, says labour expert

ERICA JANKOWITZ

COSATU and other trade union groupings would press for statutory organisational rights and employers would have to "formulate positions in this regard", Professor Peter le Roux said in the latest edition of Contemporary Labour Law

In the absence of a consistent body of jurisprudence, as well as the period required by the Industrial Court to establish standards, Le Roux said legislative changes were likely to be made to regulate these rights

Cosatu made a detailed report concerning organisational rights to the International Labour Organisation (ILO) fact-finding commission which visited the country last year It argued for the inclusion of right of access, stop order and collective bargaining facilities, and the recognition of shop stewards

Le Roux said access was recognised by the ILO commission as being of crucial importance in SA, where many workers both worked and lived on employers' premises Denial of access under such circumstances would hinder unions in their recruitment of members, as well as prevent them from having access to members

In light of an ILO convention, the commission recommended that "access should be granted more freely to unions for the purpose of carrying out normal union activities"

On collective bargaining facilities, the commission said "space for union business and meetings; time off for union business or training; (and) access to information for negotiation purposes should be accorded to the unions either through national laws, regulations or collective agreements".

However, the granting of facilities should not "impair the effecient operation of the business" and should take into account the undertaking concerned

The ILO also recommended that the prohibition on stop-order facilities under the present Labour Relations Act should be repealed. Currently, unregistered unions are not entitled to apply for such a facility unless the Minister gives permission.

Le Roux noted the draft Bill drawn up by the National Manpower Commission which is being circulated for comment included this change.

ILO recommendations also cover shop steward rights and duties. Victimisation and time off for training and to attend to union matters are dealt with as well as access to necessary information.

Le Roux said that as the article was wide in application and contained financial implications, the ILO provided for countries, either through statute or collective agreement, to define the "precise extent of facilities and the conditions under which they should be granted".

Steps to ease delay at Industrial Court

ERICA JANKOWITZ

MEASURES to address a serious backlog delaying the hearing of cases by up to nine months have been introduced in the Pretoria Industrial Court.

Writing in his first practice note since his appointment last month, Industrial Court president Adolph Landman said while the measures could inconvenience practitioners, the need to work off the backlog was "imperative and overriding"

One measure was the recent appointment of six additional members to preside in the Pretoria court

A motion court would be established as part of the Pretoria court from July 26 to expedite hearings which did not require the "presiding officer being seized with jurisdiction as regards the merits of the matter

"In the case of opposed applications for a determination in terms of Section 46(9) of the Labour Relations Act, parties will be required to hold a proper pre-trial meeting and to file a pre-trial minute with the court three weeks before the date of hearing."

Landman said this step had been taken as "many cases are withdrawn at the last minute because they only receive the earnest attention of the practitioners involved at a late stage".

He also proposed that the rules board function as a national advisory committee to enable better communication and feedback on the functioning of the court

SA fares poorly in health survey

SIMON BARBER

WASHINGTON — Health statistics published in the World Bank's latest annual development report portray SA in a decidely mixed light and in several key areas it fares the worst in Africa

According to the figures, 53% of children aged two to five suffered from stunting — low height for age — due to malnutrition between 1980 and 1990, compared with a continent-wide average of 39%

The annual incidence of tuberculosis in SA — 250 cases per 100 000 population in 1990 — is also nearly 15% above the African average of 220, and more than 10 times the rate in developed countries

Many African countries also do a better job, though with considerable foreign assistance, of ensuring that infants are fully immunised against diphtheria, whooping cough and tetanus (DPT), and measles

In SA, 63% of children younger than one received a complete course of DPT shots in 1990-91, compared with 89% in Zimbabwe and 79% in Zambia.

In all, 12 African countries had higher rates

SA consumes more tobacco — 1,4kg per capita in 1990 — than other African countries for which there are statistics, but this may be a sign of relative affluence Consumption in the developed world averages 2,4kg

The SA fertility rate, at 4,3 in 1990, is well below the African average of 6,4, and roughly in India's league (4,0) The global average is 3,4

In 1990 half of South Africans could expect to die before they reached 41, whereas half of all sub-Saharan Africans don't make it beyond five. Globally, the median age at death is 55

Caring for the elderly is not a problem in Africa Only 5% of the population is older than 60 In SA, the proportion is 6%, in the US, 22%

In the developed world, 19% of the population is under 15, in SA 38%, in Africa generally 46%

SA has 0,61 doctors for every 1 000 people — although the distribution is highly uneven — and 4,1 hospital beds

For Africa as a whole, the figures are 0,12 and 1,4 respectively The world average is 1,34 and 3,6.

Globally, the annual per capita expenditure on health care comes to an average of $323 In 1990, SA spent $158 The continental average was $23

The average developed economy devoted 9,2% of it GDP to health care, SA 5,6% This was well above the average in the developing world (4,7%)

Companies fight minimum wage

UMTATA — A minimum wage regulation implemented by Transkei's government is being challenged in court by six industrial companies which fear they may be crippled by the new financial burden

The minimum wage which was announced by Manpower Minister D D Mlindazwe, in terms of a government notice on May 7, was said to be substantially higher than wages negotiated with unions

The Umtata Supreme Court was told that the wage determination could result in loss of jobs, retrenchments and closure of certain industries and relocation

One of the companies said that the new wage determination would force it to increase its wages by more than R2,2m in 1994, and this after having suffered heavy financial losses from four weeks of industrial action this year

The applicants said they would not be able to afford to offer other benefits to employees such as 13th cheques, overtime and sick leave if they were obliged to grant the increments

The applicants urged that the matter be dealt with as soon as possible as they would be committing a criminal offence if they did not comply with the determination, but would "suffer severe financial prejudice" if they did

It was also feared that if the companies could not comply with the provisions it could result in widespread labour unrest

The six industrial companies employ a total of more than 3 000 workers and all have wage agreements with unions.

Judge C White postponed the application for argument until July 30

BDay 20/7/93

Retrenchment 'must be a matter of law'

ERICA JANKOWITZ

IT WAS time for retrenchment regulation to be removed from the realm of Industrial Court powers into explicit statutory regulation, Wits University's Centre for Applied Legal Studies' Prof Paul Benjamin has proposed

Speaking at the annual labour law conference at Natal University, Benjamin said the Industrial Court was essentially a court of equity and, as such, was perhaps an inappropriate body to set substantive conditions of employment

This could explain why the court had not ruled conclusively on the issue of severance pay, but had restricted itself to setting preconditions to retrenchment in the form of enforcing sufficient notice periods, consultation and objective selection criteria on employers He said there was still much debate on whether severance pay was an appropriate form of compensation.

To date, the court had ruled that in the absence of a clear right to severance benefits, an employer's decision not to award them could not be deemed an unfair labour practice

This, Benjamin contended, was the right decision, but for the wrong reason

"The real issue is whether the court should deal with interest issues and determining the outcome of economic disputes. The answer doesn't relieve the economic problems of individuals We need a substantive substratum of rights contained in legislation and severance pay should be the first on the list," Benjamin said.

He said not enough thought had been given to the inter-relationship between macro-economic policy and its effect at the micro level on employees

He thought too much emphasis had been placed on industrial restructuring without taking into account the consequences of realigning production with companies requiring different skills and, often, fewer workers

To Benjamin, it was labour law's function to give effect to economic policy in such a way as to attain society's social objectives — job security, full employment, decent wage levels, and opportunities for reskilling

However, because of the lack of an active labour policy in SA, setting social objectives had not been the objective of mature debate, he said (165)

The burden of unemployment had always fallen on the employee, in stark contrast to western Europe, where the state bore the brunt, and Japan, where employers were major contributors to social welfare

He also looked at the issue of insolvency, especially small businesses, and its impact on workers

Currently the winding-up of insolvent companies was regulated by the Insolvency Act and not labour legislation, Benjamin said As such, employees came third on the list of preferential creditors, after legal practitioners and state funds

Also, protection of employees was limited to three months' pay to a maximum of R2 000, Benjamin said.

Last year, recommendations were made to the state to reconsider the protection of employee claims and to restructure the preference list, placing them higher than state funds

Benjamin proposed the establishment of a fund to cover employers' liabilities to workers after insolvency He also proposed a restructuring of the Unemployment Insurance Fund to pay workers on short-time or those who have been temporarily laid off This could shift some of the burden away from employers as it would extend their options by supplementing employees' pay in times of economic downturn

This would mean employers could explore more sensible options to cope with recession than labour shedding, Benjamin suggested

Both were being investigated by the National Economic Forum, Benjamin said However, a more active form of regulation was required and should be looked at prior to procedural issues

He said, at present unions were reluctant to consider short-time suggestions or job sharing because of the cost considerations for workers

However, if a fund was established to allow a more equal sharing of the cost, unions might change their stand

Benjamin said the fund could either consist of employer and employee contributions — as does unemployment insurance — or could be a payroll tax, which would not be out of line with international trends

NEWS IN BRIEF

B/Day 21/7/93

Cane farmers hit

NATAL South Coast sugar farmers were again facing heavy crop losses because of drought and pests, including Eldana borer infestation, it was reported yesterday. In the Umzimkulu area the loss last year of R40m in cane-related income would almost certainly be repeated this year.

Award for Suzman

ANC president Nelson Mandela would deliver the keynote address at the national congress of the SA Jewish Board of Deputies in Johannesburg on August 21 when the Nahum Goldman Award would be presented to veteran politician Helen Suzman, a statement by the board said.

Concorde on safari

A CHARTERED British Airways Concorde will make the supersonic airliner's first comprehensive trans-African journey to SA with a leisurely 17-day flight via Kenya, Tanzania, Zimbabwe and Botswana from October 23 to November 10. Ninety passengers, mostly Americans, will pay about R40 000 each for the trip, which embraces some of the continent's most famous game reserves and ends with a Blue Train journey from Johannesburg to Cape Town.

Caption incorrect

A caption to a photograph depicting the handing over of a memorandum from the Seven Buildings Project to the National Housing Forum (NHF) in Business Day on Friday was incorrect in describing the people involved. Matthew Neil is the chairman of the Co-ordinating committee of the NHF and Saths Moodley is the senior co-ordinator of the NHF.

REPORTS Business Day Reporter Sapa

Tentative signs of recession's end

B/Day 21/7/93

KELVIN BROWN

THE recession was showing some signs of bottoming out but the signs were still not strong enough to indicate a definite end to the downturn, economists said yesterday.

Various indicators had shown some improvement recently with real gross domestic product increasing in the first quarter. This was carried through as mining production, agricultural output and exports had all shown increases in data released over the past few months.

Standard Bank chief economist Nick Czypionka said the current improvement was more of a statistical nature due to the better gold price, the ending of the drought and the upturn in the economies of the US and the UK. However, he added: "We are not yet seeing it out on the street."

Other indicators that had shown some levelling out included motor car sales, manufacturing output and notes in circulation. Manufacturing production was up since the middle of last year and notes in circulation — an early indicator of higher spending demand — was also better.

Czypionka said a recovery would be visible only when the man in the street felt things were better, which would be reflected in an improvement in spending patterns. "This should occur when job security improves and people have more money in their pockets."

When SA gained greater access to overseas financial markets and the situation on the political front got better the economy should benefit even further, Czypionka said. "Until then the situation is unlikely to show definite signs of improving although there may be some bouncing back statistically."

UAL economist Dennis Dykes said although there were some signs of a turnaround it was difficult to tell if it was just a blip or a sustained increase. "The question is whether it will continue or be held to ransom by the political process."

The position of consumers was still not good as disposable income had been knocked by higher taxes and lower wage increases. He said the indicator to watch for was credit extension. "When consumer confidence picks up it affects demand for credit even before GDP."

Old Mutual economist Dave Mohr said the improvement in the primary sectors could suggest a flattening out in the recession later this year.

"In the past all sustainable recoveries in SA usually started with an improvement in exports and the primary sectors."

Agricultural production was good but volatile as it was dependent on the weather while the mining sector was showing signs of improving. There were pockets of evidence that overseas demand was picking up.

Gold and platinum prices had improved, and this carried through to the steel and other markets.

The depreciation of the rand should also help improve exports in these and other areas.

Mohr said the evidence indicated the economy could approach a turnaround this year with a slow improvement next year depending on what happened politically. However, there was little room for growth in the economy given current fiscal and monetary policies.

Farmers 'must clear proposed labour laws'

B/Day 21/7/93

DIRK VAN EEDEN

ANY proposed labour legislation for agriculture would have to be cleared with farmers before implementation, Free State Agricultural Union president Piet Gous said yesterday.

"Government quickly talks to farmers, decides on its own what it wants to do and then calls it negotiations," he said.

At a congress Free State farmers had called for a referendum, or they would not accept new legislation, Gous said.

Chairman of the union's manpower committee Japie Grobler said a forum had already been established to inform farmers about their legal rights and the changes they would have to make should comprehensive new legislation be adopted.

The forum, with representatives of the Transvaal and Free State Agricultural unions, Nampo advisers, Boskop training centre and the Manpower Department, would also strive for better labour productivity.

Several information days were planned for farmers.

Gous said the Free State Agricultural Union opposed the planned legislation because it did not take into account the personal relationships between farmers and their workers, or the specific needs of agriculture.

He warned that many labourers would lose their jobs if a minimum wage was introduced. Farmers would not be able to pay higher wages and would rather mechanise.

The union was also opposed to legislation legalising strikes. A farm could be ruined if it was not worked for a week or two.

"A farm is not a factory that can be shut down. When it is planting season you must plant, and a cow does not calve between eight and five either."

No other industry had provided housing and other social benefits for its workers to the same extent that farmers had.

Should strikes be legalised, farmers would have to allow unknown trade union workers on their farms. Because they could not know all the trade union organisers, it would create a serious security risk.

NEWS

Call to alter Labour Act for new SA

■ BY ABDUL MILAZI
LABOUR REPORTER

The National Manpower Commission (NMC) has called for urgent amendments to the Labour Relations Act to make the law more relevant to the new South Africa.

NMC chairman Frans Barker said the commission would present its recommendations to the Minister of Manpower on September 6.

He also said he hoped the amendments would be approved at the next parliamentary session in November.

Barker said that the present Labour Relations Act would clash with the planned Bill of Rights.

The recommendations to be tabled before Parliament include the scrapping of the Act's prohibition on trade unions and employers' organisations to join political organisations, the introduction of a code of fair labour practice, the extension of the Act to tertiary-level educators and the redefinition of "employee" to include dismissed workers.

Other recommendations included the rationalisation and simplification of the Act's statutory dispute procedures to industrial councils and conciliation boards and the introduction of a new and separate section in the Act which dealt only with the determination of labour practice disputes

Sowetan 9/8/93 (165)

B/Day 10/8/93

Labour Act changes proposed

ERICA JANKOWITZ

PROPOSED short-term amendments to the Labour Relations Act were released at the weekend by the employment law working group of the National Manpower Commission

These were the first phase in a long-term project to eliminate anomalies and streamline and modernise the Act by mid-1994

They included the elimination of clauses which prohibited unions from affiliating to and granting financial and other support to political parties unless a closed shop existed

This would be in line with "expected amendments to the constitution regarding fundamental rights, including the right to freedom of political choice and association", the manpower commission said

The amendments also covered the introduction of a fair labour practice code to guide employers and employees and direct the Industrial Court (IBS)

The new Act would be extended to cover dismissed workers who disputed their dismissal and those who worked for educational institutions (Ato)

A system of precedents would govern labour courts Unfair labour practice dispute determinations would be covered by a separate section to simplify procedures

Amendments would also rationalise the Act's interim relief mechanisms and simplify formalities for instituting statutory dispute procedures

It was proposed that the manpower commission be renamed the national labour commission

Comment on the proposed amendments should be sent to the commission's offices by September 6

Star 11/8/93

Deal reached on farm labour draft law

Cape Town — The South African Agricultural Union (SAAU) and Congress of South African Trade Unions (Cosatu) have accepted a draft law that extends bargaining and union rights to farmworkers

The agreement follows nearly three years of negotiation

The draft legislation acceptable to both sides was handed yesterday to Manpower Minister Leon Wessels, who said he would submit it to the Cabinet He expected it to receive a sympathetic hearing

Cosatu and the SAAU said the draft could be tabled in Parliament next month

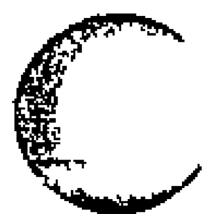
Cosatu campaign organiser Lisa Seftel said "We have agreed on an agricultural labour Act that extends the Labour Relations Act (LRA) to farmworkers, with additional provisions about special agricultural labour courts, plus more amendments to the Basic Conditions of Employment Act

"Nothing, in our view, undermines workers' rights The SAAU and Cosatu also agreed to meet and negotiate on the National Manpower Commission (NMC) "

The NMC negotiations would include debate on the possible exclusion of agriculture from the definition of essential services in the LRA. They would also deal with union access to farms

"We have agreed on certain limits on the right to strike," Seftel said — Sapa.

(165)



Short session to introduce labour Bill

ADRIAN HADLAND

PRETORIA — Cabinet yesterday approved the introduction of a draft Agricultural Labour Bill to Parliament's short September session. B Day

Manpower Minister Leon Wessels said Cabinet had approved introducing the draft after three years of negotiations between Cosatu and the SA Agricultural Union ended in an agreement on its contents last week. 19/8/93

The draft Bill makes strikes illegal, but arbitration of disputes compulsory.

Wessels said it contained provisions from the Labour Relations Act and the Basic Conditions of Employment Act, with certain amendments which accommodated the peculiarities of the agricultural sector. (165)

It provided for a special labour court, defined seasonal workers and their rights, set working hours for farm labourers and provided for Manpower Department inspections of conditions in the sector.

Farmers stall on draft labour law

BDay 19/8/93

DIRK VAN EEDEN

BLOEMFONTEIN — Free State farmers refused to accept the draft Agricultural Labour Bill at their annual congress yesterday until they had studied it

The Free State Agricultural Union had resolved at its two previous annual congresses not to recognise any form of farm labour legislation until it had been accepted by farmers in the province, union president Piet Gous said yesterday

Heated debate followed the introduction of the topic yesterday Speaker after speaker made it clear they were opposed to any form of legislation, particularly under an ANC-led government

However, Gous said he was sure the farmers would accept it at a special "mini-congress" within the next two months

In his introductory speech, Western Cape Agricultural Union president and chairman of the SA Agricultural Union's labour law negotiations team, Chris du Toit, said farmers did not want labour legislation However, they had to accept that it or the more stringent Labour Relations Act and Basic Conditions of Employment Act would be made applicable to agriculture

Farmers warned they would have to dismiss many of their workers should a minimum wage be introduced Du Toit, however, said this would not happen as the Bill did not provide for a minimum wage

Farmers also expressed concern about the possibility of illegal strikes and the financial implications this would have

Du Toit said "Farmers are not prepared to subject themselves to others' whims in the name of affirmative action

Meanwhile, Bophuthatswana president Lucas Mangope said communism was the commercial farmer's worst enemy

At the congress, he said unless South Africans were extremely careful, they faced a central government dominated by communists

"It is a matter of record that the individuals who wield the real power in the ANC owe their first loyalty to the SACP"

Free and fair elections could not be held in the current climate of violence and intolerance

The April 27 date had been sold by the ANC and government on the basis that it would stem violence The statistics proved the opposite had happened.

The violence SA experienced was not a natural phenomenon of change, but revolutionary chaos paving the way for total regional collapse and seizure of power by the masses.

Mangope said the present negotiations council had to determine boundaries and powers and write a final constitution

New specialised court for arbitration mooted

BDay 30/8/93

ADRIAN HADLAND

PRETORIA — A special industrial court is likely to be established specifically for the arbitration of disputes involving public sector and municipal employees

Prevented from strike action by the Labour Relations Act, public servants have had to wait a minimum of six months for compulsory arbitration proceedings to be heard by an industrial court increasingly congested by the private sector, SA Municipal Employees' Association labour relations consultant Nicky Van Rooyen said.

This led to great frustration for officials awaiting the outcome of a dispute as well as to diminished productivity. (165)

The creation of a special court for the public sector was mooted originally by Transvaal Industrial Court president Prof Adolf Landman, Van Rooyen said

The proposal was accepted in principle last week by the executive council of the employees' association

It suggests a panel of presiding officers be established in each region to adjudicate over salary or unfair dismissal disputes arising solely from the public sector

The employees' association would begin negotiations with state employers at the end of next month, Van Rooyen confirmed

"I hope the employers will agree because it will be to their benefit as well as to the employees to cut down on delays and dissatisfaction"

Once the principle of special industrial courts was accepted by employers, the next task would be to prepare regional panels of objective arbitrators, Van Rooyen said It was hoped the courts would begin to operate by year-end in order to address considerable backlogs.

Farm labour boost

LOOKING AHEAD Proposed law will help workers on South African farms:

DRAFT LEGISLATION TO EXTEND labour relations and employment conditions to include the agricultural sector was published yesterday

The Agricultural Labour Bill provides for the Labour Relations Act, 1956 and the Basic Conditions of Employment Act, 1983 to apply, with some amendments, to agriculture

This includes

- Investigations and recommendations by the National Manpower Commission,
- Registration of employers' organisations, trade unions and industrial councils,
- The industrial court and the labour appeal court will also be competent to decide matters regarding the agricultural sector,
- Conciliation boards will also be able to settle disputes between employers and employees in agriculture,
- Disputes can be finalised through arbitration or mediation,
- Industrial council agreements for the agricultural sector,
- Labour brokers,
- Lockouts and strikes in the agricultural sector, but subject to compulsory arbitration,
- Provision for an agricultural labour court to decide disputes regarding, among other matters, unfair dismissals,
- When the industrial court makes an order regarding reinstatement or the payment of compensation, it must take the specific farming situation into account,
- Inspectors and designated agents must give farmers prior notice of intended inspections,
- The determination of the maximum ordinary daily and weekly hours of work, and of the spread-over for: meal intervals, payment of overtime and for certain work performed on Sundays, payment for work on certain public holidays, 14 days' annual leave, termination of employment contract, certificates of service, prohibition of victimisation, records to be kept by employers

The Bill also provides for defining "seasonal worker", resulting in annual leave provisions not applying to such workers and that under certain circumstances a certificate of service may be issued to them, inspections by inspectors of the Department of Manpower after prior notice to the farmer

According to an attached memorandum, the Bill is the product of numerous discussions between the SAAU and Cosatu at which full consensus on its contents was reached — *Sapa*

Wits and Sasco deadlock

Sowetan 3/8/93

NEGOTIATIONS between University of the Witwatersrand and South African Students' Congress deadlocked yesterday morning with both sides digging their heels in on the issue of violence on campus

The university authorities have demanded a public retraction of Sasco's commitment to violence

On Sunday, Sasco issued a statement threatening student action if its demands were not met In the statement, Sasco said it did not condemn "student action" on campus

Deputy vice-chancellor Professor June Sinclair said Sasco and the Students' Representative Council refused to retract its commitment to violence

The Sasco statement followed assurances last week that the organisation did not condone violence

Nearly crushed

About 60 Congress of South African Students members yesterday covered the university's concourse with rubbish in their "Operation Litter" campaign

Moving along the corridors of Senate House, the students were nearly crushed as they panicked and ran towards exits when members of the Internal Stability Unit wielding batons entered the building.

Teargas was not used and no shots were fired by the ISU members, who arrested one student.

Earlier, Sasco members said they would continue with class boycotts, "Operation Littering" and "other forms of mass action never seen before at the university"

The announcement followed a deadlock in negotiations between university authorities and Sasco on a list of student demands — *Sapa.*

World Council of Churches general secretary Dr Konrad Raiser at the Carlton Hotel after his arrival in SA yesterday. Picture: ROBERT BOTHA

Employers warned on costs of unfair dismissal

ERICA JANKOWITZ

THE Labour Appeal Court, which greatly reduced a high compensation order for unfair dismissal handed down in the Industrial Court, nonetheless set down some very clear principles concerning future orders, Deon Nel of Webber Wentzel said on Friday

As a result, employers should be careful to ensure dismissals were fair and would not be successfully challenged in court as claims for amounts in excess of R1m could not be ruled out, Nel warned.

Speaking at a labour law conference entitled Protecting Employer Rights, Nel said the court had only reduced the amount from more than R300 000 to about R19 000 because of a lack of evidence presented by the dismissed employee's counsel.

He was referring to the ABI and Jonker case, in which the employee was dismissed because of union objections to his appointment. Prior to this case the Industrial Court had stuck rigidly to a maximum six-month order of compensation for any loss suffered from unfair dismissal.

However, the court had taken into account both past and projected future loss of earnings in this watershed case. This was likely to be the future trend, Nel said.

The Labour Appeal Court had displayed great sympathy for Jonker and indicated that, if his lawyers had presented a better case, he could have expected at least the sum the Industrial Court granted him.

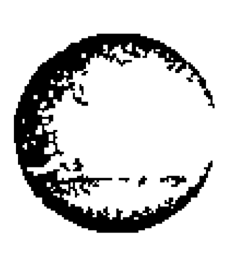
In calculating a fair compensatory order the court would take into account.

- Past loss of earnings including any relocation or medical costs an ex-employee might have incurred; and
- Future loss of earnings based on projected life expectancy, length of service, inflation, and loss of retirement benefits

Nel said although the court had not "decisively ruled on whether an employee may also seek, and be awarded, compensation for such matters as injured feelings, insult, indignity, pain and suffering and the diminution of the applicant's reputation in the business community", this could not be ruled out.

(165)

He suggested parties could refer unfair dismissal cases to arbitration as the parties could appoint a more skilled person to decide on the matter, especially as complex actuarial evidence would have to be presented to substantiate claims



Pupils get hurt in teacher fights

Parents and students have been severely affected by the dispute between the educational authorities and teachers GANIEF HENDRICKS, an industrial relations specialist, argues that parents and students can be accommodated if they play a statutory role in the dispute-settling procedure

South 3/9 – 7/9/93

(165)

THE MINISTER of National Education, Mr Piet Marais, has announced a Labour Relations Act for Teachers will be tabled in parliament in September

This Act will give the educational governing authority and teachers more legal rights to engage in industrial action

There is a real fear that as a result of the potential power-play between disputing parties, many more lessons will be lost in the future, affecting many more students

There is a need for a dispute-settlement procedure that will eliminate or minimise the loss of lessons during disputes and that will not harm the learning culture in schools

Provisions for such procedures can be made in recognition agreements or laid down in labour legislation

Education is an essential service and must be put on top of the list to help redress the imbalances of the past and build a democratic society in South Africa

Therefore teachers and their employers should go out of their way to find creative ways to settle their disputes

Arbitration tribunals provide such an opportunity They have been used in Lesotho and brokered by the International Labour Organisation

In the tribunals an arbiter makes an award with the assistance of assessors, nominated by the parties in dispute The arbiter has wide powers and can summon persons to give evidence and examine the economic portion of the undertaking in which the dispute exists

The parties in dispute are obliged to accept the award If such tribunals are used in South Africa to settle education disputes they can be extended to include assessors nominated by parties like parents and even high school students

GANIEF HENDRICKS

In this way the interests and rights of all parties can be accommodated After all, in education disputes it is the third party who is harmed if failure to settle the dispute leads to industrial actions like strikes

The collective bargaining process in South Africa makes provision for an Industrial Court This court can be used if one of the parties feels the award of the arbiter was unfair

Illegal industrial action like the unilateral retrenchments, wild-cat strikes and chalk-downs should be subject to harsh penalties In Lesotho the guilty party has to pay a heavy fine This will all help prevent the disruption to normal schooling

'There is a need for a dispute-settlement procedure that will eliminate or minimise the loss of lessons during disputes and that will not harm the learning culture in schools'

Demonstration of power is essential in the collective bargaining process, but in education disputes it should be non-confrontational

If strike action is used there should be statutory strike rules that allow classroom lessons to continue

Giving third parties a statutory role in labour disputes is new ground-in the collective bargaining process

Examples of non-confrontational demonstrations of power requires creative thinking Strike rules need to be formulated during education disputes that satisfy the interests of all parties

An appropriate penalty for illegal industrial action must be debated

Call for new labour courts

ERICA JANKOWITZ

INDUSTRIAL Court president Adolph Landman yesterday proposed that industrial council circuit courts be established to hear all matters arising in their particular sectors, thus reducing the country's backlog of labour cases

Landman suggested councils should nominate suitable candidates as additional members of the Industrial Court, subject to his approval. B/Day

"These persons should be available to service, on a part- or full-time basis, the industry for which the industrial council has been established," he said. 6/11/93 (165)

If no suitable candidate was available, an additional Industrial Court member could be assigned to this position Industrial councils would be expected to provide infrastuctural support

Welfare bodies to map out strategy

B/Day 5/11/93

KATHRYN STRACHAN

A NATIONAL welfare summit will be held at the World Trade Centre tomorrow to map out a future strategy for the neglected and fragmented welfare sector.

The summit will bring together about 800 stakeholders to identify critical issues facing welfare

Marge Brown, spokesman for the summit's ad hoc committee, expected that a national welfare forum would be created Competition among the various sectors for future Budget allocations would be fierce, she said A forum would put the welfare sector in a better fighting position.

A high proportion of future Budgets was expected to be allocated to development and education at the expense of welfare, which played a crucial role in protecting the many vulnerable people who fell outside development projects, she said While education received a high proportion of the Budget in terms of international standards, the allocation for welfare remained relatively low

Brown said there had been many confrontations between the state welfare sector and the informal sector, and it was crucial that a common vision be found Welfare faced critical problems in the wake of the violence, which had left people disabled, families scattered, children abandoned, and which disrupted the payment of pensions and grants

Another obstacle for welfare was the state's decision to cut benefits for foster parents at a time when violence and the AIDS epidemic orphaned an increasing number of children

Brown said the forum was also necessary to influence developments such as controversial new amendments to the Social Assistance Act.

GEIS keeping textile, clothing sectors viable

B/Day 25/11/93

LINDA ENSOR

CAPE TOWN — The textile and clothing industries were in dire financial straits, with operating losses being converted into pre-tax profits only by the addition of income derived from the general export incentive scheme (GEIS) and structural adjustment programme.

This was said yesterday by Board on Tariffs and Trade chairman Nic Swart at a National Clothing Federation seminar. He said an analysis had shown GEIS income was treated as separate in the income statements of clothing and textile manufacturers.

Costing studies by the National Productivity Institute on behalf of the panel appointed to formulate a long-term strategy for the clothing and textile industries showed that profitability had deteriorated since 1989/90.

The study found that the difference between the operating loss and profit before interest and tax (-1,3% and 3,9%) of clothing companies surveyed was mainly made up of GEIS and structural adjustment programme income. Swart said the interest burden of the two industries was also high, averaging 3,8% of sales for clothing and 4,7% of sales for textiles.

A comparison with the cost structure of UK clothing manufacturers showed their SA counterparts' major problem was the high cost of raw materials. In SA raw materials constituted 51,2% of sales compared with the 33%-45% UK range. Direct labour costs in SA represented 14,3% of clothing sales, as against 18% in the UK, and overhead costs represented 35,8% of sales compared with 30%-38% in the UK.

Swart said the textile industry was hampered by an inability to obtain raw material at world prices landed in-house and to achieve a competitive labour cost/productivity balance for salaries and wages.

He said total new investment needed by the clothing industry for new technology was forecast at R72m, but the industry had invested only R44m in 1992 and R32m in 1993. Huge investments would be needed if the textile industry was to become internationally competitive.

□ Clothing industry employment had recently bottomed out after a year-on-year loss of 10 300 jobs was recorded in the January to September period, National Clothing Federation economist Arnold Werbeloff said in the latest issue of Clothing Industry News.

The industry was estimated to have 90 000 workers, compared with 130 000 in 1984.

Clothing output continued to fall, although retail sales had risen a real 8% in the first seven months of 1993.

Third quarter figures showed that producer price inflation for clothing had increased by 8% and textiles by 4%.

Clothing exports in the first six months of this year amounted to R400m compared with R460m for the whole of 1992, indicating the possibility of total exports of R700m this year.

Court faces funds shortage

B/Day 25/11/93

ADRIAN HADLAND

PRETORIA — The Industrial Court was facing the imminent burgeoning of its responsibilities, but a lack of funds and accommodation was making its task difficult, court president Adolf Landman said.

While the establishment of a Johannesburg seat was a priority, the court could not secure finances or appropriate office space to open the branch.

"There is little government-owned accommodation available and, what little there is, is unsuitable for our needs."

In the meantime, litigants would have to continue travelling to Pretoria for their cases to be heard, Landman said.

The court was preparing for a considerable increase in litigation emanating from a number of new Bills and Acts.

The Public Service Act of 1993, which came into effect on August 1, conferred about 19 functions on the court. "Unfortunately no additional financial arrangements were made by central government to cover these additional functions," Landman said.

The Education Labour Relations Bill, which was tabled this year, would entitle primary and secondary school teachers to Industrial Court hearings.

Academic staff at universities and technikons would soon be able to approach the court for relief under proposed amendments to the Labour Relations Act of 1956.

An agreement between the Congress of SA Trade Unions and the SA Agricultural Union over an Agricultural Labour Relations Act also envisaged the creation of a small labour court falling under the jurisdiction of the Industrial Court, he said.

The proposed Bill of Rights, equal opportunity legislation in the pipeline and the creation of structures to deal with domestic labour-related disputes would also impact on the responsibilities of the court.

But, without additional financial resources, the court would find it difficult to meet all its obligations timeously.

Some pressure could be taken off the court if parties held proper pre-trial conferences so that the issues and time taken to hear matters could be reduced, he said.

In the case of mass dismissals, it should be possible to hear such matters within two months provided parties prepared their cases expeditiously.

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Labour code set out in new Bill

Star 3/12/93

Cape Town — A Bill that introduces a code of fair labour practice, and compels employers and unions to divulge funding by political organisations, was tabled in Parliament yesterday.

The Labour Relations Amendment Bill also extends the Labour Relations Act to university and technikon teachers.

It extends compulsory arbitration to air traffic and air navigation services. (165)

According to an explanatory memorandum, the Bill sets out to consolidate the provisions in the LRA regarding interim and urgent interim relief.

It also simplifies statutory dispute procedures relating to industrial councils and conciliation boards.

It consolidates provisions regarding the determination of unfair labour practices by the Industrial Court

While the Minister of Manpower may issue a code of fair labour practice, it is not binding on any court, including the Industrial Court.

The annual statements of trade unions and employer organisations must include details of any financial assistance from any political party.

The Bill lays down that trade unions with security agreements shall not require any employee to grant financial assistance to any political party or any candidate nominated for election to any political party or legislative body — Sapa.