

LABOUR DEPT.

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# SA law 'a threat to homeland jobs'

Sunday Times (Business)

By CIARAN RYAN

NATIONAL Manpower Commission (NMC) attempts to replace homeland laws with South Africa's Labour Relations Act will eliminate jobs there, say employers.

The move could mean a sharp jump in homeland wages, which are up to a third lower than in SA.

Confederation of Employers of SA (Cofesa) director, Hein van der Walt, says the NMC is trying to rush through legislation replacing homeland with SA labour laws.

As a first step, the NMC hopes to extend the Labour Relations Act to Lebowa before the election to set a precedent for other former homelands, says Mr van der Walt. It also wants to extend SA labour laws to Ciskei.

Mr van der Walt says. "This is despite the fact that the Labour Relations Act contains provisions contrary to the new constitution, which guarantees the right of freedom of association.

"Companies in the homelands would have to join industrial councils, pay their levies, contribute to the medical and pension funds of the councils and be subject to the central bargaining system

"Any advantage these companies received by moving to the homelands would be lost if the industrial council system was extended to them"

Mr van der Walt says Cofesa will resist any attempt by industrial councils to establish a legal presence in the homelands

NMC chairman Frans Barker says a postal vote is being taken among members to establish the amount of support for proposal to replace Lebowa's labour law with the Labour Relations Act.

He says "There is a legal vacuum in Lebowa which needs to be filled urgently. We first need to find out which institutions exist there"

Dr Barker says the NMC has also recommended that Bophuthatswana fall under SA labour laws and its industrial court. This does not mean, however, that SA industrial councils could simply extend their jurisdiction to the homelands. They would have to form industrial councils. 1014194

This matter will be contested by Cofesa. Mr van der Walt says "We believe any attempt to extend the industrial council system to the homelands before the new constitution becomes operative is illegal because it violates employers' rights to freedom of association"

He says industrial councils are trying to override the new constitution by hastily establishing a legal presence in the homelands.

The move will be challenged in the Constitutional Court.

Industrial councils, which receive their jurisdiction under 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 their agreements are also binding on non-signatories. (165)

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 fell 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.

Industrial councils say minimum wages prevent companies from competing with one another on the basis of pay.

"The system is undemocratic and immoral," says Mr van der Walt. "The industrial council system has a total disregard for the trade freedom of employers and the right to work."

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## Industrial Court warned

THE Industrial Court should not become involved in legal arguments pertaining to lock-outs and strikes as they were not included in the unfair labour practice definition, says Unisa mercantile law head Prof PAK le Roux. *8/Day*

Writing in the latest issue of Contemporary Labour Law, Le Roux welcomed a Labour Appeal Court decision which overturned an Industrial Court judgment in which the presiding officer expressed a clear wish to protect workers from what was considered "unfair employer pressure"

The Labour Appeal Court judgment said: "The language of the Act is clear and unambiguous. A strike or lock-out cannot consti-

ERICA JANKOWITZ

tute an unfair labour practice *13/5/94*

"It was the intention of the legislature that the Industrial Court should not be empowered to declare the weapons of employers and employees, lock-out and strike respectively, an unfair labour practice. The Industrial Court has no inherent jurisdiction. Its powers are circumscribed by the (Labour Relations) Act," the judgment said.

Le Roux warned of uncertainty if the Industrial Court intervened where it was clearly legally prevented from doing so, and reminded officials of recent experience when the court was empowered to judge the fairness of strikes and lock-outs *(165)*

"An activist approach to judging the fairness of collective action will lead the court into controversial areas and, potentially at least, undermine its credibility," he said.

However, Le Roux admitted that the Act was vague in its definitions of both strikes and lock-outs, which could allow court intervention in some cases.



# The struggle may not be over

Aug 23/1994

THE African National Congress's historic sweep to power was a triumph shared by Cosatu and the SACP — but the coronation of its crown prince has irrevocably changed the tripartite alliance

Tensions surfaced even before the elections, but the threesome — forged in the 1920s to counter, and cripple, apartheid — fought a unified battle for freedom

The Congress of SA Trade Unions offered the cream of its crop to the ANC's lists — and more than 20 top unionists are now in central and local government, affording the federation more national influence than ever before

But, ironically, the strategic move has depleted Cosatu's top ranks and its former leaders will be firmly tied to an ANC mandate in Parliament

Commentators believe even Jay Naidoo, whose appointment as Minister without Portfolio is seen as a victory for the labour movement, will not be "labour's man in government"

And there are tell-tale signs that Cosatu will have to fight vigorously to ensure its concerns are high up on the new government's agenda

Provincial premiers have already taken a strong line against restless workers in the Free State Patrick Lekota warned strikers of impending dismissals if a return-to-work was not imminent, while in the Eastern Cape Raymond Mhlaba told civil servants although he would consider reinstating the thousands dismissed by the previous government, he would not tolerate arrogant and forceful action and strikes should be abandoned

Labour commentator Karl von Holdt believes the Cosatu/ANC relationship will continue whether a formal alliance survives or not — but on two dimensions.

"On the one hand, the two will work together, with Cosatu seeking to influence the government, and vice versa, through the fact that Cosatu's former

**With the ANC in power, its (d)alliance with Cosatu and the SA Communist Party hangs in the balance. Labour Reporter SHARON SEROUR investigates what challenges the change holds for the labour movement.**

(165)

leadership is in government

"But on the other hand, the relationship will be one of struggle, especially if Cosatu puts pressure on the government from below"

As far as Cosatu's far-reaching "project" to bring about fundamental changes in industrial relations policy is concerned, one of its main aims is to influence government

Shifting the balance of power between unions and employers, and strengthening its branch, the Reconstruction and Development Programme, are also priorities for the federation

"The RDP was initiated by Cosatu and its been watered down, so Cosatu will push for it to be strengthened — and it's clear the federation wanted to get people into government to have a national leadership base sympathetic to the labour movement"

However, there are signs that the ANC-government is less orientated towards labour than Cosatu might have hoped

"Part of it is the current discourse on reconciliation — which is important in a national sense, but very dominant at the moment — can lead to more moderate policies and less substantial redistribution of power and wealth than Cosatu would want"

"Also, the figures who have emerged as leaders are close to big business and there will be a lot of pressure from big business to have its agenda, which differs vastly from Cosatu's, seen to"

Mr Von Holdt believes the debate revolves around tactics and strategy about whether Cosatu has the ability to influence government, and whether this is best served by having a formal



**Jay Naidoo ... unlikely to be labour's man in government.**

alliance or not. Some people believe Cosatu's interests will best be served through a formal alliance — others don't

"I believe that the alliance will come under a lot of pressure, but there is a strong lobby to maintain it. It's difficult to predict which way it will go"

Some of Cosatu's affiliates, including the most powerful Western Cape union Sactwu (SA Clothing and Textile Workers' Union), are mooting for an independent union federation, adding to existing pressure for the alliance to end

"It's crucial for Cosatu to strengthen its ties with federations like Fedasal and Nactu, and for them, Cosatu's formal alliance with political parties is a stumbling block to labour unity — so Cosatu has to decide whether it's more important to have formal ties with the ANC or a united labour movement"

"However, one could also argue that maintaining the alliance could put pressure on the ANC to deliver"

Labour expert Duncan Innes believes the new power play in the alliance to be ambiguous on the one hand it offers new opportunities to labour, but also raises challenges

"Cosatu would like the alliance to continue until a new constitution is in place and the RDP has been implemented"

He believes the government will be more receptive to labour issues, as new Labour Minister Tito Mboweni illustrated when he urged employers to pay workers for the public holidays over the election period

"But the ANC will be looking for trade-offs. They might give benefits in terms of the social wage but in return might demand wage restraint and an end to wildcat strikes"

The public sector is a cauldron in which the potential for conflict is already bubbling

"Civil servants have not had the opportunity to improve wages and working conditions to the same extent as the private sector and are now expecting the ANC to deliver better wages. But the ANC will not want wage increases to get out of hand because of inflation"

"This means that unions will have to try to tone down wage demands and expectations in the public sector"

Cosatu's leadership will try to prevent conflict, and will not want to antagonise the ANC — but at the same time, the federation will want to assert its independence

SACP stalwart Jeremy Cronin does not predict a dramatic change in the alliance even though there are new challenges and possibilities

While the party's influence in parliament is considerable with 40 MPs in the National Assembly, they will be under the ANC whip, and "won't be running back and forth"

## No agreement reached on proposed merger

ERICA JANKOWITZ

DELEGATES attending a National Manpower Commission meeting yesterday had failed to reach agreement on the proposed merger of the commission and the National Economic Forum, commission head Frans Barker said. *Biden*

Employers had requested more time to study the exact wording of the proposal before a final decision could be made. The next meeting was scheduled for August. *25/5/94*

Labour commentators, however, said the parties were near deciding to merge the two bodies into a socioeconomic labour council, along the lines of similar bodies in Europe.

This would fit in with Cosatu's proposal that one body deal with socioeconomic policy as well as labour issues. *(16)*

Barker said delegates at yesterday's meeting had decided to set up a subcommittee to discuss public holidays so that the commission could formulate a policy on the issue as soon as possible.

This would be an involved process as industrial council agreements, wage determinations, the Basic Conditions of Employment Act and the Public Holidays Act would have to be carefully studied.

All parties had nominated candidates to sit on the subcommittee, for consideration during caucuses.



**G**IVEN that he was originally tipped to head the Trade and Industry Ministry, or perhaps to get the deputy's post in the Finance Ministry, it is not surprising that Labour Affairs Minister Tito Mboweni should approach his new job from the perspective of an economist rather than that of an industrial relations or labour law expert.

That is his express intention. He is rather impatient with the purely legal questions that occupy the minds of some labour relations practitioners. His goal is the development of a labour market compatible simultaneously with notions of social justice and the demands of economic growth as SA attempts to integrate itself into an increasingly competitive and rapidly changing world.

"We must tackle issues which go beyond conflict management. For example, we must look at skills upgrading and job creation, an incomes policy and whether this is required, unemployment — these are all Labour Affairs issues."

Mboweni's appointment was greeted with satisfaction by both management and labour, though not always for appropriate reasons. There are those within Cosatu who believe that because of his inexperience in labour matters and his membership of the ANC, Cosatu's ally, Mboweni can be moulded into a "pro-labour" Minister. On the other hand, there are businessmen who hope (and unionists who fear) that Mboweni will be seduced into becoming a member of the new establishment with little inclination to worry about labour's interests.

**N**either of these rather extreme views is likely to be borne out. He enters a ministry and a sphere of SA society where the two main contenting parties have spent the past seven or so years building a new paradigm far removed from the simplistic labour versus capital one. Tripartism, albeit with old and new complications and conflicts, is the order of the

# Labour will lead SA back into the world economy

ALAN FINE and ERICA JANKOWITZ

day, and it fits comfortably into Mboweni's own vision.

The basis for meeting the challenges of the future, says Mboweni, is a "social partnership" between labour, business and government — similar to Finance Minister Derek Key's "golden triangle" concept. The difference is that, unlike the previous NP government which had to be forced kicking and screaming into accepting this tripartite system, Mboweni and the ANC as a whole actively support it.

He is quite clear on government's role in the partnership. It is not merely there to rubber-stamp agreements thrashed out between unions and companies. Rather, he envisages a greater role in guiding policy based on macroeconomic concerns. He insists government is "not irrelevant" in the process and will play a "pro-active" role in shaping labour policy and direction.

He believes his approach will not favour one side above the other, but will boost economic growth and confidence to the eventual benefit of all. He is adamant that there is a need for strong partners within the tripartite model. Weak trade unions do not have a place in his vision of the future and neither does a business community cowed by labour regula-



□ MBOWENI

tions which stunt economic growth and development.

"No one has all the answers. We need to put our heads together and come up with a solution based on consensus," he says.

But how he intends to tread this fine line in a system which is, in

many commentators' views, over-regulated will be seen only when his plans for thorough changes in labour legislation are unveiled.

Mboweni uses the words of US Labour Secretary Robert Reich, quoted in his first parliamentary speech last week, to elaborate on the challenges facing SA as he sees it.

"We are living through a transformation that will rearrange the politics and economics of the coming century. There will be no national products or technologies, no national economies."

"All that will remain rooted within national borders are the people who comprise a nation."

"Each nation's primary assets will be its citizens' skills and insights. Each nation's primary political task will be to cope with the centrifugal forces of the global economy which tear at the ties binding citizens together — bestowing ever greater wealth on the most skilled and insightful, while consigning the less skilled to a declining standard of living."

"As borders become ever more meaningless in economic terms, those citizens best positioned to thrive in the world market are tempted to slip the bonds of national allegiance, and by doing so disen-

gage themselves from their less favoured fellows."

Given his commitment to widespread consultation in the labour sphere — he has already had intensive meetings with, among others, Business SA, Sefsa, Cosatu, Nactu, the Federation of SA Labour Unions and individual unions in the metal, clothing and textile and chemical sectors — Mboweni chooses his words carefully when asked for detail on the way forward as he sees it.

For example, asked for his views on minimum wage regulation he talks vaguely about a living wage negotiated between business and labour. For the rest, the ANC still has to formulate policy, he explains. On strikes he says the obvious — that it is preferable if disputes can be resolved without them, but they are part and parcel of our economic system.

But Reich's views are sobering, and together with certain comments give a few clues to the direction he sees labour market policies taking. Trade policy, Mboweni points out, has a profound impact on labour and business. So he is aiming for a close and co-operative relationship with his colleague Trevor Manuel in Trade and Industry. But he obviously accepts the inevitability of the dismantling of trade barriers.

**H**e talks enthusiastically of the need for strong tripartite institutions, backed by strong trade unions, to make the "social partnership" work. But he also acknowledges the economic stresses and strains being felt in developed countries with powerful such institutions — Germany, Australia and the Scandinavian region.

"These forces are causing changes in business, labour and government policy. The previous way may not be appropriate," he says.

"We must approach the social partnership in the context of the global restructuring."

This is perhaps rather an oblique way of putting it, but it does seem to indicate an awareness of the tough but unavoidable choices facing labour and business in the 1990s.

Public holidays high on agenda

# Big changes to labour laws in the pipeline

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(165)

LABOUR Minister Tito Mboweni has proposed a five-year plan that will radically change SA labour relations

Substantial changes were needed to most aspects of labour relations to ensure that the Labour Department played a role in the ANC's reconstruction and development programme, Mboweni told a Pretoria news conference yesterday

He proposed a five-year plan of action, including thorough changes to labour legislation. A high priority was ensuring that an amended Labour Relations Act was presented to Parliament before the year-end

Mboweni said new labour legislation would be more accessible and would ensure that all workers, including those in the former independent states, were granted basic collective bargaining rights

Although most of the proposed amendments had been agreed within the National Manpower Commission, there was still "a number of issues to be discussed", he said

He did not foresee a proliferation of labour legislation, such as laws controlling affirmative action and an incomes policy, as this would not fit in with his planned move away from the legal approach to labour relations.

Mboweni spoke of harmonising labour legislation to take the proposed amendments into account, but said it probably would not be extended to cover public sector workers at this stage

"There will be substantial changes in the form and content of labour affairs over the next five years and the Labour Ministry will play a proactive role in this transformation"

ERICA JANKOWITZ

Rationalising the public holidays calendar would receive urgent attention and a task group had been established with this in mind. However, Mboweni warned that this was a complicated process as so many issues had to be taken into account before cancelling existing holidays or introducing new ones

"But May Day will remain on May 1," Mboweni assured journalists.

He said the post of Manpower director-general, vacant since the resignation of Joel Fourie, would be advertised. Labour lawyer Halton Cheadle would join the department as adviser, with Leshe Maasdorp filling the position of economic adviser

Mboweni welcomed SA's readmission to the International Labour Organisation, saying SA could benefit from the ILO's expertise in developing labour market policy and strengthening tripartite institutions of government, labour and business

He said SA could use the technical assistance offered by the ILO in its realignment of labour relations policy and practice, and would fully participate in conference debates for the first time since its resignation 30 years ago

"We have much to learn about labour market institutions and a good start is ILO conventions and recommendations"

He said an SA delegation, including representatives from government, trade unions and the business community, would attend an ILO conference next week.

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Labour's Mboweni plans to build social partnerships

LABOUR *Fm 10/6/94*  
**Dangerous triangle**

Before his departure for Geneva, where SA this week rejoins the International Labour Organisation (ILO) after 30 years, Labour Minister Tito Mboweni presented a brief overview of the direction in which he hopes to steer labour affairs. (165)

As a macro-economist he intends tackling such issues as skills and productivity, their link to growth, whether we need an incomes policy and how to deal with unemployment and job creation. He wants to move away from the legalistic approach and constant litigation associated with labour affairs in the past

Hence his emphatic intention "to move more into the area of social partnerships" by strengthening tripartite institutions involving business, labour and the State. Developing a social partnership is important, he explains, not only because the National Economic Forum is already in place, but because it is necessary to the process of thorough economic reconstruction.

The issue of social partnership has become sexy over the past year or two, especially as it became apparent that the unions would have an impact in the new government. However, some labour observers are sceptical about the idea being transplanted to this country. In the European context, for example, argues Gavin Brown of the journal *Contemporary Labour Law*, countries which do have such partnerships are generally capitalist or social democratic politically, with cohesive institutions and the skills and economic expertise to make the system work.

In SA by contrast, the union movement is relatively small, though powerful (partly as a result of the political battle waged against "the system" during the Eighties), and it operates alongside massive unemployment — the main drawback.

With the trade union role now reduced to a more economic one, it is questionable whether the relatively privileged unions can be

*Fm 10/6/94*  
 part of any social contract on behalf of the unemployed and nonunionised earners, who far outnumber the million or so unionised workers. The absence of small business and the unemployed from the forum has already raised controversy. (165)

It is further pointed out that any serious job-creation initiative launched by government is bound to be at the expense of the unions, whose position has become rather protected via industrial councils, centralised bargaining and other devices.

There is of course a natural tension that exists — and should exist — between business, labour and the State. That tension should be allowed to find its natural level

*Fm 10/6/94*  
 Mboweni, who expects that the ILO may help us strengthen some of our tripartite institutions, says social partnerships are important "to ensure that the challenges are dealt with from the point of view of a collaborative effort"

He rejects suggestions that the union movement, in particular, has no role to play in shaping economic policy. "We argue trade unions and business are as important in the restructuring process as any government action. And neither is the government irrelevant to this process."

Labour affairs will in future be "national question-sensitive," through a process of affirmative action, which would be important to situate this Ministry within the context of overall reconstruction and development. He adds that a lot of discussion has to take place about the actual form and content that affirmative action will take. (165)

The Labour Department will also "have to be restructured not only to respond to the Reconstruction & Development Programme, but to take a lead as well in the process of implementing it, and the labour market approach which we want to develop."

The Ministry will play an active role, "in the sense that this is not going to be a place where people bring petitions, as if to somebody who is not aware about what is happening in society. We are part and parcel of the social forces of transformation, and will try

## CURRENT AFFAIRS

*Fm 10/6/94*  
 to ensure that the issues we put on the agenda of the RDP are carried forward, in co-operation with the social partners, of course." (165)

Before the year-end Mboweni hopes to table in parliament the amendments to the Labour Relations Act agreed on at the National Manpower Commission (now the National Labour Commission). Harmonisation of labour law throughout the country, to include the former TBVC and self-governing territories, is another priority.

Asked whether a minimum wage will be introduced, Mboweni says that from the ANC's viewpoint, this debate has not progressed beyond "knee-jerk" reaction. The US, he claims, has a minimum wage of US\$4,25/hour, and the guiding principle here should be a "living wage" negotiated between unions and employers. He predicts that a major debate on the issue will soon surface.



KWAZULU/NATAL

*10/6/94*  
**Smoke-filled rooms**

While government by consensus is the order of the day in other parts of SA, Inkatha and the ANC have since the election engaged in a series of skirmishes in KwaZulu/Natal which suggest a rough legislative passage for the province.

First came the issue of legal action against Inkatha by the ANC, alleging electoral fraud when the country went to the polls on April 27. That was quickly followed by the provincial executive committee (exco) wrangle and now attention is focused on whether to locate the provincial capital in Ulundi or Maritzburg.

Except for siting the capital, all the arguments have, after some verbal sparring, been resolved. The ANC last week dropped its electoral gripe against Inkatha.

The exco issue has been settled amicably — after a stand-off which, according to Institute for Multiparty Democracy chairman Oscar Dhlomo, could have paralysed the legislature and led to the appointment of an administrator.

Attention has since switched to the provincial capital issue. Divisions are drawn sharply and passionately along party political lines and it prompts the question of whether the adversaries are setting a pattern of confrontation.

Will every move made by Premier Frank Mdlalose's ruling faction be opposed by the ANC?

Dhlomo doubts it. He agrees that both parties are in the process of asserting themselves and testing opposition. However, he says, it is in their interest to work together. "The result is that the province, like other parts of SA, will operate effectively on consensus. In some cases, agreement will be easy and in others it won't."

The wrangle over exco selection was just such a scenario, he says. Inkatha fired the

*10/6/94*  
first salvo, asserting its sole right as the ruling party to appoint an exco of provincial unity

*(165)*  
The ANC objected on the grounds that there was no negotiation over posts (as there had been for Mandela's Cabinet) and because of dissatisfaction over posts allocated to it. Inkatha's decision to change the exco after consultation with the ANC suggests the round belongs to the ANC.

**Resurgence**

It is harder to determine who emerged victorious on the allocation of portfolios. Dhlomo says it is impossible to say without knowing the internal dynamics of the negotiations.

"But what was interesting was the emergence of a joint lobby from both parties to seek an amendment to the interim constitution allowing for the appointment of Deputy Provincial Ministers. If agreed to, this could give the ANC the representation in the police and education Ministries which it so desperately wants. It also shows that when the chips are down, the parties will work together."

Dhlomo believes the issue of where the capital should be located is symbolic. "On Inkatha's side, the feeling is that, as the ruling party, it has the right to locate the capital where it likes. And Ulundi was the site where the Zulus were defeated by the British in 1879; so the location of the capital there would symbolise the resurgence of the Zulu nation."

"In contrast, the ANC sees Ulundi as a Bantustan edifice. Added to that are fears that ANC members will not be safe there. The death of party canvassers on the outskirts of the town on the eve of the election is still fresh in party minds."

The obvious practical choice is Maritzburg.

Dhlomo is optimistic because he notes that "most (of the politicians involved) agree that the emphasis should be on implementation of the Reconstruction & Development Programme (RDP) and so they have common objectives — though the parties may differ on emphasis and issues such as how to implement it without incurring unmanageable debt or a crippling tax burden."

"There could also be differences over the role of provinces versus central government in its implementation. Buthelezi made it clear in his maiden National Assembly speech that he does not want the provinces to be subservient to central government on the RDP issue."

# Mboweni tackles labour laws

ESTABLISHING a single integrated labour dispensation for SA and its former homelands was a priority and would be developed within the framework of the reconstruction and development programme (RDP), Labour Minister Tito Mboweni said yesterday 17/6/94

Speaking during a break in meetings with administrators of the former TBVC states, Mboweni said there were 11 separate labour dispensations which needed to be reviewed urgently (165)

His department's aim was to create and implement a new labour dispensation "that is inclusive, transparent and in which disruption of services is minimalised"

Discussions were also being held with organised labour and business

ERICA JANKOWITZ

One plan being floated was establishing a 10-member interim labour forum by June 24 to oversee the process. This would be supplemented by working groups investigating unemployment insurance, workmen's compensation, administration and other labour functions. The forum would liaise with the minister and other parties, including State Expenditure and the National Manpower Commission

Mboweni explained that his initial plan to extend existing labour legislation to cover previously independent states had been dropped because of the complexity of existing labour legislation, which was

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## Mboweni

linked to such issues as workmen's compensation and unemployment insurance

Also, imposing legislation on these territories might lead to resentment (165)

The integration of labour departments in all areas had to be considered when establishing regional offices accountable

to the central Labour Department.

Mboweni said he would probably table legislative changes during the August sitting of Parliament. He believed the face of labour legislation would change dramatically over the next five years "and remove any doubts about the nature and content of labour administration in SA"

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## NEWS Makwaeba family lose both daughters ●

# Labour depts to be integrated

Sowetan 17/1/94

By Josias Charle

PLANS to integrate and restructure South Africa's labour departments are at an advanced stage.

Announcing this at a Press briefing in Pretoria yesterday, Minister of Labour Mr Tito Mboweni said consultations were being held on a consultative basis with concerned parties.

These included unions and employer organisations.

The minister yesterday met officials from the former TBVC states who were responsible for the administration of labour

"Basically we want to find out how we can restructure the departments into a single one and how we can integrate labour market policies and merge them with the reconstruction and development programme," Mboweni said

He added that the mechanisms to harmonise labour law in the country had to be in place as soon as possible "so that all citizens, including those from the former independent states, can be under one law"

The process of consultation was expected to be completed by August 24. This would enable him to table legislation in Parliament during the August-December sitting.

Mboweni also said he wanted to be in a position to have basic guidelines to plan for the next five years. This would have to be carefully done so that when new labour dispensation is introduced, "it should be in a sophisticated and organised manner"

He said similar bilateral negotiations would continue to be held so that when the new law comes into effect it should enjoy the support of all people in South Africa

## Mboweni tackles staff duplication

THE issue of duplicated Labour Department personnel from the former TBVC states needs to be urgently addressed, as does racial and gender imbalances in staff complements, according to Labour Minister Tito Mboweni.

Speaking at an Institute of Personnel Management seminar in the Boland last week, Mboweni said his department currently employed five directors-general, four deputy directors-general and "duplicate personnel and labour structures in the old bantustans".

In making the department's staff more representative of SA society, "corrective action" would be taken to rectify past imbalances. "We must accept that if we do not do this, the democracy we are building will — from the point of view of justice and effectiveness — be fragile."

Mboweni stressed that white male staff members need not be concerned about their future employment in the department, nor would the department adopt a policy of employing only blacks and women.

The department would rather delibe-

ERICA JANKOWITZ

ately search for suitably qualified black and female personnel.

The second prong of the department's corrective action programme was to train historically disadvantaged workers, to avoid tokenism.

"Unless we change our past attitudes and see affirmative action not as a lowering of standards — which we oppose — nor as an attempt to replace skilled white personnel, but as positive and desirable, we will not be comfortable with the changes that have to be implemented in this regard."

Mboweni said changes in labour legislation could be expected in the August parliamentary session.

He added that issues such as the prohibition of funding of political parties by trade unions would be tackled.

A system of linking formal education and workplace training was also under discussion in the tripartite national training initiative, Mboweni said.

"This would mean changes in certification to give credit to on-the-job training."

## New welfare system planned

PRETORIA — A new united social welfare system that functioned as an integrated whole on national, provincial and local levels would have to be devised for SA, PWV social welfare minister Sakhile Blanche said last week.

Professional welfare workers should also be given greater status and financial recognition, and be brought back into the public service, Blanche told a meeting of social services forums.

The aim of the meeting was to establish a forum for social services in Pretoria. Although wider consultation still had to take place, Blanche said his immediate priorities for social welfare were:

- The prevention and control of drug abuse, family breakdown, juvenile delinquency and crime, homelessness and abandonment, domestic and other forms of violence, poverty, unemployment and trauma treatment.
- The achievement of a balance between developmental and prevention approaches as against treatment and care services.
- The establishment of a social safety net for people and families with no income, including programmes to equip people to

STEPHANE BOTHTMA

become independent.

- The realisation of a people-orientated network of services in communities.
- To convince the community and decision-makers of the contribution social welfare could make, and to obtain the necessary funds.
- To create a community conducive to the optimal functioning of people, and
- To succeed in rationalising and unifying the fragmented welfare system to the benefit of all.

Blanche said it was clear new and innovative ideas were required on how to structure a new comprehensive welfare system. However, one overriding principle should guide policy and practice — that communities would develop and people be empowered only if the planning of services was done with people and not for people. Important principles which coincided with his vision for welfare policy, social services and community development were that every South African should have the right to optimal social functioning, and the principle of equity.



# focus on

Sowetan

14/7/94

TITO MBOWENI, one of the youngest Cabinet Ministers in the Government of National Unity, is an unconventional man. He goes to Parliament wearing a leather jacket.

Born and bred in the rural areas of the Northern Transvaal, he has vivid memories of the wanton exploitation and abuse of farm workers by white farmers.

And as the new Minister of Labour, whose responsibility includes the introduction and monitoring of new policies to upgrade the status of workers, he has set his sights on farmworkers.

And the farmers, many of whom are now evicting workers in the middle of winter, had better watch out, for Mboweni is about to pay unannounced visits to farms to inspect conditions and speak to the workers.

"This is because," he says, "laws do not liberate people. We are dealing here with people who have been so exploited and denied education that they may not even know that new laws exist to protect them against exploitation."

"This means that the responsibility of my office is to ensure that the new laws are effective by increasing inspections, which were neglected by the previous regime because their supporters were the beneficiaries of the exploitation."

"We as the ANC in particular, and the Government of National Unity, were elected by the workers and we should help with education of workers and enforce laws to their benefit."

A special task force is needed, he says, to look into the problem of farmworkers. The Department of Agriculture has been invited to become involved in the issue.

He says special agricultural courts will be set up in accessible areas, and one satellite court will be set up in Stanger to deal with evictions.

## No new jobs

But farmworkers are not his only concern. Unemployment is another, and with good reason.

The Development Bank of Southern Africa showed that the Job Creation Programme of the National Economic Forum created no new jobs between October last year and January this year. Between February and March, only 3 415 jobs were created.

On the other hand, many people are losing their jobs, as figures he released in a reply in Parliament show. For the quarter year ended September 1993, people employed in the formal sector (excluding farm and domestic workers) were 4 934 174, while the corresponding figure for the end of the June quarter was 4 955 505. The figure for March is 5 010 228.

This shows a steady decline of employed people, which loads the Unemployment Insurance Fund. The state puts about R7 million a year into the Fund, but demands from the millions of unemployed is putting it under strain, with present funds able to guarantee payments only until early 1995.

Mboweni says the absence of social security

Born and bred in the Northern Transvaal — an area known for wanton exploitation of workers — Labour Minister Tito Mboweni is understandably determined to right past wrongs. But, as Political Editor **Mathatha Tsedu** discovered, it won't be smooth sailing:



Labour Minister Mr Tito Mboweni.

nets and their creation is another prime issue facing his department.

He is also looking into the long delays affecting the payouts, and intends putting the entire system on a computer programme to speed up payments. This, despite the fact that hastening payouts might mean emptying the coffers even sooner.

The long delays and backlogs experienced by trade unions and workers in the handling of cases by the Industrial Court are another worry for the minister, who has in principle decided that another court should be established in Johannesburg.

"It is just unimaginable that a centre of industrial activity, such as Johannesburg, should not have a court when it produces the majority of cases. But we are also looking, as part of the overall plan, to simplify the complicated industrial procedure laws to speed things up," says Mboweni.

This economist, who spent years in exile and was deputy head of the ANC's economics department, is also concerned about developing the labour laws of the country to deal with the

(165)  
new global economic reality.

Mboweni says huge companies overseas are relocating to new areas, creating global villages where workers suddenly find they are working for the same company employing more people in various countries.

"Companies are following the markets and you find that Japan is moving into the US, while textile industrialists are moving to the East. The issue of company's restructuring for greater and stronger investments means that workers must also think big. Skills acquisition is going to be an all-important issue for, in the next few years, the highly skilled will survive, the skilled will benefit, while the unskilled will be a major burden on society," says Mboweni.

He says the interaction between his department and trade unions has been strengthened by visits and delegations to and by trade unions.

A major conference is being planned to look into the relationship between business, trade unions and government. A strengthening of this alliance is important if labour is to help the economy grow. This alliance should concentrate more on economic issues than on legal ones, he says. This is in line with a five-year plan based on the Reconstruction and Development Programme.

## Strengthened by visits

But it won't be smooth sailing all the way, as he has to fuse five labour departments into one. A man who likes to laugh hard, Mboweni joked about calls from some of the former TBVC states that invited him to their offices to sign papers and take over ministerial cars.

The fact that his entire support staff, save for his secretary and media spokesperson, are white and "old order" people, does not make the presentation and implementation of the grand plans easy.

Above all, Mboweni, an economist at heart, finds the absence of centralised statistics on labour quite appalling. For example, there are no statistics on migrant labour, trends and analyses of labour issues are also absent as a result of this lack of resources.

The department intends, as a result, to establish an Institute for the Study of Work, which will help this process, he says.

Mboweni may be a new man in labour, he may even be one of the youngest ministers, but he is at peace with the portfolio, and if success hinges on good intentions, he will make a good job of it.

# Call for labour White Paper

BIDAY 18/7/94

ERICA JANKOWITZ

LABOUR Minister Tito Mboweni called yesterday for a White Paper as a basis for devising an active labour market policy, following the first in a series of discussions with government's social partners

Mboweni said he would appoint a tripartite (labour, business and government) core team to oversee the implementation of a new policy aimed at regulating labour and employment relations. Names would be released later. (165)

Cosatu representatives met Labour officials at the weekend and looked at issues affecting labour and the formulation of a new labour market policy

The most important development was the agreement that this policy would be national government's preserve, and not fragmented at provincial government

level, Cosatu general secretary Sam Shilowa said after the discussions.

The delegates reached common ground on several priorities and time frames on issues such as the need for a broad tripartite agreement on economic and labour market issues. A process should be implemented as soon as possible to ensure progress before the year-end.

Legislation under discussion included

- An equal opportunities Bill regulating public and private employment practices;
- Harmonisation of labour legislation to incorporate the former homelands,
- The drafting of a new Labour Relations Act to bring labour law in line with the

To Page 2

## Labour

BIDAY 18/7/94

From Page 1

interim constitution, provide a collective bargaining framework and extend the operation of laws to all sectors. (165)

- An urgent investigation into policies and laws which inhibit the right to strike; and
- Drafting labour law amendments to give effect to international standards, such as training provisions and extending wage determination jurisdiction

Mboweni said the Labour Department would assist trade unions in areas such as

financial assistance for education and training facilities and the possible establishment of a research institution Cosatu would submit detailed proposals shortly

On changes to the Labour Department, the parties agreed to establish a single labour appeal court by year-end The department would also investigate expanding the social security net and improving the efficiency of service delivery This would include establishing an effective mediation and conciliation service



# Strikes not serious – Minister

Star

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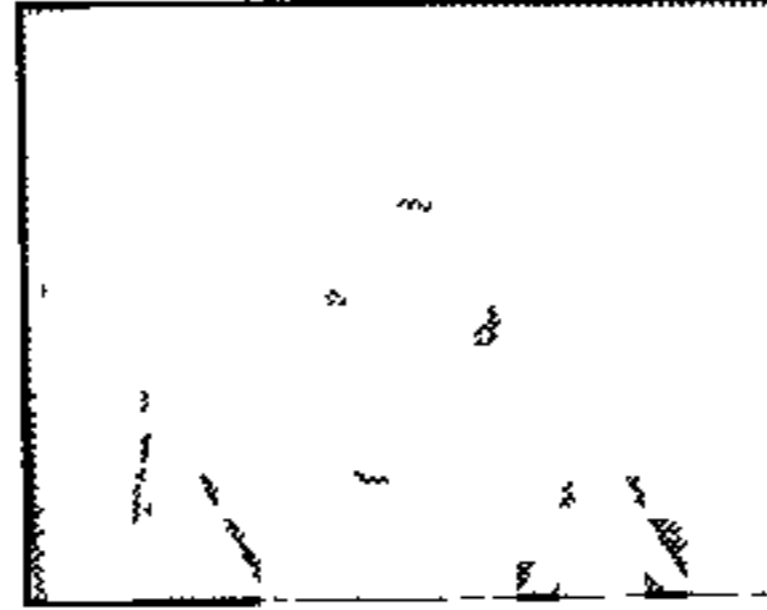
■ BY JOVIAL RANTAO  
LABOUR CORRESPONDENT

Labour Minister Tito Mboweni and Business South Africa (BSA), an umbrella body of big business, have dismissed the hysteria caused by the current spate of wage strikes and disputes.

"It's nothing out of the ordinary there has been a lot of over-exaggeration on the strikes. The only current major strike is at Pick 'n Pay..." Mboweni said.

Speaking after a consultative meeting with BSA on Friday, where he outlined his strategic five-year plan, Mboweni said the disputes experienced in the metal and mining industry had to go through the collective bargaining process before workers went on strike.

The Minister indicated that the National Manpower Commission (NMC) and the National Economic Forum would merge to form the Social and Economic Council of



Tito Mboweni

SA, the establishment of which would be subject to Cabinet approval.

Both the Minister and BSA chairman Dave Brink said the wave of strikes and disputes were consistent with wage negotiations currently under way. They said investor confidence had not been harmed by the industrial unrest.

Brink said business accepted that labour should have the right to negotiate, and to go on strike if it was necessary. But there was a need to lower temperatures and avoid violence.

The Minister's five-year plan includes

■ The need to facilitate an accord between labour and capital to give effect to the Reconstruction and Development Programme (RDP), and to reach broad agreement on key tasks identified in the ministry's proposed plan.

■ The new Department of Labour needs to be transformed and regional departments restructured to give effect to transparency, representivity and emphasis on tripartism.

■ Issues that need urgent attention include the Unemployment Insurance Fund, mediation and conciliation services, and the creation of a single labour appeal court.

■ Integration of the various labour statutes under one labour law throughout SA. The NMC has already begun drafting a Bill in this regard.

■ The drafting of a new Labour Relations Act in line with the relevant requirements of the constitution, the RDP and the fact-finding and conciliation commission.

Minister Mboweni

Mboweni has big plans for his department

A new labour

# Labour era dawns

Star 6/8/94

THE Labour Ministry is determined to provide the best legislative framework possible to regulate and minimise industrial disputes. Plans are in the pipeline to have a revised Labour Relations Act on the statute book by this time next year, writes PATRICK LAURENCE.

**T**HERE will always be tension between capital and labour because they pursue fundamentally contradictory interests, Labour Minister Tito Mboweni remarks philosophically

Employers strive to increase their profits while employees seek to raise their wages. He quotes an aphorism coined by one of the legendary figures of South African trade unionism, Emma Mashinini. "Strikes will follow me for the rest of life".

Mboweni hastens to add that it is important to ensure that the adversarial relationship between owners, or managers acting on their behalf, and workers is not aggravated by inadequate legislation. His ministry is determined to provide the best legislative framework possible to regulate and minimise industrial disputes.

Plans are in the pipeline to have a revised Labour Relations Act on the statute book by next year's round of wage negotiations

Seated in his 12th-floor office in Cape Town's old HF Verwoerd Building — now simply known as 120 Plem Street — Mboweni offers a "diagnosis of the present round of strikes, which has created images of incipient anarchy.

The period between March and August is wage negotiation time. Old agreements come up for reassessment and renewal.

While the Labour Relations Act provides for annual wage negotiations, the current succession of strikes must be seen in context

The number of "labour hours" lost — Mboweni eschews the sexist phrase "manhours" — was high in 1990 and "very high" in 1991. In 1992 and 1993, however, the graph dipped as workers concentrated on mass marches and demonstrations. The trend continued in 1994 until Nelson Mandela's inauguration as president on May 10

"In June and July, people began to concentrate on wage negotiations." Some potential disputes were defused by wage agreements, notably in the clothing industry

squabble — he appointed a mediator under the relevant section of the Labour Relations Act — helped end it

**O**N THE dispute in the motor industry he expresses confidence that the maturity of both sides — the National Union of Metalworkers of SA and the Automobile Manufacturing Employers' Organisation — will result in a settlement

Mboweni returns to his initial point: the contradiction between capital and labour. The Government cannot hope to dissolve the contradiction. To expect it to do so is to misread the situation.

There is, however, another factor behind the rash of strikes

Having helped end political apartheid, workers want to end racism in the workplace

The conversation turns to another fundamental point of departure in the thinking of the Labour Ministry: the need to revise and update the Labour Relations Act

"Many difficulties are experienced with the present Labour Relations Act," Mboweni says. He enumerates some:

- Procedures for the settlement of disputes are too complex, a factor which might contribute to the loss of productivity through industrial disputes

- Mechanisms for the registration of unions are similarly too complex (meaning, perhaps, that workers might operate outside the legislation framework)

- Restrictions placed on political affiliation by unions are too complex and might even be unnecessary

The law "does not say anything about workplace democratisation", which is of central importance to workers because attainment of democracy in the political field has made them impatient with obsolete practices in factories and shops

There is another major deficiency: the Labour Relations Act does not cover all workers. Excluded from its ambit are many workers in the public sector, including teachers, nurses and public servants

The question of whether these workers should be brought under the aegis of a revised industrial relations law has to be addressed urgently.

On the danger of crippling strikes in the public sector...



an exhibit of Bushman art

Young Art Gallery tomorrow, archaeologist Thomas Dowson

PHOTOGRAPH MYKEL NICOLAOU

## ...es its place

among the politically correct, means "tramp", says Dowson. To escape the "hornet's nest" of this terminology, every time he uses the word Bushman in writing, he stipulates that there is neither racial nor gender implication.

The exhibition is impressive in its variety. With pride Dowson shows off the eland painted and engraved into rocks, explains linocuts and brightly coloured contemporary paintings. The care he has taken to release Bushman art from the minor role it

which serves to maintain ties with other groups of people outside of family and marriage relationships.

A quote from a Bushman text explains the idea well. *The worst thing is not giving gifts. If people do not like each other but one gives a gift and the other must accept, this brings a peace between them. We give to one another always. We give what we have. This is the way we live together.*



Mboweni hastens to add that it is important to ensure that the adversarial relationship between owners, or managers acting on their behalf, and workers is not aggravated by inadequate legislation. His ministry is determined to provide the best legislative framework possible to regulate and minimise industrial disputes.

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"In June and July, people began to concentrate on wage negotiations." Some potential disputes were defused by wage agreements, notably in the clothing industry.

**H**OWEVER, these agreements have not been noticed or have been forgotten because of the prominence given first to the dispute between the South African Commercial, Catering and Allied Workers Union and Pick 'n Pay, and, more recently, in the motor industry.

Mboweni takes a positive view of these disputes. He says his intervention in the SACCAWU-Pick 'n Pay wage



**LABOUR MINISTER: Tito Mboweni takes a positive view.**

ment (165)

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There is, however, another factor behind the rash of strikes.

Having helped end political apartheid, workers want to end racism in the workplace.

The conversation turns to another fundamental point of departure in the thinking of the Labour Ministry: the need to revise and update the Labour Relations Act.

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The law "does not say anything about workplace democratisation", which is of central importance to workers because attainment of democracy in the political field has made them impatient with obsolete practices in factories and shops.

There is another major deficiency: the Labour Relations Act does not cover all workers. Excluded from its ambit are many workers in the public sector, including teachers, nurses and public servants.

The question of whether these workers should be brought under the aegis of a revised industrial relations law has to be addressed urgently.

On the danger of crippling strikes in the public sector — where two of the most militant of the newer unions, the South African Teachers' Democratic Union and the National Education, Health and Allied Workers' Union, are preparing for battle on the wage front — Mboweni maintains a tactful silence.

**I**T IS a problem which, for now, falls in the portfolio of Public Service Minister Zola Skweyiya.

"It is better not to say anything," Mboweni says.

Another problem demands urgent attention: the new order has inherited at least five different labour laws, one each from the old South Africa and the former states of Transkei, Bophuthatswana, Venda and Ciskei, which have left behind five departments of labour and five directors-general of labour.

These departments must be integrated into a single department, a complicated and exacting process which requires the removal of "dead wood" and elimination of replication.

Mboweni's vision of the Labour Ministry will leave much of the day-to-day administration to a new, unified labour department and will concentrate on research to enable it to make constructive interventions, espouse a labour policy which is enlightened and in tune with world trends, and help the public understand labour issues.

# Tito appoints labour team

LABOUR Minister Tito Mboweni yesterday appointed a legal team headed by his adviser lawyer Halton Cheadle to draft a new Labour Relations Bill

The team was appointed after Mboweni consulted the National Manpower Commission and the Cabinet.

Its submissions will be submitted to the Cabinet and, if approved, new labour legislation could be tabled in Parliament by next year's round of wage negotiations

The team is Cheadle, lawyer Ray Zondo, who served on two Goldstone commission committees, Amanda Armstrong, a partner in law firm Cheadle, Thompson & Hayson, Rand Afrikaans University associate professor of labour law Willem le Roux; and Anglo American legal adviser Andre van Niekerk

At least three international legal ex-

B/D Day 10/8/94  
JACQUIE GOLDING

perts would be consulted regularly. However, Industrial Court president Adolph Landman was not included in the team  
Ministry spokesman Shareen Singh said "The process is meant to expedite the formulation of a new Labour Relations Act. The Minister would like to see a new Act in place when the next round of wage negotiations takes place next year"

The team's terms of reference included giving effect to government policy as reflected in the reconstruction and development programme, recognising trade unions' fundamental organisational rights, promoting and providing collective bargaining in the workplace and, at industry level, addressing the articulation of differ-

□ To Page 2

## Labour team

B/D Day 10/8/94

□ From Page 1

ent bargaining levels  
The Bill would replace the Labour Relations Act and the Public Service, Education and Agricultural Labour Acts (165)

The draft was also intended to make provision for a system of labour courts to determine disputes of labour rights in an accessible, expeditious and inexpensive way, the Ministry said. The Bill would also provide simple procedures for resolution of disputes through statutory conciliation, mediation, arbitration and licensing of alternative dispute resolution services.

The constitutional right to strike, subject to reasonable and justifiable limitations, had to be entrenched, it said, adding that lock-outs also had to be regulated

Meanwhile, the existing 11 Manpower or Labour Departments, including those of the former homelands, would be rationalised into a single labour dispensation

Joggie Kastner was appointed acting director-general to ensure a smooth process of rationalisation. He would remain in the post until it was filled.



# Legal team to draft labour Bill

Star 10/8/94

165

Labour Minister Tito Mboweni appointed a legal team to draft a new Labour Relations Bill after consultations with the National Manpower Commission (NMC) and the Cabinet yesterday

The team is to be headed by Professor Halton Cheadle and will also include attorneys Ray Zondo, Amanda Armstrong, Professor Willem le Roux, Andre van Niekerk and a State legal adviser

The team will work in consultation with at least three international legal experts on a regular basis

Expectations from the draft

are to.

■ Give effect to Government policy as reflected in the RDP

■ Give effect to public statements and decisions of the president and the Minister, which, among others, commit the Government to the findings of the fact-finding Conciliation Commission of the International Labour Organisation

The drafting team will submit the draft to Mboweni, who will in turn submit copies to the Minister of Public Administration and the Minister of Education. The Ministers, in conjunction with the drafting team, will finalise

the draft Bill

It will then be submitted to the NMC — including its agricultural subcommittee — the Public Service Bargaining Council and the Education Labour Relations Council for their consideration and comment

Parallel to this process, the Minister will publish the draft Bill in the Government Gazette and invite members of the public to submit their comments

The Minister will then submit the Bill to the Cabinet for its approval and, finally, the Minister will table the Bill in Parliament — Staff Reporter.

## Labour Act legal team constrained by deadline

ERICA JANKOWITZ

THE Labour Ministry-appointed legal team charged with rewriting the Labour Relations Act would have major time constraints on meeting its deadline, leaving much of the detail to be drafted by existing bodies, Wits University's Centre for Applied Legal Studies researcher Rob Lagrange said yesterday.

He said the National Manpower Commission's successor — the National Economic, Development and Labour Council — would need to develop codes on specific issues such as picketing and bargaining levels. These would be included in the redrafted Act once agreement on content was reached.

Speculating on possible changes to the Act, Lagrange said these were likely to reflect concerns highlighted by the International Labour Organisation's fact-finding and conciliation commission. Some areas of change were:

- Simplifying existing dispute procedures to avoid many of the technical objections which currently hold up this process; *21/8/94*
- Placing more emphasis on effective conciliation mechanisms as a first attempt to resolve disputes by encouraging parties to seek mediation before going to court or resorting to strike action;
- Greater emphasis being placed on establishing collective bargaining structures, if Cosatu is able to exert sufficient influence;
- Attempts being made to delineate relationships between the different levels of bargaining to eliminate conflicts; and
- The possibility of allowing unions greater freedom of access to company premises and the simplification of stop-order procedures *(165)*

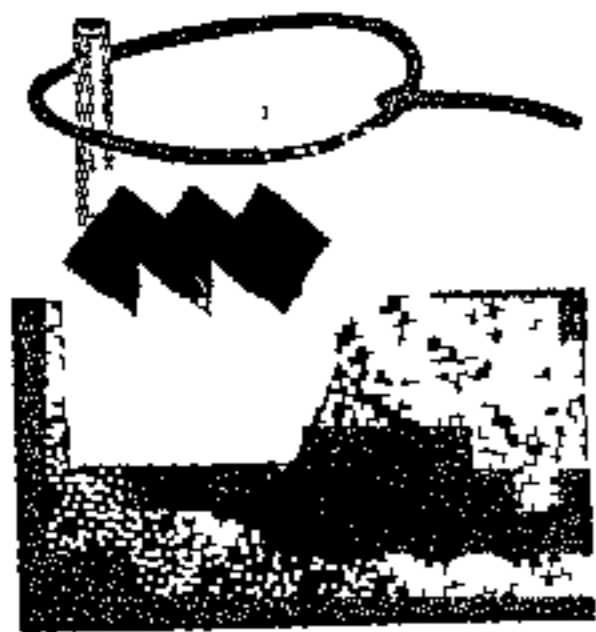


LABOUR

# No, Minister

Fun 16/9/94

Major issues of principle have been avoided, to nobody's advantage



**Reining in** the unions was never going to be easy for an ANC-led government. Labour Minister Tito Mboweni, in contrast with some of his Cabinet colleagues, seemed reluctant at the recent Cosatu

congress to grasp the nettle. Indeed, some of his unrealistic suggestions went further than any unionist could reasonably have wanted — and he may have to deal later with unnecessarily raised expectations.

Mboweni let slip recently that he has had to remind some of his Cabinet colleagues about "where we come from." For example, he continued, "some Ministers were very keen that at Mooi River (during the recent truckers' blockade) some strong action was taken." In the event Mboweni's coaxing intervention eventually defused the truckers' blockade and also helped to settle the Pick 'n Pay strike — but he does recognise that the Minister cannot be putting out fires all the time.

As an economist, Mboweni once said, he did not see himself being Minister of Labour — but "I couldn't say no to Madiba when he appointed me." This unwillingness to answer in the negative now seems to extend to the unions themselves.

Mboweni said that he wants to focus on "how labour can play an important role in the re-integration of the SA economy internationally and become centrally involved in issues of competitiveness and globalisation." Broad statements such as this suggest that he is in touch with the economic realities facing the country. But he left it to colleagues Trevor Manuel (Minister of Trade & Industry), Alec Erwin (Deputy Finance Minister), Jay Naidoo (Minister responsible for the RDP) and President Nelson Mandela himself to dole out the nasty medicine to delegates at Cosatu's fifth national congress last week. With conviction, these Ministers and Mandela spoke of the need for tightening belts, fiscal discipline, improving the supply side of the economy, greater productivity and proactive steps with regard to tariff reduction and industrial restructuring

for longer term job security," as Erwin put it to the workers. Even regarding the mooted "sale of State assets" (privatisation by another name), these Ministers held forth on how this might benefit the RDP fund and reduce government debt — though they softened the message by saying the unions and others would first be "consulted."

It is disturbing, too, that Mboweni has not spelled out what he means by workers being "centrally involved" in policy setting — at company or national level. Certainly, Mandela's approving allusion at the congress to the economic success achieved by the 'Asian tiger' countries (which don't tolerate unions) would seem to cut across notions of worker co-determination. Mandela said: "Unless business expands and creates jobs it is going to be difficult to solve our economic problems."

It is doubtful, anyway, whether organised labour's contribution in any macroeconomic policy forum can be more than advisory. In the final analysis, it is up to government to make policy, even though it may consult other players in an effort to reach consensus.

This point is made by Anglo American deputy chairman Leslie Boyd, in the latest *SA Labour Bulletin*. Boyd compares the growth rates of Europe and South East Asia and points out that the latter is better by a factor of three. He supports the Japanese *kaizen* ("continuous improvements") system of worker participation over the European way. "I believe in democracy but I do not believe in democracy in the workplace. The managers have to manage

I like to consult, but at the end of the day the manager has to make a decision. The reason I like the *kaizen* system is that it gives you what this country is going to need, which is high growth and the creation of a lot of jobs."

Anglo's Michael Spicer, in the same interview, says there is a big question mark behind the German model of co-determination. He points out that it will have to be earned in the sense that relationships



Mboweni and Shilowa still friends

mature. "At the moment there are too many elements in dispute. If we ever get there, it will grow out of the improving relationship. You also have to be sure that it will not stifle the growth of new industries. Centralised bargaining, industrial councils — we are always told that these are going to be flexible. But the track record is of inflexibility and destruction of jobs."

Mboweni should have risked personal unpopularity by underscoring the hard messages from his colleagues at the Cosatu congress, indeed, there was room for him to do so. Despite Mandela's advice to the workers "not to pull their punches" when they questioned Manuel, Erwin and Naidoo, the question session did not produce the expected fireworks. Workers' responses to the answers they got were pretty lame, if a little sullen, overall, Cosatu seems to have emerged from its congress somewhat cowed and beset more by internal structural and leadership problems of its own.

Perhaps it was against this backdrop that Mboweni felt the need to give something positive to old allies — and came up with the suggestion of reducing the working week to 40 hours from 46 hours. Only between the lines did he call for a new approach from organised labour.

Hailing Cosatu's "many achievements" since its formation in 1985, Mboweni said he hopes to see trade union unity enhanced. This is important for restructuring, he



Naidoo and unionists tough message behind the charm



argued, saying that no tripartite institutions (between labour, business and government), which he strongly favours, can succeed without strong unions. They must also ensure "disciplined action, so that we don't have to spend nights in Mooi River"

To his credit, Mboweni emphasised the point that "we are operating in a changed political situation" — parliament is dominated by MPs from the former liberation movement and "failure to understand this means business as usual, which it is not". If this was Mboweni's diplomatic way of telling the unions they are no longer engaged in a liberation struggle and must moderate their approach accordingly, it must be welcomed — if it got across to delegates at all.

Previous parliaments had had a link with business and had ensured there were no progressive laws, Mboweni went on. This has now changed, he said, urging Cosatu to open an office in Cape Town from which to lobby parliament in the way that business does. Rather mysteriously, he seemed to suggest that he was under siege from hostile questions in parliament, which get relayed by the media and thereby mould public opinion, it was important that Cosatu provide counter-publicity of its own to assist him in his task of bringing in progressive laws. Within parliament, he added, there are "opponents of democratic transformation engaged on a major project to destroy the alliance between the ANC and Cosatu we must sharpen our skills or else the road ahead will be difficult".

Such language suggests that Mboweni sees himself as a spokesman for organised labour, as opposed to being a Minister responsible for a portfolio which must concern itself with a variety of interest groups and national concerns. In last week's parliamentary debate on the Labour vote, said Mboweni, he had found himself "in the strange position of having to defend the trade union movement, collective bargaining and the motor strike".

Despite the Nat onslaught in parliament against the ANC's alliance with Cosatu, Mboweni said, "there's nothing to apologise for and nothing to hide". The Cosatu congress cheered — and was pleased to hear the Minister's opinion that the unions had for too long been excluded from playing a part in social transformation.

As if to drive home his message of solidarity, Mboweni then outlined a programme of action designed to bring changes in the labour front. A five-year plan aimed at strengthening the alliance is being finalised and he intends putting in place a system of labour reforms through a new Labour Relations Act (LRA).

Mboweni says he basically wants the new Act to ensure the sound regulation of the workplace, entrench the right of repre-

sentative unions to organise in the workplace, ensure access to information, enforce allowance by employers for union meetings and protect shopfloor representation and shop steward training (165) (182)

He also wants "a more rational system of industrial relations" in which he sees improved mechanisms for conciliation and dispute resolution, as well as "room for private agreements". This sounds most encouraging and should be welcomed by



Manuel and Erwin *courageous performance*

employers if it results in more decentralised collective bargaining, including plant-level agreements on remuneration — as was advocated by employers in the recent motor industry strike. Employers, while not rejecting national and industry level negotiations for setting macro policy, targets or minimum standards, have rightly argued for plant level profit sharing agreements.

Mboweni should have been more forthright about this. Instead he only made light-hearted mention of the fact that he gets complaints "every day" from small businesses over the extension of industrial council agreements to non-parties. He stopped short of saying that he thought the small businesses had a point — and that their success is vital if the economy is to grow. Perhaps he implied as much (drawing knowing laughter from the delegates) when he asked whether the owners of spaza shops comply with the law regarding working hours and basic conditions.

Mboweni also envisages a simplified and more expeditious Industrial Court, including a small claims division. There will be consultation all round and the law is promised to be ready by next April, before the next round of wage bargaining.

The intended changes to the Basic Conditions of Employment Act went down very well with the Cosatu delegates, though it is not clear when Mboweni sees them coming into play. He wants to increase the minimum statutory leave period from 14 days to 21 days, put an end to dismissal on account of pregnancy, entitle workers to examine all employer records, and extend to part-time and temporary workers the benefits of annual and sick leave. All this, he wryly notes, should provide for major debate in parliament. Increasing minimum leave won't have a big impact on productivity, according to some observers and

(as with ending the dismissal of pregnant women) the proposal has some merit. But some of his other ideas seem naive — and what about productivity agreements?

The Minister's idea of a phased reduction of the working week to 40 hours from the present 46 hours and an eight-hour working day sounds like kite-flying. For a start, it would mean increasing companies' wage bill by 16%-18%, says consultant Gavin Brown. And it cuts across everything Mandela told the congress about the need for "tightening belts" and working harder in order to improve productivity and industry's international competitiveness. This unpopular message was courageously reiterated by Manuel and Erwin, a former Cosatu stalwart, who told the congress that while it was good to be home, his message would not be popular.

Mboweni would also like to amend Section 100 of the Insolvency Act, so that workers (and not only banks and other creditors) are also taken into consideration when companies go bust. This seems fair enough. And the Minister intends developing a national labour market policy and is to appoint a commission soon to make recommendations.

But among the more unpopular measures that are urgently required but which Mboweni did not mention (even though his team redrafting the LRA is expected to address it) is a code of conduct for strikers. Most employers, says Gavin Brown, will be quite willing to accept greater protection for strikers (against dismissal, that is), provided this is accompanied by strict rules on strike conduct and violent behaviour.

Clear regulations on what is acceptable and what is not are needed. In line with the constitution's protection of the individual's rights, such regulations should prevent intimidation of those who wish to cross picket lines. Workplace occupation and intimidation of "scabs" or the public must not be countenanced, and be punishable by law. The inevitable corollary of the right to strike is the right to work, notes Brown. There is also the right of the citizen to go about his business, unhindered by truck blockades.

And there are certain sectors — such as the security forces — where the right to strike should not only be restricted but withheld completely.

These are issues to which Mboweni does not appear to have applied his mind. Yet they go to the heart of what is required in labour law and practice if democracy in the society as a whole is to be upheld. Mboweni's recommendations on matters such as wages and maternity leave may well have merit, but they are essentially procedural and subject to negotiation. Sadly, in his understandable desire to be nice to the workers, he seems to have ducked major issues of principle confronting his portfolio. On the positive side, though, there has been little mention of minimum wages and the closed shop. ■



# Possible end to Industrial Court 'demotivates staff'

PROPOSED changes to labour law which included phasing out the Industrial Court in favour of a multitiered system for dealing with industrial disputes, did little for staff motivation, Industrial Court president Adolph Landman said yesterday.

"There is widespread speculation, with some foundation, that the Industrial Court will be replaced by two new institutions — compulsory conciliation for all disputes and a labour court on a par with the Supreme Court and staffed by Supreme Court judges," Landman said.

Landman, who was appointed to his post 18 months ago and who has been instrumental in cutting the waiting period for cases to be heard from an average 10 months to five, described staff morale as very low.

"We are on the horns of a dilemma we are probably going to be phased out, but what do we do in the meantime?" Landman asked.

The existing case load would keep

ERICA JANKOWITZ

the court going for about 10 months at the current rate of hearing about 500 cases a month.

The outflow of cases had exceeded the inflow of new cases since February, and the court was making significant inroads into its backlog.

In September, the four regional divisions of the court handled 824 cases, leaving 5 033 on hand.

The court handled about 500 cases a month and was working under intense pressure, Landman said.

Its aim was to reduce the waiting period in the PWV from five months to about three months. This target had been reached in Cape Town and the planned three new appointments to the Durban court would help reduce the load there.

Only about 0,5% to 1% of cases handled fell under the Agricultural, Public Service or Education Labour Acts as this side had yet to take off.

The Pretoria court had been ex-

panded by an additional 11 courts in the Paulshof Building, bringing to 21 the number of courts in the area. Plans were still afoot to establish courts in Johannesburg and Landman was looking for suitable premises.

The Industrial Court recently advertised for 12 new posts and had received 65 applications which were being sorted through.

Currently about 20% of presiding officers were black or female and there were plans to increase the representativeness of officers.

But the freeze on public service appointments meant replacements for the eight recent resignations from administrative staff could not be found, placing an additional load on personnel. He attributed the resignations to insecurity as a result of the possible phasing out of the Court.

He said some delays were caused by the apparent inability of unions to find and pay for legal representation.

He singled out Numsa in the Eastern Cape.

# Fired staff in battle

By Josias Charle

FOUR years after being dismissed for allegedly going on an illegal strike, 300 workers at Vametco Mineral Corporation in Brits, west of Pretoria, are still battling to gain reinstatement.

In papers submitted to the Industrial Court of the North-West this week, the workers denied that they took part in an illegal strike and claim they were unfairly dismissed. They also said they were not afforded an adequate disciplinary hearing. Workers were demanding a R5 an hour across-the-board increase and later lowered it to 60 cents, while management stuck to its opening and final offer of 42c.

The workers said that on September 12, 1990 management pretended to be continuing with negotiations on condition that workers reported to a football pitch outside the company premises. When they complied with this request, the gates were locked and they were handed dismissal notices. Police were called in and some shop stewards were arrested.

"We maintain that we were not on strike and the then minister of manpower in Bophuthatswana did not establish an industrial tribunal after the industrial council had failed to resolve the dispute," the workers submitted.

Their attorney, Mr Cyril Morolo, confirmed yesterday that papers had been served and said the matter would be heard next month. He said the workers were seeking an order directing Vametco to reinstate them with immediate effect and to pay them retrospectively from September 12, 1990, alternatively that the applicants be adequately compensated.

BY LEE-ANN ALFREDS

At first glance, nothing seems to have changed on Tokoza's infamous Khumalo Street.

Barricades still line the road and young armed men still demand identification and search vehicles and occupants.

But a closer inspection reveals barricades made of bags instead of tyres and drums, young men dressed in camouflage uniform rather than fatigues and shinning rifles cradled confidently instead of AK-47s pointing menacingly.

Khumalo Street, once one of the greatest divides in South African politics, has become a symbol of hope and rec-

*Hard won peace not to be given up lightly*

# Tokoza is no longer danger spot No 1

conciliation.

Residents now walk fearlessly down the dusty street — thanks to the election and a permanent roadblock.

Occupants of the hundreds of minibuses taxis and vehicles which enter and leave the township also willingly disembark at the permanent road-

block despite the inconvenience.

For peace in the embattled township has been hard won — and no one is prepared to give it up without a fight.

Not the police who, aided by the army, traffic department and other parties, embarked on Op-

eration Jambun at the beginning of the year to fight crime and restore law and order.

Nor the residents who have come out in open support of the police operation which will entail being subjected to random spot checks at eight permanent roadblocks to be set up in the Katorrus

area (Kathlung, Tokoza and Vosloorus) and moving road patrols.

"We instituted Operation Jambun on January 3 at the request of the residents and we will mainly try to stop the flow of illegal weapons, cars, immigrants and other things into and out of the area," SA National Defence

Force spokesman Colonel Chris du Toit said.

He said that 41 people had already been arrested at the permanent roadblocks so far.

The operation would remain in force until effective policing was visible in the township, Du Toit said.

"We will be moving out of the township some day, but no definite date has been set yet. When the police upscale, we will downgrade," he said.

But the residents are in no hurry to see the security forces pull out.

"I am very happy that they are here to uphold law and order," a woman who did not want to be named said.

# Industrial court calendar 'hopelessly overloaded'

BY JOVIAL RANTAO

The industrial court calendar is becoming hopelessly overloaded.

There is an 18-month backlog in the Natal industrial court and in the former Transvaal — where 10 new courts were put into operation earlier this year — the delay is now between nine and 12 months, says an industrial relations

expert.

Pierre Wolmarans said the conciliation board system provided for in SA labour legislation was not effective, and often served only to increase tension between employers and employees.

"When a dispute takes place or an employee is dismissed, a dispute is declared and a conciliation board is appointed to try and settle the matter.

"That's the theory but in practice, the conciliation board has no real authority; parties are not obliged or compelled to attend the meeting, nor are they expected to make any effort to settle," he said in a statement.

As a result, an increasing number of disputes which should reasonably be settled by a conciliation board are finding

themselves on to the industrial court roll.

Wolmarans said that many cases on the industrial court calendar were settled "virtually" on the steps of the court once the disputing parties realised the costs involved.

"However, this doesn't ease the load on the court as the time for the hearing has already been allocated," he said. He suggested that me-

diation should be made compulsory before litigation can be embarked upon.

"Parties who do not arrive for mediation, or fail to make a sincere effort to settle the matter at this level, should be barred from proceeding to litigation.

"In addition, conciliation board mediators should not be government officials but independent consultants with expertise in dispute resolution who provide their services at a set fee to be paid by both parties.

"If conciliation boards are made more effective and given real powers, disputing parties will be less likely to threaten industrial court action in an effort either to squeeze more money from the settlement, or save some," he said.

AT STATION NEWS



S.A. Breweries of 12,500 over eight years. Helen Surtees, who was employed by SAB, also admitted to illegally buying foreign currency and sending it out the country.

### Telkom services

ABOUT 2 800 of Telkom's Witwatersrand clients had been affected by either the theft of telecommunications cables or cables getting wet because of rain.

It said in the Blawich Park and Daggafontein industrial areas, service to about 500 clients had been disrupted by attempted theft of a cable. In Robertsham, service to about 600 clients had been affected by a stolen cable.

About 1 000 Grasmere clients and 600 in Mayfair were without a service after cables got wet. Repairs were under way.

REPORTS Business Day Reporter Sapa-Rentier

Hydroelectricity of the Cahora Bassa dam in Mozambique had kept the operation in good condition during the war.

He said HCB would coordinate contracts for clearing the landmines in the ground under the transmission line and for rebuilding the line itself.

## Science organisation to be revamped

THE Science and Technology Initiative is to be restructured into a more representative National Science and Technology Forum, a spokesman for the Arts, Culture, Science and Technology Minister said yesterday.

The forum would facilitate liaison between the ministry and the science community, he said.

The ministry has invited applications for membership to the restructured organisation. Applications would be accepted until February 10. Criteria laid down for membership to the new organisation by the minis-

try include adequate inclusivity, effectiveness, maternal interest and balance of influence. Positions for significant science and technology players have been prepared.

The minister said it would widely advertise the transformation of the technical forum in view of its importance to the business community.

Advertisements calling attention to the transformation and vacancies within the organisation would be run in the national media.

SELLO MOTLHABAKWE

## Spar strikers plan to intensify action

THE two-month Spar strike was far from over and action, including a consumer boycott, would intensify, SA Commercial, Catering and Allied Workers' Union (Saccawu) assistant general secretary Herbert Mkhize said yesterday.

The strike, triggered by Saccawu's demand for regional bargaining, had affected 220 stores in the Gauteng region with the dismissal of all 2 500 participants, he said.

A Spar spokesman disputed this, saying that at a guess 75 stores had been affected, with some workers only recently joining the strike.

As a total of 48 interdicts had been applied for, he estimated about 1 200 workers had been dismissed, as the strike had been declared unprocedural in court action.

ERICA JANKOWITZ

Mkhize said although full details of the new phase of industrial action could not be released, a consumer boycott of all Spar outlets, and the extension of the strike to other areas, were on the cards.

He argued that contrary to Spar claims, the group had a central body which established a code of practice and at which minimum employment standards could be set and policy-related matters such as affirmative action discussed.

A minority of store owners had indicated their willingness to bargain centrally and Saccawu had asked them to persuade others to follow suit, he said.

The Spar spokesman reiterated the

## Court tackles long delays

ERICA JANKOWITZ

THE Industrial Court had reached its optimal three-month lag between close of pleadings for unfair labour practice applications and being allocated a court date, Industrial Court president Adolph Landman said yesterday.

In the recent past, parties had waited up to 18 months for a court date due to large workloads and staff shortages. This was rectified by the opening of new courts and the appointment of more presiding officers and administrative staff.

Landman said the court would not attempt to reduce the delay periods as parties required a reasonable period in which to prepare their arguments. Parties whose pleadings closed on January 16 were allocated court time on April 18.

At the end of November, 5 156 cases were pending at the four Industrial Courts with Pretoria accounting for 3 154. Almost 1 000 applications were received in November.

Landman said advocate Sarel van Zyl had been appointed senior member in charge of the Kwazulu/Natal Industrial Court. He replaced Myles Freeman, who moved to the Industrial Court in Cape Town.

# Manpower forum is finally wound down

BD B/P/46 (165)

THE final function to mark the dissolution of the National Manpower Commission was held earlier this month, five years to the day after former President FW de Klerk's "waterbed speech", and coinciding with the launch of the draft Bill on the Labour Relations Act.

The commission's demise was conducted in such a haphazard fashion that it was necessary to formally close the book, former chairman Frans Barker said at the farewell.

The commission was essentially empowered to submit recommendations to the Manpower Minister on all labour matters and policy.

The Wiehahn commission in 1979 recommended the establishment of the commission as it foresaw "a more dynamic role for the state in the planning of future labour policy while at the same time abiding by the principle of as little intervention as possible in the relationship between employer and employee".

The Labour Relations Act of 1956 was amended in 1979 to make statutory provision for the commission.

The Minister was empowered to appoint members to the commission which included a limited number of union and employer representatives appointed only in their personal ca-

pacities and who did not represent the interests of business or labour.

The signing of the Laboria Minute in 1990 between Manpower Minister Eil Louw, union federations Cosatu and Nactu and employer federation Saccola paved the way for the restructuring that enabled the commission to become a proper tripartite forum.

The commission was restructured in 1992. The forum operated for about 15 months during which it was involved in several initiatives including laying the groundwork for the Labour Relations Act draft Bill, the harmonisation of homeland legislation and the Agricultural Labour Act.

In 1994, the tripartite parties within the commission and the National Economic Forum decided to merge the two bodies to form the National Economic Development and Labour Council (Nedlac) to be launched this month.

Barker said: "The whole mode of trying to find consensus was strong within the commission, although this declined slightly from April 27 onwards." He expressed the hope that Nedlac would not experience the same type of problems. However, "reaching consensus on the draft Labour Relations Act would certainly be Nedlac's first major test".

RENEE GRAWITZKY

## Public service salary plan on the cards

RENEE GRAWITZKY

AGREEMENT has been reached in the central chamber of the Public Service Bargaining Council on the formation of joint task teams to formulate a salary plan for the next three years that would resolve the public sector wage dispute.

This agreement stemmed from discussions held in December between the two Deputy Presidents and the parties to the council to resolve the wage dispute and to avert a strike.

The Commission for Administration said the task teams would make recommendations on ways to narrow the wage gap, facilitate upward mobility, review the grading system, fringe benefits and allowances and to identify discriminatory practices and disparities.

The parties also agreed to bring into line court interpreters' allowances with those paid to administration clerks in the Justice Department.

The SA Health and Public Service Workers' Union, which was part of these discussions, at the weekend announced its intention to embark on strike action on an unspecified date in support of demands for a 15% across the board increase and a minimum wage of R1 500.

The date of the proposed action would not be announced before the action began for fear of police retaliation, union publicity secretary Themba Nxalo said.

He said that although the union was participating in the task teams, it did not regard them as being able to resolve the wage dispute.

BD B/P/45



# New top staff for labour dept

Sowetan 11/12/95 (165)

**T**RADE UNIONIST MR Siphon Pityana has been appointed director-general of the Department of Labour, Labour Minister Mr Tito Mboweni announced in Pretoria yesterday.

Two deputy directors-general have also been appointed

They are trade unionists Mr Les Kettleidas and Mr Joachim Kastner

Kastner has been acting director-general of the department since June last year

## Combined experience

Mboweni expressed confidence that the combined experience and expertise of the new top management would "enhance the face and image of the new Department of Labour".

Their appointments will be effective from March 1 this year.

## ■ IMAGE CHANGE Three trade

## unionists appointed to top positions:

Pityana (35) is presently the registrar of the University of Fort Hare

Having spent nearly 10 years in exile, he studied at the universities of Essex and London and holds a Master's degree in Politics and Sociology

He has done extensive research on labour-related matters and was a key negotiator in the formation of the Council of South African Trade Unions

Pityana currently acts as consultant and advisor to several bodies, including the Ministry of Education

## National secretary

Mr Kettleidas (46) has been a trade un-

ionist for more than twenty years and served as national secretary of the National Union of Metal Workers

## Civil servant

Kastner (50) holds a Business Administration Honours degree and has been a civil servant throughout his working life

Mboweni appointed as him acting director-general in June last year

"We will end up with a new management team to enhance the ability of the department to realise its objectives with respect to the reconstruction and development programme" — *Sapa*



# Mboweni names trio

CT 14/2/95

(165)

PRETORIA. — Labour Minister Mr Tito Mboweni yesterday announced a new non-racial management team to oversee labour department matters

Mr Siphon Pityana, currently the registrar at the University of Fort Hare and a former trade unionist, was appointed director-general of the department

Mr Les Kettleidas, a long-serving trade unionist in the motor industry, and Mr Joggie Kastner, the department's present acting director-general,

al, were named deputy directors-general

Their appointments will be effective from March 1

"Basically, the Department of Labour is under new management," Mr Mboweni told a news conference here

"I am confident that the combined experience and expertise of the three will significantly enhance the face and image of the new Department of Labour." — Reuter

# Fort Hare registrar gets top labour post

(165)

RENÉE GRAWITZKY

FORT HARE University registrar Siphso Pityana had been appointed Labour Department director-general, Labour Minister Tito Mboweni said in Pretoria yesterday.

He also announced the appointment of two deputy directors-general. Les Kettledas, with more than 20 years' union experience, and recently national secretary of the National Union of Metalworkers of SA, would be responsible for labour relations, labour market policy and human resources.

Joachim Kastner, who had been acting director-general during the transition period, would be responsible for labour market programmes such as the Unemployment Insurance Fund and the Occupational Health and Safety Act, as well as administration.

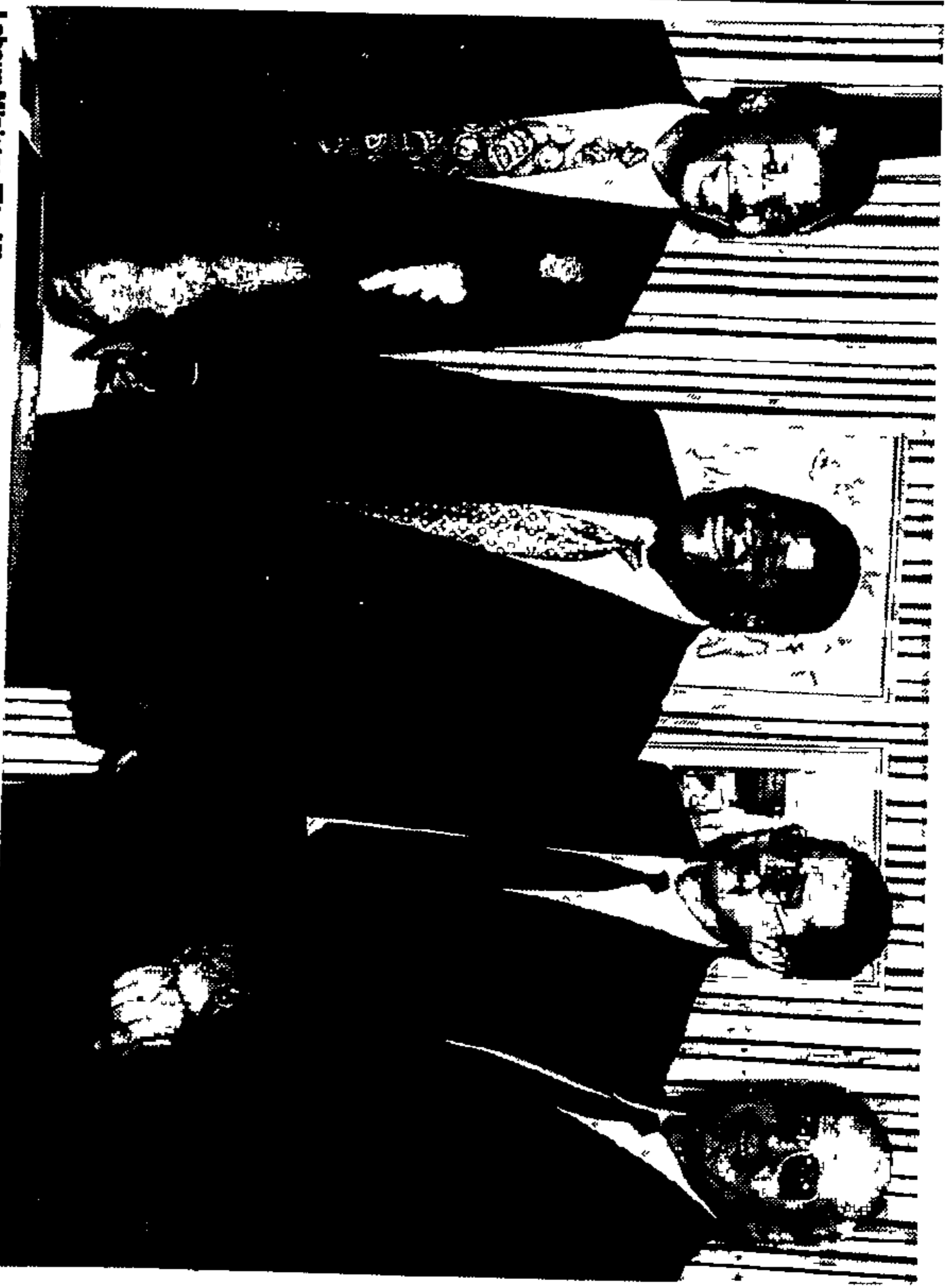
Mboweni said once other vacancies had been filled, the department would have a "new management team" responsible for taking the reconstruction and development programme forward in terms of labour and to implement the Ministry's five-year plan, to be released during the next two weeks.

Pityana, who would take up his post on March 1, had extensive experience in research and writing on labour matters. He had also acted as consultant and adviser to the Education Ministry. He was involved in the union movement in the early Eighties.

His department would spearhead the promotion of sex and race equality "to ensure that the leadership in the department reflects the society in which we live", Pityana said.

He identified the consolidation of a social base of policies as his first challenge.

The more difficult challenge would be to ensure that these policies were supported by the department's public servants, "to make people in the department embrace the need for change and to make the department part of the new society".



Labour Minister Tito Mboweni, second from left, announces the appointment of Labour director-general Siphso Pityana, left, and his deputies, Joachim Kastner, far right, and Les Kettledas. Picture ROBERT BOTHA

## Council heads tariff talks

THE National Economic Development and Labour Council (Nedlac) would

## US pension funds' attention back on SA

RD 14/2/95



# Mandela unveils new council to ~~cut~~ labour unrest

Weekend Argus Correspondent

JOHANNESBURG — President Nelson Mandela today unveils a new partnership government, labour and business which is expected to reduce the labour unrest which has characterised South Africa's industrial relations

At the Gallagher Estate in Midrand Mr Mandela will launch the National Economic, Development and Labour Council (Nedlac), a merger between the National Economic Forum and the National Manpower Commission where labour, business and government are represented

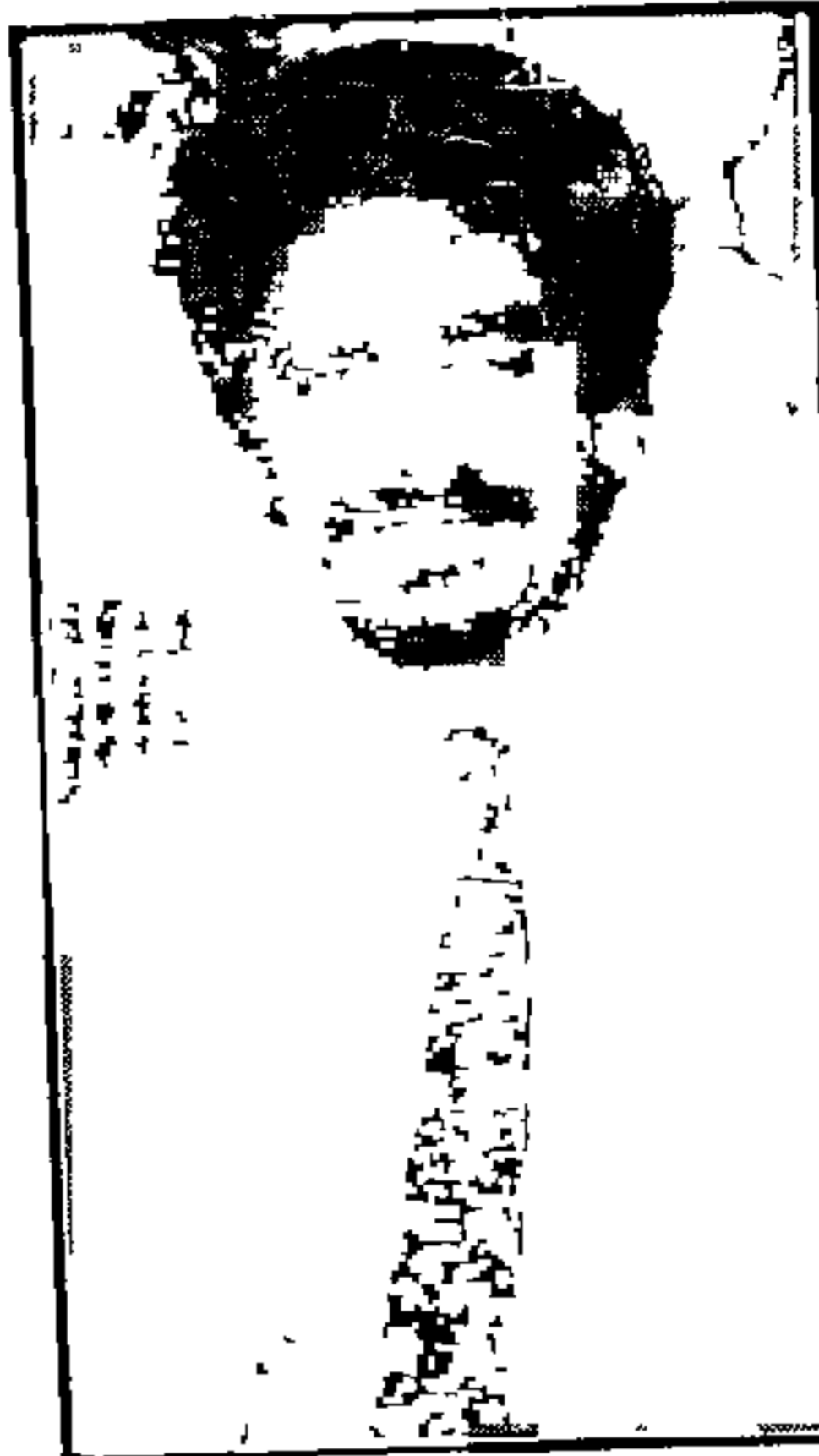
About 300 delegates are expected

Former trade unionist and political activist Jayendra Naidoo is the executive director of the new institution, which is statutorily charged to consider all changes to labour legislation and all significant changes to socio-economic policy before it reaches parliament. It will therefore play a significant role in the formulation and implementation of new government policy.

Says Mr Naidoo "This body is a negotiating forum between four constituencies: government, labour and business and the community. It will make agreements on matters concerning social and economic issues. It considers all labour legislation before it is introduced into parliament. It will also consider any significant change to social and economic policy before implementation or introduction into parliament.

"This is a potential partnership between government and civil society at national level and will change the way disputes are dealt with."

Nedlac will be made up of the executive council and four chambers representing labour, trade and industry, development and public finance and monitoring



□ **NEW CHIEF:** Jay Naidoo heads the new institution.

Mr Mandela will deliver the keynote address, which will be chaired by Deputy President Thabo Mbeki. Other speakers include Minister of Labour Tito Mboweni and President of the Congress of South African Trade Unions (Cosatu) John Gomomo.

Mr Naidoo says Nedlac is being created because the government realises the need for co-operation of all the four constituencies that are represented on the body.

"Every constituency is equal and independent and that includes government."

"If there is a failure to reach an agreement each party can proceed with whatever steps it intends to take. But inevitable there will be pressure to reach agreements. There will be no barriers to reach agreements. This is a unique institution which will strengthen our democratic process," says Mr Naidoo.

This body is "not solely responsible for transforming the country," he adds.



# Dispute delays council's launch

By RAY HARTLEY: Parliamentary Correspondent

SOUTH AFRICA'S business, labour and government leaders gathered to see President Nelson Mandela launch the National Economic Development and Labour Council in Midrand yesterday.

But they were kept waiting for over an hour while black business, represented by the National African Federated Chamber of Commerce and Business South Africa, squabbled over representation on the council, which seeks to establish consensus on economic policy.

Nafcoc president Joe Hlongwane and Business SA head David Brink eventually agreed to resolve the matter after the

launch and both took to the stage

Mr Mandela was loudly applauded by the Nafcoc delegation when he called for the matter of black business representation to be addressed.

He described the launch of the council as an event of "towering significance".

"None of us would contest the assertion that our democratic gains will be shallow and persistently threatened if they do not find expression in food and shelter, in well-paying jobs and rising living standards," he said.

In his speech, Cosatu's John Gomo

warned that bringing workers and bosses together would not be "a calm and easy process".

But he added: "The alternative is for the new democracy to flounder on the rocks of continual strife and conflict over all matters of production and distribution."

With six cabinet ministers, a deputy minister, a fistful of trade union heads and the leaders of 19 business organisations on its executive, the National Economic and Development Council is shaping up to be the most powerful body in

South Africa after the cabinet.

Founding executive director Jayendra Naidoo said agreements reached by the new body would "impact on the quality of life of all citizens."

With a brief that covers everything from the drafting of legislation to monetary policy, he may have understated the council's case.

Among those set to take government seats at the council's meetings are Labour Minister Tito Mboweni, Mineral and Energy Affairs Minister Pk Botha, Finance Minister Chris Liebenberg, Trade and Industry Minister Trevor Manuel and Public Works Minister Jeff Radebe.

165

# Industrial Court 'faces collapse'

(165) 6017/3/95

RENEE GRAWITZKY

FAILURE to address the problems facing the Industrial Court could lead to its collapse, Federation of SA Labour Unions (Fedsal) general secretary Dannhauser van der Merwe warned yesterday

Van der Merwe was reacting to the resignation of the court's president, Adolf Landman

Staff shortages, low staff morale and lack of resources suffered by the court would increase the backlog in the handling of cases, he said. This could be further exacerbated as more applicants approached the court once legislation was passed extending its coverage to more workers.

Prof Willem le Roux, one of the members of the team commissioned to draft the negotiating document on the Labour Relations Act, said he could not see how the proposed new system would work if the current

system had failed. The necessary funding and other resources would give it a greater chance of success

Prof Martin Brassey of Witwatersrand University said Landman's resignation and other problems indicated that "if a limited system could not operate properly on a limited budget, it will be challenging to see how the new system operates with the additional workers having access to court"

He said the court would continue functioning even when the proposed new legislation came into effect, processing disputes under the old Act

The Labour Ministry said it was unfortunate that Landman had decided to resign. At this stage no decision had been taken on whether to accept the resignation



The Secretary-General's Note has been referred to a number of academic institutions. The Department of Foreign Affairs will formulate a suitable reply and will submit comments to the United Nations once feedback has been received from the above.

#### Refurbishing of Ministerial residences/offices: criteria/money set aside

\*44 Mr A G MOHAMED asked the Minister of Public Works

- (1) What criteria are being used in respect of the refurbishing of Ministerial (a) residences and (b) offices,
- (2) whether a maximum amount of money is set aside for the refurbishing of each such (a) residence and (b) office, if not, how is the amount to be spent determined, if so, (i) what is this amount and (ii) how is it determined?

The MINISTER OF PUBLIC WORKS  
N372E

(1) Ministerial residences are of widely differing standards and the current policy is that, as funds become available, they be upgraded to more or less the same standard. The majority of the houses date back to the early thirties and essential maintenance rather than complete refurbishment has become the criterion, taking into account the critical shortage of funds for this purpose. The Department has dedicated a professional team of architects, interior designers and other technical staff, in conjunction with professional consultants, to attend to the restoration and upgrading of ministerial residences.

Improvements to residences are not done on an *ad hoc* basis. Proposals are evaluated and costed by the Department's professional team and then submitted to me for consideration.

Ministerial offices do not present the same problems in that they are largely of equal standards and are relatively modern by comparison with the houses.

Replacement or restoration of furniture, carpets, curtains, etc are mostly done on request by the Political Office-bearer concerned, but only after the Department's

Interior Decorators have ensured, in terms of the state of repair of the items coupled with cost, the necessity thereof and that it is not only required to satisfy personal taste. Should it happen that a Political Office bearer wishes to deviate from the existing standards and cannot be convinced to renounce his viewpoint, I will be approached to give a ruling.

- (2) Although a fixed amount is not set aside specifically for the refurbishing of each Ministerial residence or office, an amount is budgeted in each financial year to cover refurbishing to all Ministerial residences and offices, as refurbishing is not scheduled to be done at pre-set intervals, but as an ongoing process when necessary.

#### Percentage of State Revenue derived from personal tax

\*45 Mr A H NEL asked the Minister of Finance †

- (1) (a) What percentage of State revenue from personal tax is derived from personal tax and (b) what is the optimum ratio between personal and other kinds of tax as sources of State revenue,
- (2) whether it is his intention to plan with a view to reaching this optimum ratio, if not, why not, if so, what are the relevant details,
- (3) whether he will make a statement on the matter? †

The MINISTER OF FINANCE  
N373E

(1) (a) 1994/95 (revised) 39,7%, 1995/96 (budgeted) 40,0%

(b) The composition of the ratio between direct and indirect taxes in any country varies over time and depends on the economic and institutional structure of that society and a multitude of other factors including administrative capacity, the stage of development of the economy, the distribution of wealth and income, the size of the formal sector relative to informal activities and the number persons in active employment.

- (2) No. As such there is no unique optimum ratio.
- (3) No.

#### Deactivation of land mines in Mozambique by SANDF: estimated cost

\*46 Mr J A MARAIS asked the Minister of Defence

What is the total estimated cost, including salaries, of the deactivation by the South African National Defence Force of land mines in Mozambique?

N374E

#### The MINISTER OF DEFENCE

The deactivation of land mines in Mozambique will not have any cost impact on the SANDF as the task will be executed against repayment by the Mozambique government.

#### Arbitration of industrial disputes by Industrial Court backlog

\*47 Dr F J van HEERDEN asked the Minister of Labour †

(1) Whether any backlog has developed in the number of cases to be disposed of by the Industrial Court in the arbitration of industrial disputes referred to it, if not, what is the position in this regard, if so, (a) what is the backlog and (b) why did this backlog develop,

- (2) whether he or his Department intends taking any steps with a view to eliminating this backlog, if not, why not, if so, what steps,
- (3) whether the Industrial Court will be replaced by a labour court, if so, in what way will the unsettled cases be completed,
- (4) whether there was an increase in the number of industrial disputes referred to the Industrial Court in 1994, if so, what was the reasons for this increase?

N375E

#### The MINISTER OF LABOUR

- (1) A backlog of cases has existed for a number of years already.
- (a) On 31 March 1995, the Backlog was 6 200
- (b) An increase of 25% occurred during 1994.

The backlog developed for a number of reasons of which the following two are the most common ones.

(1) The infrastructure of the Industrial court was not adjusted to meet the influx of industrial disputes.

(2) Although the number of courts were increased in 1994, no corresponding increase in the number of staff was brought about. The existing staff complement is only 30% of what is needed.

(2) As from 2 May 1994, steps were taken to address the backlog. 14 permanent courts have, in addition to the existing courts, been put into operation on a national level.

The number of cases that were finalised, increased from 7 495 in 1993, to 8 443 in 1994.

In a further endeavour to deal with the backlog and speed up the resolution of the disputes, I have given instructions to the Department of Labour to convene a meeting to all the stakeholders (Association of Law Societies, General Council of the Bar, President of the Industrial Court, Organised Business, Organised Labour and Independent Mediation Services) to reach consensus on and plan a National 'Settlement' week.

Our intention is that professional mediators from within the Department of Labour and from the Independent Mediation Services will actively seek to settle all existing disputes before the Industrial Court during that week. Cases that are not settled will be promptly adjudicated by members of the Industrial Court, assisted by *ad hoc* appointments to the Industrial Court. I hope that the Law Societies, the Bar and the Independent Mediation Services will assist us in bringing together large numbers of mediators and *ad hoc* members of the Industrial Court. The large number of cases being referred to the Industrial Court is a result of inadequate mechanisms for dispute resolution within our existing Labour Relations Act. The proposed new Labour Relations Bill under negotiation at NED-LAC will provide mechanisms for dispute resolution through active mediation, con-



conciliation and arbitration. This would effectively reduce the number of cases being referred to the courts for resolution in the future.

- (3) With the envisaged new legislation, the Industrial Court will be replaced by a Labour Court. The unresolved cases will still be dealt with by the Industrial Court, until those cases have been finalised.
- (4) Compared with 1993, there has been an increase of 1 701 in disputes referred to the Industrial Court in 1994. The reason for this is not clear but presumably has to do with tighter conditions in the labour market and a concomitant increase in redundancies and retrenchments.

#### Members of National Peacekeeping Force enlisted

\*48 Col N G RAMAREMISA asked the Minister of Defence

How many members of the former National Peacekeeping Force who belonged to non-African National Defence Force as at the latest specified date for which information is available?

The MINISTER OF DEFENCE

N376E

631 Members of the former National Peacekeeping Force who had been members of the non-statutory forces have enlisted in the SA National Defence Force.

Currin Committee on Amnesty recommends release of certain person

\*49 Mr D M BAKKER asked the Minister of Justice

- (1) Whether the Currin Committee on amnesty and releases in terms of the Further Indemnity Act, 1992 (Act No 151 of 1992), recommended that a certain person, whose name has been furnished to his Department for the purpose of his reply, be released, if so, when,
- (2) whether the recommendation has been submitted to the President of the Republic for consideration, if not, when will such recommendation be submitted to the President of the Republic, if so, when,

(3) whether he will make a statement on the matter?

The MINISTER OF JUSTICE

N378E

- (1) Yes, during December 1994
- (2) The recommendation is still being considered by myself as the offences for which the person concerned was sentenced are very serious, involving 11 murders. The court imposed the death sentence 11 times, but these death sentences were commuted by the former State President to the President, although I have discussed it with him. I intend submitting it in the near future, together with my own views regarding the recommendation.

(3) Apart from above, I do not intend making a statement. I will consider making a statement once the matter is finalised.

Air show in Windhoek: misunderstanding on participation of SA Air Force team

\*50 Mr P I BIKITSHA asked the Minister of Foreign Affairs

- (1) Whether a misunderstanding developed with regard to the participation of the South African Air Force team in an air show on 24 and 25 March 1995 in Windhoek, if so, why did this misunderstanding develop,
- (2) whether President Nujoma of Namibia was in touch with the President of the Republic or with him or his Department prior to giving instructions that the South African aeroplanes should leave the country, if so, what are the relevant details,

(3) whether he will make a statement on the matter?

The MINISTER OF FOREIGN AFFAIRS

N379E

- (1) A misunderstanding developed in Namibia, since President Nujoma had not been informed by the relevant Namibian authorities that the South African Air Force was officially requested to participate in the air show,
- (2) President Nujoma and President Mandela were in telephonic contact on two occasions which resulted in the misunder-

standing being resolved in a satisfactory manner prior to the commencement of the air show at which the South African Air Force subsequently participated as planned.

- (3) Falls away

*New questions originally put on the Question Paper for reply on 26 April 1995—no sitting of National Assembly*

SANDF colonel guilty of theft: name/sentence

\*51 Mr L T LANDERS asked the Minister of Defence

- (1) Whether a certain colonel in the South African Defence Force, whose name has been furnished to the South African National Defence Force for the purpose of his reply, was convicted by a Johannesburg regional court of theft on or about 10 May 1993, if so, (a) what is his name, (b) what sentence was imposed on him and (c) when did this sentence become effective,
- (2) whether the said colonel's commission was withdrawn as a result, if not, what is the policy in this regard, if so, what are the relevant details,
- (3) whether any queries in this regard were received by the SANDF, if so, from whom?

N432E

The MINISTER OF DEFENCE

- (1) Yes

(a) Colonel (Retired) G T Holland-Muter

(b) R100 000,00 fine or three years imprisonment plus a further three years imprisonment suspended for five years on condition that he is not found guilty of theft during the period of suspension

In terms of section 300 of Law 51 of 1977 (court may award compensation where an offence causes damage or loss of property) the court ordered that the Witwaterstrand Command Officers Club be reimbursed an amount of R123 752,00

(c) Sentence was passed on 20 July 1993

(2) No. Colonel (Retired) Holland-Muter's commission was not cancelled due to the fact that he had retired on pension on 31 March 1993 and that he had not been imprisoned.

Section 83(3)(c)(iii) of the Defence Act, Act No 44 of 1957 as amended stipulates that the commission of any officer shall terminate and shall be deemed to have been cancelled on the date on which he/she is imprisoned pursuant to a sentence of imprisonment imposed upon him/her by a competent court.

(3) Yes. A similar enquiry was received from the Editor of the magazine Armed Forces

State-owned corporations: disclosure of salaries of top executives

\*52 Mr J A JORDAAN asked the Minister for Public Enterprises

- (1) Whether she is aware of a Cabinet decision in regard to the disclosure of information in respect of the salaries of top executives of State-owned corporations, if so, (a) when was the decision taken and (b) what are the relevant particulars,
- (2) whether such decision has been communicated to (a) her Department and (b) the boards or top management of State-owned corporations under her jurisdiction, if not, why not, if so, when in each case,

(3) whether she will make a statement on the matter?

N436E

The MINISTER FOR PUBLIC ENTERPRISES

- (1) Yes

(a) 9 November 1994

(b) That the remuneration packages of the employees of the Development Bank and similar institutions should be publicly available

- (2) (a) Yes

(b) No. The Cabinet decision only refers to the Development Bank and "similar institutions". As such it is interpreted as including those institutions with a development brief, eg the SA Development Trust and the



# IFC buys 8,8%

## of African Life

**JOHANNESBURG** — The International Finance Corporation has invested R41 million in African Life Assurance, according to a statement released by the insurer.

The IFC, the private investment arm of the World Bank, would hold 6,8 million shares or 8,82 percent of the shares in issue. The parent company Real Africa Investments (RAI) would retain control with 46,6 percent and the Southern Life Association Limited would hold 22,8 percent, the statement said.

IFC South African representative, Vincent Rague said,

*ARC 3/16/95*  
"This is our opportunity to align ourselves with the development of black-associated and formerly disadvantaged groups."

Don Neube, executive chairman of RAI said he was "flattered that the IFC has chosen African Life, and indirectly Real Africa, with which to form an alliance and achieve its objectives in Southern Africa."

"The deal is a sizeable investment and we hope to see similar involvement by other investors in the powerhouse of Southern Africa," Mr Rague said.

### Strike postpones Askin hearing

**FLORENCE** — An Italian Appeals Court hearing on whether South African businessman Julian Askin should be sent home to face charges of fraud was postponed on Friday because of a strike by lawyers.

The Court of Appeals in the Tuscan city of Florence rescheduled the extradition hearing for July 10.

It had already been postponed from April 27 because of the strike and earlier delayed

several times for procedural reasons and because Askin, who has heart trouble, was too ill to attend.

South Africa is seeking the extradition of Askin, former chairman of the Tollgate Holdings group, to face eight charges of fraud totalling R29 million.

Askin, a South African who travels on a British passport, was arrested last October in Florence.

# New law on cards to promote informal sector

**COLIN DOUGLAS**  
Business Staff

A NEW law to promote the fortunes of informal businesses in the Western Cape is on the cards, provincial economics ministry officials say.

Trading regulations should be relaxed and local authorities should be obliged to help informal entrepreneurs, said Tomie Botha, acting director-general in Economic Affairs Minister Chris Nissen's department.

The provincial government was looking to the small and medium business sector to provide most of the 50 000 new jobs the Western Cape needed each year to keep up with population growth.

Powers of regulation under the Business Act are to be devolved to the provinces next month, and Mr Nissen held a consultative meeting with interested parties in Cape Town this week to plan the province's approach to the issue.

"The greatest problem with the Business Act is the regula-

tion of the informal sector," Mr Botha said.

"We have to free the informal sector to grow as much as possible.

"If we are to get the economy right, today's informal sector will be tomorrow's formal sector and today's unemployed will be tomorrow's informal entrepreneurs. It's got to be a dynamic process."

The economic affairs ministry had begun negotiations with the Cape Town City Council and other major municipalities to urge them to give greater backing to the informal sector.

The Western Cape government was considering introducing legislation that would visibly promote the interests of the informal sector and place an obligation on local government to provide amenities and facilities for informal traders.

"The facilities required would be much like those of Cape Town, but the money collected by the Cape Town City Council from these facilities has never been ploughed back into the informal sector."

*ARC 3/16/95*

"Informal traders have complained, with some justification that they have been short-changed."

Strong arguments for the liberalisation of business regulation were presented in a report by the interprovincial task team on economic affairs, which represents the governments of all nine provinces.

"Laws which prohibit the carrying-on of business without a licence raise a barrier which restricts people from entering the economy — they criminalise economic activity," said the report, tabled by Mr Botha at this week's meeting.

"Those most in favour of licensing laws are often existing traders who wish to avoid competition from new traders, even though competition may benefit consumers."

"Introducing laws to license more trades would increase the powers of the government concerned, but would not increase economic activity in the province."

*(153A)*

ple still had to obey health laws, building regulations and town planning schemes.

The Western Cape government was unlikely to impose licensing requirements on any businesses except those, such as arms dealers and food traders, which posed a potential danger to the public, Mr Botha said.

On hawking, the task team also adopted a liberal approach, saying it should, in principle, be allowed in every part of a municipal area.

The team recommended that provincial legislatures give local authorities the power to control, but not restrict, hawking.

Cape Town City Council spokesman Ted Doman said regulation of informal traders was essential if the appearance of the city was to be maintained and pedestrians were to be able to move around the city without obstruction.

The scrapping of business licensing regulations three years ago had been undertaken against the Council's will and all the task team said as per the office.



**FARMED OUT** Conrad Strauss, chairman of the presidential commission into rural financial services

# Small means big in rural areas

By KEVIN DAVIE

THE informal rural economy makes a relatively minor contribution to gross domestic product, but a sound rural economy stands to benefit about half the population.

Standard Bank's Conrad Strauss, chairman of a presidential commission into rural financial services, says he believes the informal sector probably contributes no more than 5% to GDP.

This indicates that the informal rural economy makes a small contribution to total economic activity.

Dr Strauss says this sector is nonetheless socio-politically significant as about half the population lives in rural areas

Rural development, and its

financing, impacts strongly on the rest of the economy through urbanisation, for instance.

While the government may assist rural dwellers with subsidies during the start-up phase of land reform and other programmes, it is vital that financing packages aim to be sustainable, says Dr Strauss.

A key factor in ensuring success in rural financing strategies should be affordability.

"There has to be a low-cost infrastructure. Where banking services for the poor have worked in countries such as Indonesia, costs have

been kept low by services such as the scooter bank."

But South Africa's high crime rate means that guards, armoured vehicles or buildings may be required to provide banking services in outlying areas.

The commission, set up in January, has three task groups. One will establish the financing needs of rural communities. Another will look at the existing institutional structure which services rural communities, while a third will consider the legal framework which governs rural financial services.

The commission hopes to complete its work this year or "as soon as possible thereafter".

(ISSA) STER 14/6/95



## Hawking controls only by September

**MUNICIPAL REPORTER** (153A)

THE law on street hawking will only be tightened in September, according to city planner Mr David Daniels **CT 14/6/95**

He told the City Council's economic development committee this week that provincial authorities' consultations with various stakeholders would continue until late this month

The Businesses Amendment Act allows control of hawking via by-laws, after the Business Act deregulated it several years ago

The provincial department of economic affairs is, however, considering legislation that will be valid throughout the province.

FRIDAY  
JUNE 16, 1995

SINGLE MANAGEMENT COMPANY FORMED

# End to trade feud in Mitchells Plain

(153A)

CT16/6/95

**AFTER** years of infighting, formal and informal traders operating in Mitchells Plain town centre have united to form a management company. **CHRIS BATEMAN** reports.

**I**N a ground-breaking move aimed at setting the trend for trade relations in the Peninsula, the formal/informal trader feud in the Mitchells Plain town centre has ended with the creation of a single management company

A delighted Mr Tomie Botha, acting head of trade and industry for the Western Cape, said this was the result of intense negotiations after years of "headaches" for the City Council in attempting to "create some kind of order"

The management company will consist of two members each from the Stall Holders' Association,

the Mitchells Plain Traders' and Hawkers' Association, the Mitchells Plain Police Forum and the Merchants' Association

The first breakthrough came when the informal sector traders got together and formed a single organisation

The council then agreed to negotiate all future leases and deals with the new company

The company will also be responsible for security, refuse removal, open walkways and general control and administration in the bustling square

It has the full backing of region-

al police commissioner Lieutenant-General André Beukes

Police fear some gang retribution following the new deal and have stepped up patrols to ensure the hard-fought deal is not destroyed by the "mafioso"

## Hawkers

Mr Botha said it "looks as if we've finally reached the end of the road on this one", adding that all informal traders and hawkers were setting up an umbrella body for the Peninsula

Other important negotiators were deputy city administrator Mr Alan Dolby and Mr Mark Jasson, head of regulatory services in Mr Botha's department



## Hawkers want better facilities

(153A) STAN 27/6/95

■ BY BONGIWE MLANGENI  
CITY REPORTER

Hawkers at the Baragwanath taxi rank outside Soweto are appealing for the council to speed up the upgrading of trading facilities in the area.

Baragwanath Hawkets Association spokesman Connie Makhubu said the council was dragging its feet on the matter.

The Greater Johannesburg Transitional Metropolitan Council said it was discussing the issue.

Makhubu said traders needed toilets and water. She said there were more than 300 traders using one block of toilets.

"We always have to duck bullets and run for life, leaving our stalls unattended. It is important that our safety should be seen as a priority," she said.

A council report said the upgrading would take place in phases but did not say when it would begin.

# Achib <sup>(K3A)</sup> wants *same as* inclusion *29/6/95* in Nedlac

**By Isaac Moledi**

THE African Council of Hawkers and Informal Business vowed to ensure that the organisation is represented at the National Economic Development and Labour Council and other local and regional authorities

The resolution emerged after the organisation's two-day annual general meeting at New Horizon Conference Centre, Wilgespruit, at the weekend.

The conference, which retained Lawrence Mavundla as Achib president for another year, also resolved to establish 15 micro entrepreneur development banks before May 10 next year, the organisation's 10th anniversary. About five banks are expected to be established in each region.

Achib statement says the organisation should ensure that it has representation at Nedlac, "even if this means going there alone."

## **No method**

Although no method of how this would be achieved was established, Achib added that it would also ensure that the organisation is well represented at the local and regional government chambers.

Other resolutions include:

- The launching of a mass micro enterprise training campaign to all its members,

- That Achib ensure that local authorities are forced to build toilets and provide mass waste removal facilities, and

- That Achib negotiate with the Department of Housing at local and regional levels on behalf of its members, so that they also qualify for the subsidy scheme



# Pumping life out of Lesotho

(165) South Star  
7/8/95

The Lesotho  
Highlands Water  
Project will  
immensely benefit  
South Africa but there  
won't be any drop to  
drink for the Basotho

By Thabo Ndabeni

**D**URING the past few weeks, a terrible picture was painted about the low levels of water in the Vaal Dam by Rand Water and the Gauteng provincial government

We were told that the situation would improve only around 1997 and 1998, when the Lesotho Highlands Water Project begins to pump water to the Reef — something all of us, under normal circumstances needed to look forward to

However, I returned recently from a seven-day tour of the Lesotho Highlands Project areas What I have seen leaves much to be desired

The building of the dams and tunnel in Lesotho is causing socio-economic and cultural disruptions to the peasants in the areas affected In Muela, people have lost their rights to land, which for generations belonged to them The contractors working on the projects have literally taken over land belonging to people of Lesotho

Camp sites for construction workers and equipment have been erected on farmland, with ridiculous compensation

Quarries are being blasted on grazing land with little regard to the hardships This project is bringing misery in its wake to the people on the highlands

The preparation of a quarry site is preceded by the scraping of the top soil in order to expose shale underneath, causing irreparable damage to the productivity of the soil This is the case with Trateng in Ha Kaise

In the Muela area at a village called Palehong, wells have been blocked to make way for the construction of an access road to the hydro-electricity dam

These people are now without water At a neighbouring village a well has been fenced in because it falls within the restricted area

With the reduction of grazing land and water, stock farming is dying Where camps have been erected on farmland *mole* and potato planting has also come to a dead end

In Lenbe at Haseshote village one farmer lost his yard to the construction of an access road The front door of his house is now just five metres from the busy road

In the process, he had to sell his horse and cattle because he no longer has land for his *kraal* and stable Compensation by the Lesotho Highlands Development Authority was just R1 730

As part of this area is in a valley with very fertile *mole* farms which hug the valley and the surrounding hills as far as the eye can see, this area will be no more in the not-so-distant future It will be dammed as part of the Matsoku Dam, with a tunnel transferring collected water to the Kaise Dam The lush farms will thus perish

The same can be said of Ha Mohale, Molikallo, Ha Makka, Khoho Niso, Ha Lejone and Ha Kenan The list is endless

I am not opposed to the water scheme as such In fact, it is quite an engineering feat, comparable to the construction of the dykes in the Netherlands

Besides it is going to guarantee that at least for the next 50 years water will be coming out of my tap

My problem is the devastation it is causing to people on the highlands People are being dispossessed of their land, their main source of survival and wealth They are losing access to water, grazing land and houses for us South Africans to have water

Those affected are told they will receive fodder for their livestock and *mole*s to eat for the



General Metsing Lekhanya ... the water treaty he signed with South Africa in 1986 needs to be revisited.

next 15 years What, then after 15 years?

People are being stripped of their power, self-worth and sources of survival in the name of development

The question South Africa, particularly the Government of National Unity, has to answer is the price being paid by the Basotho worth the water we will be getting?

Perhaps the treaty, when it was signed in 1986, was between unequals — racist South Africa and the military junta of General Metsing Lekhanya

Maybe then South Africa wanted to remain the economic and military super-power in the region If this is so, the treaty needs to be revisited as a matter of urgency Otherwise South Africa will have to pay an even bigger price when the floodgates of economic refugees descend on South Africa. Alternatively, the crisis in Lesotho which may result will cause South Africa to intervene at a very high cost

(The writer is an independent development consultant)

Perhaps the treaty, when it was signed in 1986, was between two unequals — racist South Africa and General Metsing Lekhanya

## Bid to cut industrial court backlog

Edward West

CAPE TOWN — The Industrial Court and Independent Mediation Services of SA (IMSSA) have planned a week's programme to reduce the backlog of 630 industrial court cases in Cape Town by pioneering the new approach in the Labour Relations Bill.

Between November 6 and 10 a Settlement Week would be held in Cape Town in an attempt to persuade parties to settle disputes voluntarily through the use of outside mediators and arbitrators, thereby pioneering the new approach to dispute resolution in the Labour Relations Act.

According to the Industrial Court and IMSSA, most of the lengthy cases involved claims of unfair dismissal of individual workers.

Others involved mass dismissals, interdicts on issues such as pickets, de-

marcation disputes and interpretation of contracts

IMSSA mediators and arbitrators would be available at no cost to the parties to settle disputes during the week

The programme hoped to go a long way towards "clearing the decks" before the introduction of the new labour system early next year

Labour Minister Tito Mboweni's special adviser David Lewis said the previous dispute resolution system, consisting of conciliation at industrial councils and conciliation boards, had been ineffective, wasting resources

"We are told only 30% of all disputes referred to industrial councils are settled there. In the case of conciliation boards the position is even more unfortunate. Only 20% of all disputes are settled there." About 6 500 cases awaited hearing at various seats of the industrial court, he said.

(165)

SD 27/9/85



# Worker disputes backlog to be settled

JACQUELYN SWARTZ  
Staff Reporter

ABOUT R2 million is to be spent clearing a backlog of more than 6 500 unresolved worker-employer disputes countrywide, including 680 cases in the Western Cape.

The bulk of them — more than 4 000 — are in Johannesburg.

Details of the National Settlement Week programme were announced yesterday by the Independent Mediation Service of South Africa, (IMSSA).

The Industrial Court outlined details of a programme to be held in Cape Town between November 6 and 10

The Cape Town programme, which follows a National Settlement Week in Durban and precedes one in Johannesburg, is aimed at reducing a backlog of 680 cases. *AR 27/9/95*

Run simultaneously with settlement attempts in Port Elizabeth and East London, it is expected to clear about 200 outstanding Western Cape cases at a rate of 40 a day.

The National Settlement Week initiative was sanctioned by Labour Minister Tito Mboweni, who said in a statement delivered on his behalf by Special Adviser David Lewis that the plight of workers awaiting hearings was one of his motivations

"Another reason is the need to start our new dispute settlement resolution system with a clean slate.

"We cannot afford to burden the new system with the problems of neglect caused by a previous government," the statement said

Mr. Mboweni also condemned the former dispute resolution system of conciliation at industrial councils and conciliation boards as "ineffective" and "wasteful of scarce resources".

"The industrial court was never fully sponsored by the previous government

"The court was regarded as an institution which made inroads on the privilege of employers to deal arbitrarily with their workers

"The disregard for the Industrial Court and the failure to allocate appropriate resources to the court has meant that the court has never been in a position to deal adequately with the workload which has come its way," the statement said

"We are told that only 30 percent of all disputes referred to industrial councils are settled there.

"In the case of conciliation boards the position is even more unfortunate

"Only 20 percent of all disputes are settled there."

Disputes not settled at industrial councils or conciliation boards were either resolved by arbitration or by the industrial court

"The persons who bear the brunt of this unhappy situation are the dismissed workers who wait patiently for their cases to be heard.

"This situation is obviously one which the ministry cannot condone.

"If the law fails to provide an adequate alternative to disgruntled workers the law will fall into disrepute and labour peace will be seriously threatened by parties taking the law into their own hands.

"This will jeopardise peace, good order and a stable society will be put at risk"

The Industrial Court and IMSSA will, on a voluntary basis, offer workers and employees the chance to mediate existing disputes by placing at their disposal the services of skilled and respected mediators and arbitrators

# City gets Settlement Week to reduce Industrial Court backlog

(165)

ET 3/11/95

10

**BARRY-STREEK**  
POLITICAL STAFF

THE "Settlement Week" programme to reduce the backlog of Industrial Court cases through mediation in line with the new Labour Relations Act is to be implemented in the city on Monday

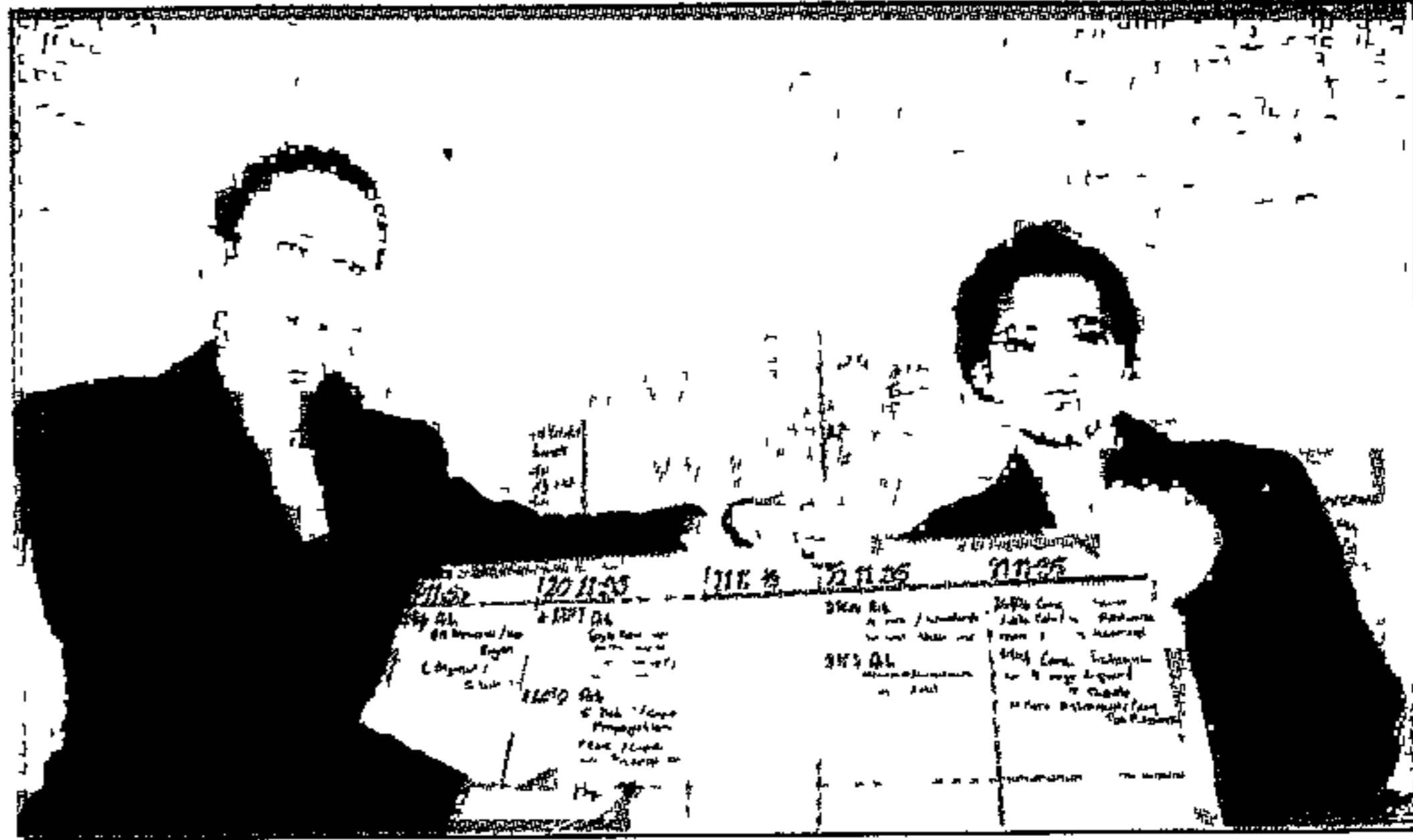
Since the launch of the project in the city about a month ago, there has already been a decline of over 50% in the backlog of 598 cases

Settlement Week was initiated in different centres by the Industrial Court and the Independent Mediation Service of South Africa (Imssa) to reduce the backlog before the Labour Relations Act comes into effect

Mediation of disputes is a key element of the new industrial relations policy as the Industrial Court is to disappear

Imssa's Western Cape director Ms Susan Hayter said yesterday since the launch, 316 cases in the Western Cape had been withdrawn or settled after Imssa had contacted the parties

"Of the remaining matters on the court roll, about 70 will be referred to



**MEDIATORS.** The people behind the campaign to cut the Industrial Court backlog in the city are Imssa regional director Ms Susan Hayter (right) and co-ordinator Ms Sarah Archer.

**PICTURE ALAN TAYLOR**

conciliation and arbitration during Settlement Week

"Indications are that Settlement Week will clear 70% of the backlog on the Industrial Court roll in Cape Town," she said

Ms Hayter said the programme was started to persuade parties to set-

tle their disputes voluntarily through outside mediators and arbitrators

Most disputes at the Industrial Court in the city involved unfair dismissals of workers

Settlement Week will be held at the Leshe Social Sciences Building at the University of Cape Town



# Settlement Week aims to resolve backlogs

165

ARL 7/11/95

Staff Reporter

DEBORAH Fredericks, 24, has pinned her hopes of again earning a regular wage on Settlement Week, an Independent Mediation Service of South Africa (IMSSA) initiative to reduce Industrial Court backlogs.

Not only did Mrs Fredericks lose her job at a Fish Hoek bakery in March this year, but also became estranged from her husband. Luckily, she was able to find refuge at her parents' Strandfontein Village home, where she has been living since.

But while her parents have been able to offer food and shelter to her and her two daughters, Mrs Fredericks has had to babysit her sister's child to earn some money. "I'm hoping I will get my job back," she said of her case being heard during Settlement Week.

"I'm desperate. You know, when you work you budget according to what you earn. When I was suddenly dismissed and ran out of money, my furniture was repossessed. I have lost a lot," she said.

Mr Fredericks's case is one of 282 cases which have not yet come before the Industrial Court in the Western Cape. Most of these involve unfair dismissals of individual workers.

One which involves a wage dispute and a group of workers is the Delheim Wine case. Grant Twigg, general secretary of the Farm, Food, and Rural Workers' Support Association, the workers' representative, said the dispute had been referred to a conciliation board but had not been settled. Workers were demanding an increase of R14 a week on the lowest wage of R110. It is the first time that the com-

pany has entered into wage negotiations.

Mr Twigg said Settlement Week, which started yesterday and runs until the end of the week, offered a quick-fix opportunity for the issue to be resolved. Taking the matter to the Industrial Court could involve a waiting period of up to six months.

IMSSA regional director, Susan Hayter, said she anticipated the Settlement Week would result in enormous savings in terms of cost and time. "Arbitration and mediation are more user-friendly and attorneys play a lesser role."

Although this is the first time the Settlement Week concept has been implemented, it has been successful in other centres. Even before it began in Cape Town, more than half the cases on the Industrial Court roll were settled or withdrawn, as a result of contact between the IMSSA and the parties concerned.

During Settlement Week this week in Cape Town, IMSSA mediators and arbitrators will try to resolve cases brought to them voluntarily by the parties.

The Labour Relations Act is based on arbitration and mediation. Indications are that these processes could prove more effective in resolving industrial disputes than current conciliation board meetings.

A Settlement Week has already happened in Durban where about 80 percent of the cases were resolved.

Ms Hayter said several of these had already gone through the conciliation board procedure. "It is significant that mediation and arbitration seems to work," she said.

## Initiative to slash court backlogs (165)

Renee Grawitzky

AD 10/11/95  
NATIONAL Settlement Week — a joint initiative between the Industrial Court and the Independent Mediation Services of SA (Imssa) to reduce the current backlog in the Industrial Court — gets under way in Gauteng next week

The mediation and conciliation centre and the resolutions board will also be roped into service

Imssa national projects director Dave Douglas said this would also promote co-operation between dispute resolution agencies.

The centre's director, Machmood Fedal, said he was pleased his organisation had been included in the initiative, albeit at the last minute

Douglas said the concept of and funding for the initiative came from the labour ministry

Parties caught up in the Industrial Court backlog would gain access to free and speedy service in the next two weeks. A wide range of services would be provided — including mediation, conciliation and arbitration — but parties themselves could also devise their own processes for dispute resolution.

The initiative could also be seen as a test run for the proposed commission for conciliation, mediation and arbitration envisaged by the new Labour Relations Act

Douglas said the backlog in the Pretoria Industrial Court was between 1 500 and 2 000 cases, with a waiting time of 14 to 16 months for 4 700 current cases. He said 100 cases had signed up to take advantage of mediation week, but the administrative infrastructure was in place to take on more.

A fortnight has been set aside for mediation, but the period could be extended. Parties wanting to take part should call the settlement week line at (011) 726-6680.



# Quick way to settle disputes

Nov 10/11/95 (165)

Settlement week shows the way forward for industrial dispute resolution through SA using confidential mediation until agreement is reached

By DAVID DOUGLAS

When Labour Minister Tito Mbovini launched National Settlement Week in Durban in September this year he spoke of the Government's commitment to changing the way labour disputes have been resolved in the past.

Speaking of 'Rolling Settlement Week' - a reference to its being held in Durban, Cape Town, Port Elizabeth and Johannesburg at different times during October and November this year - the Minister said Settlement Week heralded the beginning of a different era as contained in the new Labour Relations Act.

This creative process is supported and sponsored by the Department of Labour and the Industrial Court, and enjoys the backing of leaders in management and labour.

While the new Act will be implemented during 1996, the implementation of a Settlement Week in Gauteng is long overdue. The Pretoria Industrial Court has a current case-load of approximately 4 700 cases.

In addition, 4 000 files are within the court's buildings awaiting review to determine whether they represent matters still needing to be dealt with by the court.

Add to this the fact that the court deals with about 250 to 300 cases per month - but is currently receiving

approximately 350 to 400 new cases during the same period.

The conclusion is clear: The backlog is huge and is growing.

If you are a worker who alleges he has been unfairly dismissed, the implementation of this form of justice is Dickensian rather than effective. About 90% of the Industrial Court cases consist of these cases.

Put yourself in such a worker's shoes. You have waited between 14 and 16 months before your matter comes before the court. Unless you have found another job, your savings and benefits will have been wiped out by now, and any assets bought on credit will have been repossessed.

## A process in which you have nothing to lose

*It is quite possible you have moved to another town and therefore cannot be contacted when your case comes up. Your case could then be dismissed and you will not have received even the appearance of justice.*

Indeed, it may sometimes suit some employers to have troublesome matters locked up in the backlog for over a year.



The dismissed worker will be off the premises and no legal costs need be incurred until the matter finally comes up in the Industrial Court. If the employer loses the case, their financial resources would make a series of appeals an attractive option.

However, the delay can backfire if, for example, a worker or group of workers is reinstated retrospectively. The back pay due could amount to a large amount of money, as some recent appeal cases have shown.

In addition to this potential financial cost, there is also the relationship cost within the workplace.

Presuming the dismissed worker enjoys the support of the union and of his/her colleagues, a delay may only serve to heighten and prolong the resultant tension and adversarialism within the workplace.

Aside from the problems of the current Industrial Court system, what makes Appropriate Dispute Resolution in general, and Settlement Week in particular, so attractive? Simply put, Settlement Week offers processes which are:

- entered into voluntarily;
- able to a final and binding resolu-

- tion to the dispute,
- able to be tailored to suit the specific needs of the parties,
- handled promptly and speedily,
- accessible and understandable,
- facilitated by trained professionals, and
- cost-effective - in fact, they are free.

All parties who have cases caught up in the Industrial Court backlog are invited to participate in Settlement Week, which will be held from November 13 to 24 on the ninth floor of the Carlton Office Block.

However, this is a completely voluntary process and both parties must first agree:

- to participate, and
- on the nature of the process they wish to use.

A range of processes will be available to the parties, including mediation, conciliation and arbitration (or any combination of these). We expect that most cases will be resolvable within one day.

However, if an extension of time is necessary, this will be arranged.

Parties will also be entitled to bring legal advisers along at their own cost. Trained, professional facilitators from the Independent Mediation Service of South Africa (IMSSA), the Resolutions Board and the Medi-

ation and Conciliation Centre are ready to act as facilitators in these processes.

The processes available offer something for every beauty of arbitration is that it provides you with a legal, even format which is, however, more formal than a court case but gets a solution which is final and binding.

This is not necessarily as it sounds as the parties are given the opportunity to draft the terms of reference, and construct the arbitration powers and the process itself a structure with which they are comfortable.

Mediation is a process in which you have nothing to lose. The process is confidential and prejudice until a settlement is reached to both parties is reached.

A non-binding or advisory arbitration could give the parties an idea of what judgment will be if their case goes forward to the Industrial Court.

Cases submitted to Settlement Week will not lose their place in the Industrial Court roll, so it is not a case of parties having to lose but settlement to gain.



NATASHA PINCUS

ation and Conciliation Centre are ready to act as facilitators of all the processes

The processes available to parties offer something for everyone. The beauty of arbitration is that it provides you with a legal, evidentiary format which is, however, less formal than a court case but gives you a solution which is final and binding.

This is not necessarily as extreme as it sounds as the parties have the opportunity to draft the terms of reference, and construct the arbitrator's powers and the process itself to form a structure with which they are comfortable.

**M**ediation is a process in which you have nothing to lose. The process is confidential and without prejudice until a settlement acceptable to both parties is reached.

A non-binding or advisory arbitration could give the parties some idea of what judgment will be given if their case goes forward to the Industrial Court.

Cases submitted to Settlement Week will not lose their place in the Industrial Court roll, so it certainly is a case of parties having nothing to lose but settlement to gain.



Parties to the cases in the backlog face a very real choice to remain there for up to 16 months at potentially great cost or to take part in Settlement Week.

This will provide an opportunity to participate in alternative dispute resolution processes and also to contribute to the enhancement of the ad-

ministration of justice in South Africa.

■ The Settlement Week office can be contacted at telephone numbers (011) 726-6680 or 726-5093.

David Douglas is national project director of the IMSSA's Industrial Dispute Resolution Service.

**Two sides of the coin . . . striking workers (above) and round table talks (below) Alternative dispute resolution processes contribute to the enhancement of the administration of justice in South Africa**



# Industrial Court backlog halved

**BARRY STREEK**  
POLITICAL STAFF

(165)  
ET 14/11/95  
THE backlog in Industrial Court cases in the Cape Town area has been almost halved by last week's Settlement Week process

About 60 longstanding cases, most involving alleged unfair dismissal, were settled through mediation and arbitration. A number of cases were withdrawn or settled beforehand.

Settlement Week, involving about 25 skilled mediators and arbitrators, had been so successful that it had been decided to extend the process until mid-December, the Western Cape director of the Independent Mediation Service of SA, Ms Susan Hayter, said yesterday.

Settlement Week, funded by the Department of Labour, has been held in Durban and is to be instituted in the Johannesburg/Pretoria area and Port Elizabeth.

It was initiated to remove the backlog of Industrial Court cases before the implementation of the new Labour Relations Bill, which will abolish the court and introduce a new system for disputes to be settled through mediation and arbitration.

## Test

The approach used in Settlement Week was similar to that proposed in the bill and was in effect a test-run of the new system.

Ms Hayter said about 80% of the cases handled in Settlement Week had been settled. Many of them had been referred to arbitration and settled between the parties before any ruling was made.

Some cases had dragged on in the Industrial Court for three to four months with little prospect of resolution, but had been settled in half an hour through the Settlement Week process.



# Settlement Week brings fast resolution to disputes

## Alternative process alleviates backlog in industrial courts

(165)  Nov 14 11 19 95

BY JUSTICE MALALA  
Labour Reporter

For more than a year, Jacob Duker lived in suspense, not knowing what his fate was, nor when it would be decided

Jacob, the sole breadwinner in his family and a father of two, has been out of work for more than a year after being retrenched along with 38 other workers last September. Believing the retrenchments were unfair, the workers took the matter to the Industrial Court for resolution

"We were still waiting for a date for the matter to be heard, a year after the matter was lodged there. I was surviving through part-time jobs but times are hard, and such jobs are not easy to find," said Duker, who used to work as a welder, yesterday.

Due to the backlog of more than 4 700 cases at the Pretoria Industrial

Court coupled with about 4 000 files waiting to be reviewed to find out whether the matters still need to be dealt with by the court, it seemed unlikely the 39 workers' case would have come to court in the near future, thus keeping them in a state of uncertainty

But thanks to a bold idea that took the combined efforts of the Labour Ministry, the Independent Mediation Services of SA and the Industrial Court to kick off, Duker and many other workers' cases are being heard in a week of alternative dispute resolution to alleviate the backlog in the court and to ensure that justice is dispensed quickly

Settlement Week, which runs formally in Gauteng over the next two weeks, was designed to offer employers and workers a speedy way of ending disputes through mediation, arbitration and any other process they felt would help resolve

the dispute. Participation is voluntary and by agreement between the disputing parties

Yesterday, two cases were settled within the first thirty minutes of proceedings

"The only problem is that many employers are not coming forward because they believe if the matter drags out it is to their advantage," said a National Union of Metalworkers of SA official who was involved in one of the quick resolutions

The process is also under way in Durban, Cape Town and Port Elizabeth, where hundreds of disputes have already been settled

The matter between Duker's group could not be settled yesterday, but he is hopeful

"At least after this process I will know exactly where I stand, rather than waiting for years only to find that I have been waiting for nothing," he said



In suspense ... Jacob Duker hopes that justice will now be done after a year of waiting.

# Case settlement week prompts good response

Renee Grawitzky

8028/11/95

165

HIGH settlement rates were achieved countrywide during National Settlement Week, but problems were experienced in Gauteng and Eastern Cape in getting respondents to participate, leaving the Industrial Court with a heavy workload.

The settlement week, a joint initiative between the Industrial Court and the Independent Mediation Services of SA (IMSSA) to reduce backlogs in the Court, handled more than 447 cases countrywide leaving more than 7 000 cases on the Court's roll.

Earlier this year, the Industrial Court was wracked by controversy and its functioning hampered following a series of staff resignations. In the wake of these resignations which left the court understaffed, Industrial Court president Adolph Landman resigned. He withdrew his resignation after the labour department assured him it would address the court's problems.

Landman said yesterday that "having regard to resources available, the court is coping quite competently." All cases which could be enrolled, he said, had been and would be heard up to the end of next January in Cape Town, May in Pretoria and Durban and next

February in Port Elizabeth. The parties sometimes took up to nine months to lodge their applications, which "was not the responsibility of the Court."

IMSSA representatives in Durban and the Western Cape reported very high settlement and participation rates and in some cases the process itself had led to the parties settling the cases between themselves.

IMSSA's national projects director Dave Douglas said the process was voluntary and necessitated the agreement of both parties. In Gauteng grievants were more keen to participate than the respondents, he said.

Despite this, settlement week in Gauteng had subsequently been extended due to a increase in interest once the process had commenced.

An Eastern Cape IMSSA representative said there was a lack of understanding of the process by some employers, while their legal representatives did not encourage participation, for fear of a loss in revenue if the case was settled and not referred to the Industrial Court. Annamarie Duff, a senior member in charge of the Port Elizabeth Industrial Court, said that despite provincial problems, once people understood how settlement week operated they would support it.

**MENS  
DORF**



# Federation formed to fight Industrial Council legislation

Business Reporter

A FEDERATION of clothing employers' associations has been formed to fight membership of the Industrial Council

"The Industrial Council system is a legacy of apartheid," Alan Biesheuval, press officer of the newly-formed federation said in an interview on Friday

He said any factory that employed five or more people was forced to belong to the Industrial Council and to comply with the same rules and regulations that applied to all members, regardless of their size

This put the smaller factory at a severe disadvantage when it came to paying a minimum wage and having its employees belong to pension and provident funds, he said

"Legislation that is binding on the bigger groups is binding on anyone who employs more than five people. They force you to conform to all their rules and regulations," Mr Biesheuval said

He said labour was 80 percent of the smaller factory's cost, whereas it represented only about 30 percent of the total operating cost of the bigger factories.

"We say those that need the Industrial Council should have it under freedom of association. But it should not be forced on anyone," he said.

LABOUR DEPARTMENT

1996 + 1997-1999



## 'Inefficiency' delays labour courts

From Sapa (165)

CT(BR) 18/9/96

Cape Town — Justice John Myburgh, the president of the Labour Court, launched a scathing attack against the justice and public works department yesterday. Their inefficiency was delaying labour courts being set up, the judge said.

A dispute between the Judicial Review Commission and the National Economic Development and Labour Council had remained unresolved for seven weeks, causing further delays, Myburgh said, appearing before the

National Assembly's labour committee

He had sent many letters to Cabinet ministers and the directors-general of several departments requesting that the problems be sorted out. The letters had been ignored, and subsequent meetings also failed to yield results.

A justice department official responsible for ordering books for the courts had not done so. This meant the order had been put on hold for months, Myburgh said.

There had been considerable delays in securing computer equipment and soft-

ware Persetel, the company contracted by the government to provide the necessary computer systems, had "proved itself incapable of delivering anything on time", he said.

Problems had also been experienced in securing premises. The court had found an ideal premises in Braamfontein and taken occupation on June 27. The public works department had been responsible for securing a lease and seeing appropriate renovations were carried out, but had not done anything, Myburgh said.

□ KENYA

(165) CT (10R) 8/7/97

### **Students in riot to protest against fee rise**

Kenyan university students stoned riot police and barricaded roads on the outskirts of Nairobi at the weekend in a protest against a proposed increase in fees.

The riots followed battles in central Nairobi on Thursday between police and students. Witnesses said several students were injured in weekend incidents at the Kabete campus. Shopkeepers barricaded their premises to deter looters. Police fired teargas before the rioters withdrew to residence halls.

Students say a new draft legislation for universities will impose fees too high for poor students to afford. The protests coincided with increasing pressure from opposition politicians for constitutional changes ahead of Kenya elections later this year.

Traders in central Nairobi have employed extra security guards to deter looters in the wake of the protest meetings.

*Reuters, Nairobi*

(165)

ET(BR) 9/7/97

### IMF warns it may suspend \$280m loan

The International Monetary Fund (IMF) has warned that it may suspend a \$280 million loan to the government of the Republic of the Congo if it fails to meet its obligations under the agreement.

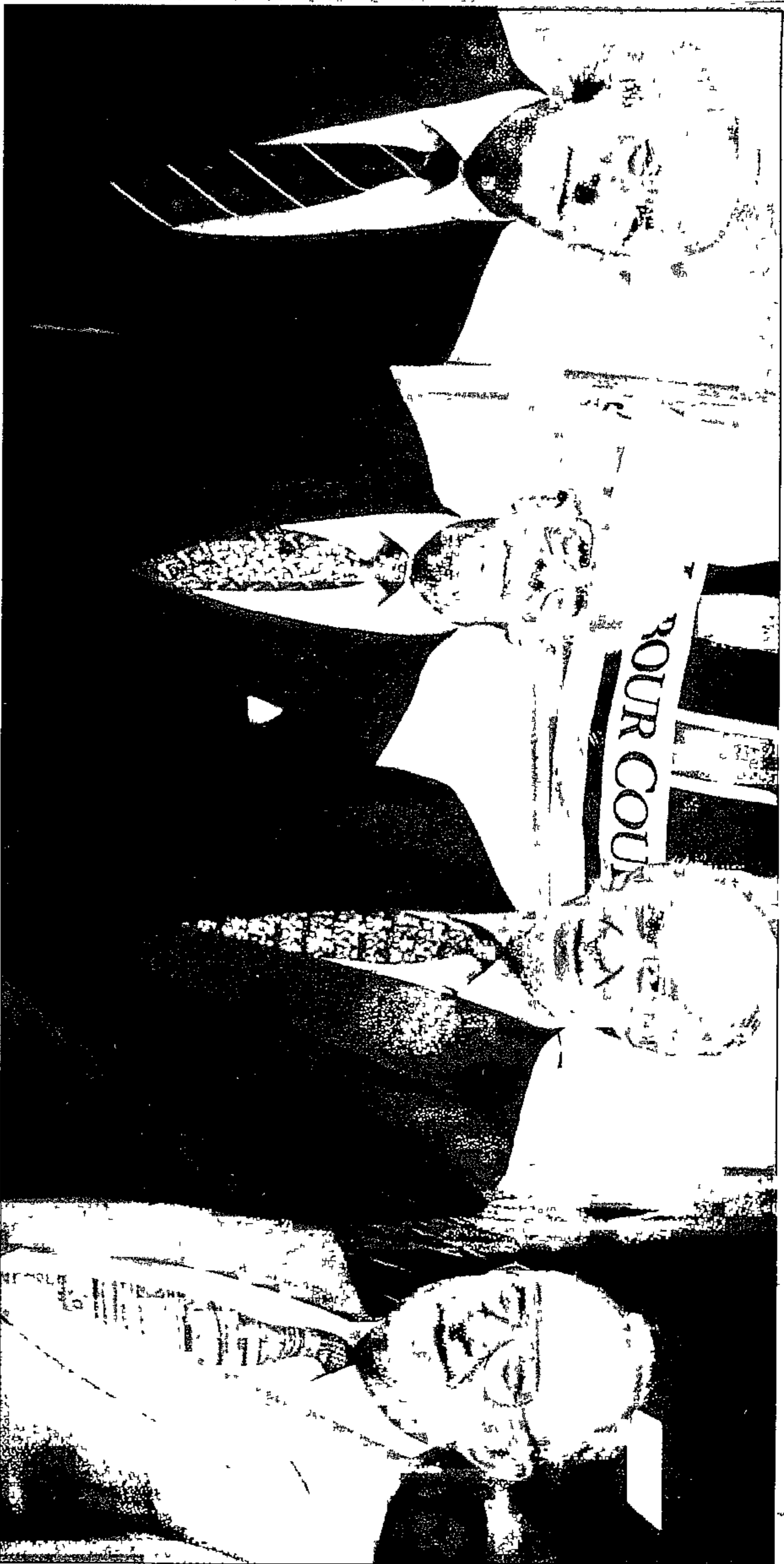
The IMF's director, Michel Camdessus, said in a report that the government's failure to meet its obligations under the agreement is a serious concern. He said that the government's failure to meet its obligations is a serious concern and that the IMF is prepared to suspend the loan if the government does not take steps to improve its financial situation.

The IMF's report also noted that the government's failure to meet its obligations is a serious concern and that the IMF is prepared to suspend the loan if the government does not take steps to improve its financial situation. The IMF's report also noted that the government's failure to meet its obligations is a serious concern and that the IMF is prepared to suspend the loan if the government does not take steps to improve its financial situation.

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to form the constitution





**NEW ERA:** Present at the opening of the new Labour Court in Cape Town yesterday were (from the left) Mr Justice E L King, Mr Justice Gerald Friedman, Judge President of the Cape, Mr Justice John Myburgh, Judge President of the Labour Court and Constitutional Court judge, Mr Justice Richard Goldstone

PICTURE THEMINKOSI DWAYISA

# Short tenure threat to independence — labour judges

**RONALD MORRIS**  
JUSTICE WRITER

THE independence of the Labour Courts required that its judges be given lifelong tenure, similar to High Court judges, and not be appointed on the present fixed term of 10 years

Mr Justice John Myburgh, Judge President of the Labour Court, made this point at the opening of the Labour Court in Cape Town yesterday

While Labour Court judges had the same powers, and were appointed on the same terms and conditions as High Court judges, the president appointed them for a fixed term

The judges have recommended that the Labour Relations Act be amended to give them lifelong tenure, Judge Myburgh said

He also recommended that the Cape Town Labour Court adopt a system whereby law graduates are appointed as judges' clerks for a

year before moving on to do their articles

The idea originated in the Transvaal Provincial Division of the High Court where judges' clerks were generally found to be underqualified and undertanned while there were a large number of law graduates unable to find work

A solution suggested was to upgrade the post of judges' clerk in the Labour Court to that of judge's associate with a minimum qualification of an LLB degree that would

carry a salary almost double that of a judge's clerk Training would be provided

Three large law firms in Johannesburg were approached to participate in the scheme When the firm had chosen its short list of candidate attorneys, judges wanting an associate appointed the following year, would participate in the selection process Graduates would serve a year as judges' associates and then do their articles with the participating law firms

The advantage to the Labour Court would be the appointment of high-quality associates committed to legal careers while the law graduates are guaranteed articles at the end of the year The law firm gets a better qualified article clerk, someone who will have learnt about labour law, law of evidence and civil procedure

Judge Myburgh said there was no reason why a similar arrangement could not be made with law firms in Cape Town

# Labour department to revamp services

Pearl Sebolao

BD 5/3/98  
THE labour department's inspection and employment services and labour centres needed to be restructured at a local level to ensure effective access to and utilisation of its services, minimum standards director Lisa Seftel said yesterday.

Seftel said at the department's first annual inspectors conference in Johannesburg that this was made necessary by new challenges including new functions brought about by recently introduced legislation, financial constraints, the poor management and inaccessibility of labour centres and the need to translate the department's vision on a local level.

The department had already agreed to transform the inspectorate and lab-

our centres through short-term and long-term programmes and had introduced legislative amendments to create an enabling environment

However, there was also a need to establish working relationships between government bodies and other stakeholders in labour, Seftel said

Seftel said a task team linked to the department's transformation committee had developed a long-term project focused on improving service delivery at the local level

The project would decide which services should be provided, as well as their design and implementation. Phased in over three years, the project was expected to achieve efficient organisation and management and ensure that labour centres were appropriately resourced and located

# Industrial Court grinding to a halt with huge backlog

SHALU MBATHA

The Industrial Court's grinding to a halt ahead of its closure later this year, and its backlog of over 2,000 cases will be passed on to the already loaded Commission for Conciliation Mediation and Arbitration (CCMA).

More than 50 Industrial Court presiding officers have joined the CCMA, according to the court's president, senior advocate M A E Bulbulia. Most were attracted by the higher fees being paid by the CCMA, whose commissioners get R1,000 a day (or R1,500 a day for senior commissioners) compared to the R698 a

day at the Industrial Court. Others have left to return to private practice because of the pending closure of the court.

Under the Labour Relations Act (LRA) of 1995, the CCMA will be the primary dispute resolution mechanism for labour cases and the Industrial Court will be closed. There is

ARC 6/6/98

still uncertainty whether Industrial Court cases which were initiated before the LRA took effect would automatically be passed on to the CCMA.

Mr Bulbulia has issued a notice to all parties informing them about the shortage of presiding officers. Only 18 officers are available to hear cases

and many pending cases have been postponed indefinitely.

Mr Bulbulia's notice imploded disrupting parties to settle outside the judicial system, because presiding officers would only be available after they had been recruited and appointed at a future date. However, in reply to questions by Consumer Alert, Mr

Bulbulia said no new presiding officers had been recruited.

In an attempt to offer a service to their clients, labour specialists and legal practitioners wait all day in the corridors for a chance to "bribe" a presiding officer whose matter was settled fast. "These are very expensive ambushes because failure to

'capture' a presiding officer could cost up to R5,000 a day in advocate fees," lamented a labour consultant.

The Industrial Court has between 2,000 and 3,000 outstanding cases nationally, and litigants fear their cases may never be heard. They take no comfort in the CCMA because it is plagued by its own woes.



# Industrial Court is preparing to

The Industrial Court is grinding to a halt ahead of its closure later this year, and a backlog of more than 2 000 cases is set to be passed on to the already loaded Commission for Conciliation, Mediation and Arbitration.

More than 50 Industrial Court presiding officers have left the court to join the CCMA, according to the court's president, senior advocate M A F Bulbulia. Most were attracted by

the higher fees being paid at the CCMA, whose commissioners get R1 000 a day (or R1 500 a day for senior commissioners), compared to the R648 a day that the Industrial Court pays its presiding officers. Others have left to return to private practice because of the pending closure of the court.

Under the terms of the Labour Relations Act of 1995, the CCMA will be the primary dispute resolution mechanism for labour cases, and

the Industrial Court will be closed.

There is currently some doubt about the status of cases which are still before the Industrial Court but which were initiated before the Labour Relations Act took effect, and whether these will automatically be passed on to the CCMA.

Bulbulia has issued a notice to all parties informing them about the shortage of presiding officers. Only 18 are available to hear

cases, and many pending matters have been postponed indefinitely.

Bulbulia's notice explored disputing parties to reach a settlement outside the judicial system.

In an attempt to offer a service to their clients, labour specialists and legal practitioners wait all day in the corridors for a chance to "juggle" a presiding officer so that a matter can be settled quickly.

These are very expensive ambushes because failure to capture a presiding officer could cost up to R5 000 a day in advocates' fees," lamented a labour consultant.

The Industrial Court currently has between 2 000 and 3 000 outstanding cases nationally and many litigants fear that their cases may never be heard.

They also take don't take any comfort in the CCMA because it is plagued by its own woes.



close its doors  
ARM 6/6/98

# 'Not falling behind in its work, and most users are satisfied'

Star 6/6/98

(111)  
(165)

The Commission for Conciliation, Mediation and Arbitration has objected to Consumer Alert's report on May 23 that the body is falling behind in its work.

CCMA information services department head Sue King said dates for arbitration of cases are being set by the body's offices around the country on a daily basis, and that allegations of delays in the processing of industrial relations cases reflect only a minority of the total case load of the commission.

She said the CCMA had a backlog of 800 cases in Gauteng, and that this was a small percentage when compared to the more than 13 000 the commission has already dealt with. Around 68% of the total of 88 000 cases the commission has dealt with were handled in the conciliation phase and did not even get to arbitration, King said.

She added that an independent survey of the CCMA's work found that 70-80% of people involved had found the commission's service "good to excellent".

"This is dramatically different to what it was under the old system," said King.

A caller from Durban, who preferred to remain anonymous because he is involved on a daily basis in working with disputes through the CCMA, said that in KwaZulu Natal there were backlogs of as much as six months or more and that small companies especially were being badly prejudiced.

He said the Labour Relations Act stipulated that even if an employer had valid grounds for dismissing a worker, if the dismissal was not done in accordance with set procedure, the employer would have to pay compensation. That compensation was calculated from the date of the dismissal.

"The company may well be in the right, but because of the delays in the CCMA system, it is forced to pay six months or more in salary to an employee who was rightfully dismissed. This kind of drain

on a company's cash flow could well force some smaller concerns to go bankrupt."

The man said the CCMA did not seem to be keeping to time limits set out as an addendum to the act, which says cases should require no more than 74 days to go from the dispute stage, through conciliation and arbitration to a final resolution. Many cases were taking much longer.

His comments were echoed by Johannesburg labour lawyers, who confirmed our initial story about delays within the CCMA. One said he knew of a client who was still waiting for an arbitration date after six months.

This week, an official of the Metal and Electrical Workers Union of South Africa, Moses Manake, was quoted in news reports as saying he was dealing with cases which had been referred to the CCMA during the middle of 1997 and for which arbitration hearing dates had still not been set by last month.

Manake also said CCMA case managers sometimes give the applicant different dates and times for a hearing to those given to the respondent.

## Deadline

Manake claimed further delays arise when CCMA commissioners fail to stick to the 14-day deadline set by the act for the finalisation of the arbitration process and award. In two cases, the wait for the arbitration decision was eight weeks.

King also objected to Consumer Alert's suggestion that commissioners were not qualified enough for the work they are doing. She said most of the commissioners had tertiary education, with many having law degrees.

She also denied that taxpayers' money was being squandered by the CCMA's hiring of advocates to deal with cases.

She said that, under an agreement with the Bar Council and the Independent Mediation Services of South Africa, the advocates were being paid R1 000 a case.



# Labour court judges differ on how much companies must pay

(165) (166)  
Uncertainty over compensation for procedurally unfair dismissals will prevail until the Labour Appeal Court rules on the issue, says **Robert Lagrange**

UNDER the previous Labour Relations Act (LRA) there was always some uncertainty about the award the industrial court would make for a dismissal which was only procedurally unfair

The new Act attempted to eliminate that uncertainty by adopting the rule used by many private arbitrators, namely to award procedurally wronged employees their salary for the period between the dismissal and the end of the arbitration proceeding

This meant that the employee suffered no loss as a result of the initially unfair procedure of the employer

Regrettably, the Labour Court is not yet unanimous on its approach to this question under the new LRA

If a dismissal of an employee is only procedurally unfair, subsection 194(1) of the LRA requires the Labour Court or the Commission for Conciliation, Mediation and Arbitration to make an award of "compensation" which "must be equal to the remuneration that the employee would have been paid" between the date of dismissal and the end of proceedings

Under subsection 194(2), the compensation payable if a dismissal is substantively unfair, "must be just and equitable in all the circumstances, but not less than the amount specified in subsection (1)" The only exception to the rule in subsection (1), is when the former employee pursuing the claim is tardy in doing so

However, what this rule means, is a matter on which Labour Court judges are divided

In *Chothia v Hall Longmore* (J39/97), Judge Basson took the view that "compensation" is equivalent to damages suffered or the



BO 30/7/98  
actual loss to an employee, which implies an employee must prove the loss of income since the date of dismissal and take steps to reduce that loss. Consequently, the minimum award is restricted to the actual loss suffered by the employee between the date of dismissal and the end of proceedings

By contrast, in *National Union of Metalworkers of SA & Others v Precious Metal Chains (Pty) Ltd* (J109/97), Acting Judge Maserumule held that an adjudicator must award an employee the value of remuneration the employee would have earned while waiting for a fair hearing by the adjudicator, irrespective of the employee's actual loss during that time

In reaching this conclusion the judge relied on, among other things the clear, imperative, language of subsection 194(1), the intention of the legislature to eliminate the confusion around compensation awards which prevailed under the old Act by introducing certainty and uniformity, and the salutary effect of such awards in compelling employers to be more

careful in following the guidelines on procedural fairness in the Act

Judge Zondo's decision, as an acting judge, in *CWIU v Johnson and Johnson* (P3/97) distinguishes compensation for purely procedural and substantive unfairness

Although agreeing with Basson on the meaning of compensation, the judge held that the calculation of compensation under subsection (1) applies irrespective of the actual loss suffered

In the latest contribution to the debate, Wagley, AJ in *Manning v Metro Nissan & Ano* (Case no 1034/97) decided that an adjudicator has a discretion on the amount to be awarded above the minimum specified by subsection (1), up to the maximum of 12 month's remuneration, but not in respect of the minimum itself

Further, the acting judge held that the purpose of subsection (1) is not to profit the employee but to avoid prejudice to the employee while awaiting a fair hearing by the adjudicator.

Consequently, any income earned in the interim from other sources must be offset against the amount due under that section

Effectively, Acting Judge Wagley reached a similar result as Basson, but without implying a duty on former employees to mitigate their losses

However, on the correct method of determining the amount payable, uncertainty will prevail until the Labour Appeal Court pronounces on the matter

Until then, dismissed employees would be advised to look for other work

□ *Lagrange is a member of the South African Association of Labour Lawyers*



# Minister asks for hike in housing subsidy

Vuyo Mvoko

CAPE TOWN — Housing Minister Sankie Mthembu-Mahanyele has asked the cabinet to consider increasing government's housing subsidy to the poor from R15 000 to R16 000.

The move is understood to have raised eyebrows in the cabinet as it has huge implications for the fiscus at a time when money is tight for every government department. It also follows assurances by the minister that she would not increase the subsidies.

About R2,88bn has been allocated this year for housing subsidies. If Mthembu-Mahanyele does not get the extra funds she requires but increases each subsidy by R1 000, the number of subsidies will decrease by 11 000.

The minister said yesterday inflation and rising building material costs

7/8/98  
were just some of the reasons that had made her decide to approach the cabinet. The matter had now been taken to the state treasury and a response was expected within two weeks.

Sources close to the minister felt that she might get something as it would be "politically insensitive" for the cabinet to reject her request so soon before the elections. They predicted that if the money did not come straight away, the cabinet might ratify her request but award the money later.

Government has built more than 500 000 houses since 1994, just more than half of its promised target of 1-million houses by 1999.

Mthembu-Mahanyele had considered asking for more funds before, but did not want to raise the issue until she had exhausted all other possibilities.

It was unlikely that she would con-

sider increasing each subsidy by more than R1 000 as that could reduce funds even further, sources said.

Mthembu-Mahanyele also announced that government would increase subsidy levels for the disabled by between 8% and 36%, depending on the severity of a person's disability.

The minister also said government had come up with new definitions of norms and standards for building low-cost houses.

This comes in the wake of unscrupulous behaviour by contractors and developers taking advantage of unrestrictive and loose definitions to produce substandard work.

A document stipulating "strict specifications that clearly define the basic parameter within which housing development should take place has now been drafted".

# BTR Sarmcol agrees to pay axed workers

Reneé Grawitzky

A 13-year old court battle between BTR Sarmcol and the National Union of Metalworkers of SA (Numsa) has finally come to an end with the company agreeing to pay R11,7m in compensation to the 970 workers dismissed during a strike in 1985.

The settlement — which will ensure that each worker receives R13 000 — brings to an end the longest and one of the most bitter disputes in SA's labour history. The dismissals caused major hardship for the community of Mpophomeni near Howick where two-thirds of the residents were employed by the company. Tension was heightened when the company hired workers

7/8/98  
from the United Workers' Union of SA, an Inkatha-aligned union, sparking off violent clashes between Inkatha Freedom Party supporters and Congress of SA Trade Unions and United Democratic Front supporters.

Workers at BTR Sarmcol — which was bought out in March this year by Dunlop Africa — went on strike on April 30 1985 over the alleged failure of the company to agree to certain clauses in a recognition agreement which was being negotiated with the Metal and Allied Workers' Union. Workers were dismissed three days later.

Since first being heard in the Industrial Court in 1987, the matter has faced five hearings by various courts. In March the appellate division of the

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High Court overturned a decision handed down by the Labour Appeal Court in December 1995 and held the dismissals to be unfair.

The court referred the case back to the Industrial Court to determine compensation for the dismissed workers, with the recommendation that the parties should attempt to settle out of court. Sources close to the process said the new owner — Dunlop Africa — was serious about resolving the matter whereas BTR Sarmcol had made little attempt at reaching a settlement, except for an offer of R1,5m.

Dunlop Africa CEO Mike Hankinson said the company had inherited this unfortunate issue and it was pleased the matter was now finalised.

Key Market Movements

# NEWS

## Judge votes CCMA system superior

FRANK NXUMALO

LABOUR EDITOR

Johannesburg — The case management system of the South African Commission for Conciliation, Mediation and Arbitration (CCMA) "had turned out to be superior" to that of the Australian Industrial Relations Commission (AIRC), the commission that helped establish it in the first place, Judge Geoffrey Giudice, the president of the AIRC, said yesterday.

"I am here to look at the development of the South African CCMA case management system, and it's much better than ours," Giudice said, adding that the Australian experience had been fundamental in shaping the Labour Relations Act

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But whether the Australians would develop what South Africa had set up in terms of case management would depend on cost, he said.

The AIRC, like the CCMA, had to deal with a large proportion of unfair dismissal cases and there had been a number of "internal discussion" of how services could be improved.

Giudice said that the major difference the two countries' industrial policy was that in addition to the federal AIRC, each state in Australia had an industrial relations commission, which set up the basic conditions of work and basic wages around April each year.

Although only about 32 per cent of workers in that country's private sector were unionised, the

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salariated workforce was much larger than its South African counterpart.

The CCMA said the relationship between the two institutions had developed into continuing bilateral co-operation and technical assistance, including governing body, commissioner, administrative and registry assistance.

Different South African delegations had visited AIRC under the auspices of, and funded by, AusAid.

Sithembele Tshwete, of the CCMA communications department, said the overall conciliation rate since the inauguration of the commission in November 1996 was 71 per cent.

This was a significant improvement over the old industrial council, he said.



**IMPRESSED** Judge Geoffrey Giudice of the Australian Industrial Relations Commission

PHOTO JOHN WOODROOF

# CCMA forced to do some navel gazing

Reneé Grawitzky

THE Commission for Conciliation Mediation and Arbitration (CCMA) — set up in terms of the Labour Relations Act to resolve disputes — is embroiled in attempts to resolve internal grievances raised by its staff association

The association, which represents about 80% of nonmanagerial employees, submitted a petition last month to the commission's governing body requesting its intervention

The petition, signed by more than 350 employees, listed a number of grievances mainly relating to alleged bad management practices including unfair promotions, appointments made by the national registrar and is-

BO 13/8/98  
sues around management grading.

At the same time a number of CCMA employees have declared individual disputes relating to procedures around internal promotions. Some of these cases were not resolved during conciliation and have been referred to arbitration or the Labour Court

The acting chairman of the commission's governing body, Bokkie Botha, said during discussions with the association that it was agreed that the matter should be dealt with by the commission's director

CCMA director Thandi Orleyn said a series of bilateral meetings was under way and good progress was being made in addressing the issues raised by the association

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Orleyn said, however, that a number of the issues related to discussions around the negotiation of a "relationship (recognition) agreement"

The commission was also involved in wage negotiations with the association which were at a delicate stage, she said.

The commission faces some constraints as the majority of its funding comes out of the labour department's allocation which amounts to about R106m for the current financial year. A commissioner said these developments occurred at a time when commissioners were being placed under tremendous pressure as the case load continued to increase. Last month, 7 000 cases were referred to the commission



# Heavy case load bogs down CCMA

LYNDA LOXTON

PARLIAMENTARY CORRESPONDENT

~~ET 30/9/98~~ (165)  
ET 30/9/98 (CA)  
Cape Town — The Commission for Conciliation, Mediation and Arbitration (CCMA) had become bogged down in the unexpected flood of cases referred to it, the national council of provinces' select committee on labour and public enterprises heard yesterday

Dennis van der Walt, the labour department's director of collective bargaining, told the committee that more than 110 000 cases had been referred to the CCMA. It was now "considerably behind" in its work.

He said the Labour Relations Amendment Bill was aimed at speeding up the flow of cases through the CCMA, but it was clear that the Labour Relations Act would have to be reviewed again by the year 2000 to iron out further problems.

Van der Walt said Greg Smith, the Australian labour commissioner who had helped create the CCMA, had admitted during a recent visit that

the Australian model had not been perfect for South African conditions.

"The number of referrals has outstripped the projections," Van der Walt said.

The bill seeks to simplify many CCMA procedures, provides for the closure of the industrial court and the transfer of cases to the CCMA, and provides greater flexibility in dispute resolution procedures.

The bill also will allow the director of the CCMA to delegate certain functions, such as the signing of subpoenas, and allow commissioners to run disputes involving the same parties on the same day.

Van der Walt said the bill also would prevent so-called labour consultants or "unions" formed just to deal with certain disputes from "trying to elbow their way into disputes".

It would stipulate that disputes should be arbitrated within 90 days of conciliation failing. This would prevent people waiting for anything up to a year before arbitration.

DEPARTMENT OF LABOUR STAFF DRAW UP PETITION

# Director has been victimised, says union

**THE SUSPENSION** of activist Bran Williams as director of the provincial Department of Labour has raised eyebrows among three unions. **CHIARA CARTER** reports

**P**ROMINENT community activist and former unionist Bran Williams has been suspended as director of the Western Cape Department of Labour.

Williams' union, the Professional Employees' Trade Union of South Africa (Petusa), says Williams has been victimised because of his "clean hands" approach to running the department.

However, department director general Spho Pityana has claimed Williams defied an order not to get involved in personal issues.

Meanwhile, staff at the department's offices have drawn up a petition supporting Williams, who has received the backing of the three staff unions in the department.

Williams refused to comment because he has been forbidden to speak to the media.

Pityana confirmed Williams had been suspended with full pay and said it would be inappropriate to discuss the matter before a dis-

primary hearing was held. The Western Cape office, which has consistently won praise as the provincial office with the best financial management systems, previously made news for holding lunchtime music and poetry recitals as a way of cementing a new corporate culture. Last year it made history by funding unemployed musicians and singers who staged the opera *La Boheme*.

Now, however, dissonance seems to be the order of the day. According to sources, Pityana has charged that Williams committed misconduct when he intervened to resolve a labour dispute between the Public Service Association and the department about an allegedly unprocedural transfer of an official from Bellville to Cape Town.

The move appears to have saved the department the cost of an arbitration hearing. According to Petusa, the official responsible for causing the employee's grievance admitted he had erred. Petusa

says Williams' intervention stopped the department acting in conflict with labour law and was in line with sound industrial relations.

However, Pityana apparently claims Williams' action was a violation of instructions because Williams had been forbidden to get involved in human resource management.

Williams informed Pityana that he intended lodging a grievance procedure about this restriction a day before Pityana in turn told Williams he faced disciplinary action.

The clash is the most recent chapter in a tale of increasing animosity which stretches back to last year. Earlier this year Williams was relieved of all his functions, only to get them back days after the national office released funds for a controversial collapsed training scheme — a move Williams had refused to approve.

One strand in the conflict is the embittered relationship between Williams and the deputy director of labour relations in the province, Meko Magda.

According to sources, Magda — who is said to be a friend of

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Pityana — clashed repeatedly with Williams and communication ended up being restricted to a series of increasingly hostile e-mails.

Before his suspension, Williams repeatedly urged the department to deal with a series of alleged irregularities and cases of insubordination by Magda.

The alleged irregularities include "numerous cases" of misuse of government vehicles last year and the requisitioning of a bus for a workshop at Goudini Spar holiday resort despite Williams having forbidden the outing.

Earlier this year the state accountant found that R50 000 expenditure incurred on the Goudini trip was not authorised and auditors found R8 000 was spent fruitlessly by Magda on a speech-training course which staff members ended up not attending.

Tensions between Williams and another official in Magda's section who was accused of misusing state vehicles ended up with claims that Magda had leaked confidential information to his colleague and accusations of electronic eavesdropping.

Meanwhile, Williams ruffled feathers in the national office in

March when he refused to release funds for a controversial West Coast training scheme, which subsequently collapsed.

At the time Williams expressed concern that such funding would float procedures. Department officials, trade unions and community organisations — including the local ANC branch — had pointed out that instructors at the Vredenburg scheme did not have the required accreditation.

However, according to department sources, there was considerable political pressure to release the R1,9m promised by the government to underline the government's commitment to development initiatives.

Williams was relieved of his duties on March 10 this year and resumed these — except for human resource management — on June 8. His return to his duties came days after national human resources director Lindsay Falkow paid R830 670 to the Western Cape Training Centre for the project.

The payment, made on June 5, came a month after the Industrial Development Corporation, the initial funder of the collapsed project, appointed an independent auditor

to investigate how Opus and Simon Cape Training secured a tender for the programme when neither was accredited by the metal and electrical industry's board.

Because there was no training agreement between the department and the Western Cape Training Centre, tuition was not monitored or inspected.

Now Williams' union intends presenting as background to his case an argument which in essence says the decision to relieve him of his duties in March came like a bolt from the blue because there were no previous letters of complaint and that the decision was based on trumped-up claims which were not subsequently borne out.

They say that after Williams was relieved of his duties, the department did not conduct a skills audit or organisational analysis.

Furthermore, a subsequent investigation of the Western Cape department by chief directorates did not discover any of the original allegations.

They further claim that the withholding of the human resources management function from Williams is unlawful.



**GAGGED** Bran Williams, director of the provincial department of labour, has been barred from talking to the media. **FILE PICTURE**



# CCMA faces enormous challenges

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Sithembele Tshwete

ABOUT 123 252 cases have been lodged with the Commission for Conciliation, Mediation and Arbitration (CCMA) since it started its operations, with an average of 300 cases being logged a day

Although we are faced with a limited budget and staff, the settlement rate remains impressive, currently at 74 percent of the total figure

Large volumes of disputes referred to the CCMA arise from alleged unfair dismissals and are 77 percent of the total caseload

The caseload poses enormous challenges to the institution and commissioners who have up to five cases a day

Yet the institution has managed to cope with this situation and is continually training its staff and streamlining its organs with enthusiasm to be able to meet its obligations

A huge number of cases have been heard by this institution – some of those referred to us are incomplete or fall into a category over which the CCMA has no jurisdiction

It will be worth sharing with our users some ideas on the proper referral of disputes and the processes involved in referring cases

**What to do if a dispute arises:** A dispute can be referred to the CCMA

Despite the caseload the CCMA is faced with, it has coped with the situation rather well. However, it is urging *Sowetan* readers to find out more about procedures and the cases that can be referred to it in terms of its jurisdiction.

at any time after it arises, except dismissal disputes, which must be referred within 30 days after the date of dismissal

The Labour Relations Act (LRA) 711 forms assist parties in referring a dispute without securing the help of a specialist

However, often these LRA 711 forms are submitted without adequate information as to the nature of the issue at dispute or a clear explanation of the alleged dismissal

Parties are urged to take note of this because it causes a lot of confusion for our teams which screen cases for the purposes of allocating it to a commissioner, and in determining the urgency of the case

The referring party must also satisfy the CCMA that it had served a copy on the other party in dispute

**Bargaining councils and collective agreements** Most collective agreements between employers and employees have provisions that detail mechanisms of resolving a dispute;



CCMA director Thandi Orlyen.

and it is advisable that those provisions be exhausted before resorting to the CCMA

Also, if your company is in a sector that falls within a bargaining council, the dispute should then be referred to the relevant bargaining council for

conciliation

**Jurisdiction** Often there is confusion over which institution to refer certain labour disputes, like the non-payment of salaries/wages, injuries occurring at the workplace and payment of the Unemployment Insurance Fund

The Department of Labour deals with these disputes

The CCMA does not have statutory jurisdiction over such matters

**Non-compliance with statutory process** When some registered trade unions wish to enforce organisational rights, like the election of union representatives, union access to the workplace and so on, they do not comply with provisions encapsulated in section 21 of the LRA

Provisions set out in section 21 of the LRA relates to notifying the employer that the union seeks to exercise one or more rights, and negotiations on a collective agreement on the

manner in which the union will exercise its rights should be exhausted before referring a dispute to the CCMA

Besides conciliating and arbitrating disputes, some of the initiatives taken by this institution, which are in material compliance with the Act, have been

- To publish guidelines on conciliation proceedings
- To give training on the LRA
- To help parties design dispute-resolution mechanisms,

- To help set up bargaining councils and workplace forums, and
- Accreditation of bargaining councils

We wish to conclude by saying that the CCMA is acutely aware of the challenge to be more proactive and undertake dispute-prevention interventions and research is being conducted by this new and learning organisation in this regard

(The writer is the communication coordinator of the Commission for Conciliation, Mediation and Arbitration)



# It's a huge job to resolve work disputes

CP 1/11/98

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**ENORMOUS CHALLENGE...** Sithembale Tshwete, communications officer of the CCMA

## Unfair dismissals top list at CCMA

**M**ANY readers have approached Hotline with labour related matters which should be resolved by the Commission for Conciliation, Mediation and Arbitration (CCMA)

The CCMA, tasked with the overwhelming duty of resolving labour disputes, started operating two years ago. The commission is a statutory dispute resolution institution and a creation of the Labour Relations Act of 1995.

The CCMA's main function is to conciliate and arbitrate disputes that arise at workplaces. It is an autonomous body, governed by a body of representatives from organised labour, government and business.

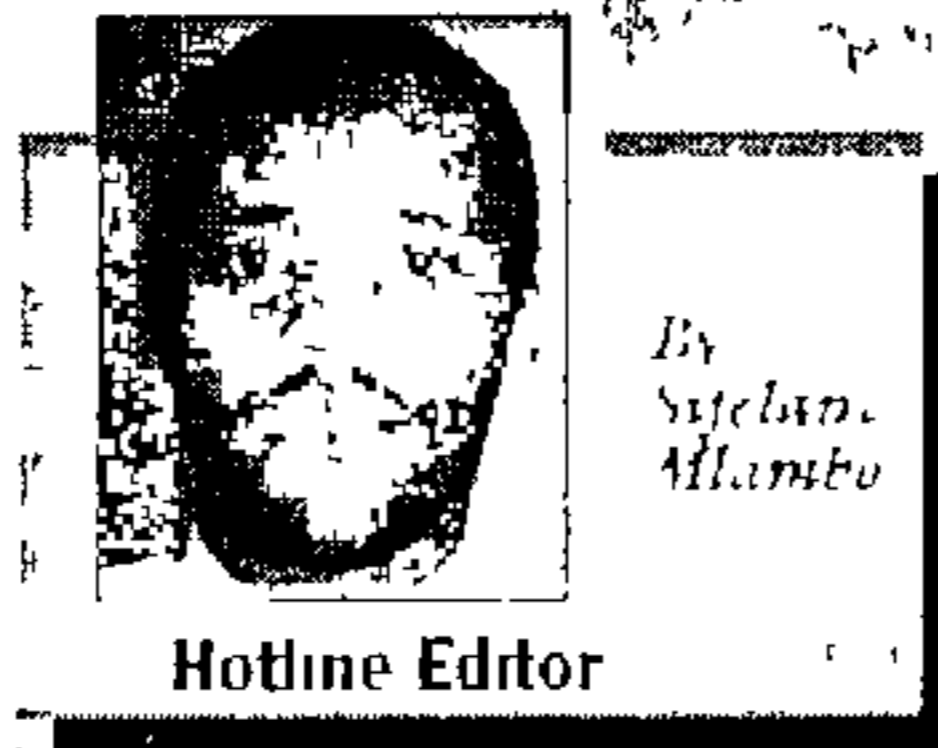
The CCMA's communications coordinator, Sithembale Tshwete, says only disputes about labour issues are referred to it.

He says since its inception in November 1996, 124 000 cases have been referred to the CCMA for conciliation and arbitration.

At least 75 percent of the cases related to unfair dismissal, 12 percent were cases of unfair labour practices, five percent related to mutual interest and another five percent involved collective bargaining disputes.

Only two percent of people who contact the CCMA have queries about severance packages.

"This case load continues to pose enormous challenges to this new organisation and has forced it to be



Hotline Editor

By Sithembale Tshwete

creative and enthusiastic in handling its duties," says Tshwete. "The CCMA has continued to train its staff and commissioners to meet this challenge and this has yielded positive results."

"We have a labour dispute settlement rate of about 71 percent."

Many disputes that arise at workplaces are initially referred to the CCMA for conciliation. If conciliation fails, the CCMA or the labour court then has to arbitrate in the matter.

The normal procedure is to complete the referral forms for conciliation - the LRA 7 11, or LRA 7 13 forms.

"However, our staff who screen disputes at the entry point have noted that people who approach the CCMA do not supply adequate information on the referral forms. They also do not exhaust the internal dispute resolution procedures before coming to the CCMA," says Tshwete.

The following is the correct procedure which should be followed when a labour dispute is referred to the CCMA.

- The parties should study and understand the law and dispute resolving procedures
- Follow internal dispute resolution procedures before referring a dispute to the CCMA. A collective agreement or internal grievance procedures may provide for these procedures
- Keep records of all disciplinary and case proceedings
- Fill out referral forms clearly, accurately and completely
- Determine if the circumstances of your hearing need special requirements such as an interpreter, a senior commissioner or a particular commissioner
- If your company is in a sector that has a bargaining council, then you should refer your dispute to that bargaining council for conciliation.

The CCMA also urges people to make use of Workplace Forums.

These forums are there to encourage and foster co-operation rather than conflict at workplaces.

They are meant to encourage joint decision-making between employees and employers on issues such as workplace restructuring, and enhancing productivity.

One of the main aims of these forums is to create an atmosphere of consultation between employers and their workers.

The CCMA plays a crucial role in

helping employers and employees to establish workplace forums.

Recently the CCMA began training people for bargaining council accreditation.

"These bargaining councils will replace the old industrial councils and the training is meant to put people in line with the new Labour Relations Act and updated dispute resolution mechanisms," says Tshwete.

Currently 21 bargaining councils have been accredited for conciliation functions and 16 have been accredited for arbitration.

The CCMA has also been instrumental in forming the Public Service Co-ordination Bargaining Council.

Tshwete says the CCMA is aware of the need to be more active in formulating dispute prevention programmes rather than concentrating on dispute resolution.

"An initiative to consult and conduct research in this regard is already underway and we believe this will help to address the huge caseload we have."

"This will also help us to resolve disputes more effectively," he says.

The CCMA has put in place interim dispute prevention strategies, says Tshwete. These include encouraging good relationships between employers and their workers and encouraging them to exhaust internal dispute resolution procedures.

# Department of labour 'broke its own laws'

## Outcry over official's suspension

JANET HEARD

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ST(CM) 17/11/98

Williams' suspension and demanded his reinstatement. It alleged that there appeared to be a vendetta against Williams.

**T**HE labour department has been accused of flouting its own laws when it suspended its Cape provincial director last month.

Brian Williams was suspended on full pay pending the outcome of an internal inquiry into allegations of misconduct.

He is alleged to have displayed insubordination by disobeying an instruction from the director-general of labour, Siphon Pityana, that he should not intervene in human resource management issues.

Williams had settled a dispute between a staff member and the department and had stopped the department acting in conflict with labour law, according to sources. But this has been denied by the department.

An internal disciplinary inquiry into the misconduct allegations is due to begin in Cape Town tomorrow, but it may be postponed until next month if the presiding officer grants an application by Williams' attorney.

Williams has challenged his suspension, arguing that it is unlawful. His appeal will be heard by the Public Service Conciliation Board on November 27. The Professional Employees Trade Union has alleged that there was no reason to suspend Williams.

Union president Dee Cranswick said the department had an obligation to act with "absolute transparency. They haven't done that."

Cranswick claimed Williams had not been given an opportunity to debate the allegations surrounding his suspension.

The Public Servants Association, the Public Administration Workers Union and the local branch of the National Education, Health and Allied Workers Union (Nehawu) have also shown support for Williams.

Nehawu interim shop steward Douglas Brown said the union was not involved in the dispute, but "from the basis of union principles, he has been unjustly dealt with".

Public Servants Association provincial manager Koos Kruger said they supported Williams and the Public and Allied Workers Union condemned

Williams' suspension — which bars him from speaking to the press — came after a year of clashes between Williams and certain department officials. The details are likely to be used by Williams to defend his reputation of having a "clean hands" approach in running the department.

For the past year, Williams has been urging the department to investigate alleged irregularities against the Cape deputy director of labour relations, Meko Magida. These allegations include misuse of government vehicles, failure to comply with direct instructions and insubordination.

Williams had also refused to authorise the release of funds for a controversial training scheme on the West Coast, which subsequently collapsed. At the time, Williams had argued that the training project did not have the required accreditation. Williams' duties were suspended in March. Two months later, the department authorised payment of R830 670 to the Western Cape Training Centre for the training scheme. Williams was reinstated a few days after the release of funds, but he was released from his human resource management duties.

Petusa believes Williams' suspension was unjustified as he had received no prior warning or letters of complaint.

Uven Bunsee, head of the Department of Labour's legal services, said tomorrow's inquiry would be conducted by an independent presiding officer, who was a retired magistrate.

Bunsee denied that Williams had not been given the right to reply or that labour law practices had been disregarded.

"The disciplinary inquiry gives him the right to reply. The inquiry gives him the opportunity to defend himself. We should all wait for the due process — which is above reproach — to take its course," he said.

Vuyi Raseroka, chief director of human resources management at the Labour Department, said the allegations of irregularities against Magida were the subject of an independent investigation.



# Judgment may reduce reviews of arbitration awards

**Robert Lagrange examines how the Labour Relations Act is being interpreted by the courts**

**T**HE Labour Relations Act does not permit an appeal against the merits of awards by the Commission for Conciliation, Mediation and Arbitration, but the awards may be reviewed by the Labour Court.

Policy reasons for limiting rights of appeal were to ensure early finality and to discourage a litigious process favouring parties with deep pockets. In the absence of a right of appeal, parties unhappy with arbitration awards have resorted to reviews with alacrity — at the rate of two a day, according to a commission source.

Some decisions of the Labour Court encouraged this tendency in adopting a wide standard of review which was sometimes indistinguishable from an appeal on the merits of a decision.

The Labour Appeal Court decision in *Carephone v Marcus NO* and others, which narrowed the scope of review, could reduce the flood of reviews, if it is adhered to. The judgment rejects the wider standard of review of arbitration awards applied under section 158(1)(g) of the act and confirms that the correct test is spelled out in section 145.

This section confines successful grounds for review to improperly obtained awards, gross irregularities, acts of gross misconduct and awards outside an arbitrator's powers.

The court emphasised in the strongest terms that a decision could not be reviewed merely because the arbitrator's award was incorrect or unjust.

Nonetheless, it conceded that the requirement of justifiable administrative action, under section 33 of the constitution, means that an arbitrator must reach a decision which, on an objective and rational basis, is justifiable on the available evidence before the arbitrator.

In practice, preserving the court's intended demarcation between appeal and review on the basis of deductive coherence will demand great restraint on the part of judges. They must resist tampering with the values adopted by arbitrators in reaching their decisions, and avoid collapsing this test of logical integrity with more invasive standards of review.

An important procedural consequence of the judgment is that review applications must be brought within six weeks of an award, which should discourage the practice of filing review applications inordinately late.

Another Labour Appeal Court decision which attempts to clarify some of the uncertainties arising from conflicting decisions of the Labour Court is *Johnson & Johnson v CWIU (PA15/97)*.

Confusion has surrounded the question of compensation which may be awarded in cases of procedurally unfair dismissal. The Labour Appeal Court has partly solved the question, but in doing so has created a new area of uncertainty.

BD 24/11/98  
The case concerned the initial selection of retrenchees on unfairly discriminatory grounds, which the employer sought to rectify shortly after the retrenchments took place.

The offer of rectification was not accepted by the retrenchees.

The court held that, although the retrenchment had been procedurally unfair, this was not a case in which compensation for procedural unfairness was due.

These facts formed the basis on which the court spelled out two principles governing compensation awards for procedural unfairness in dismissal.

First, the adjudicator has discretion whether or not to award compensation for procedural fairness.

Second, if the adjudicator does make an award of compensation, then section 194(1) of the act prescribes the amount. That amount is the value of the employee's remuneration from the date of dismissal to the last date of the hearing.

The certainty about the compensation formula to be used must be welcomed, but not the new uncertainty surrounding the exercise of a discretion to award compensation or not.

The underlying problem with the provisions of section 194(1) is that nobody envisaged it would take the commission so long to arbitrate on unfair dismissals.

It was assumed that awards of compensation for procedural unfairness would not stretch beyond two months' remuneration.

The recently tabled amendments to the Labour Relations Act demonstrate that the social partners have been unable to resolve this glaring difficulty in the act.

The contorted solution arrived at by the court is a natural consequence of provisions based on false factual premises.

Ironically, employees who think the rigidity of the compensation formula favoured them, may now find the formula of little help, as adjudicators exercise their discretion not to award compensation for procedural unfairness when they feel uncomfortable with the amount of compensation they will be compelled to award if they do so.

The judgment at least settles the true character of the compensation awarded: it is compensation for the loss of the right to a fair procedure, which is not the same as damages awarded for patrimonial loss.

Consequently, an employee should not have to demonstrate the actual financial loss he incurred following his dismissal to qualify for the compensation.

Nor, presumably, is he under a legal duty to minimise such losses by seeking alternative employment.

□ Robert Lagrange is a member of the SA Association of Labour Lawyers. He writes in his personal capacity



# Labour Court judge considers resigning

BD 30/11/98

**Reneé Grawitzky  
and Alan Fine**

JUSTICE Minister Dullah Omar is expected to meet Labour Court Judge President John Myburgh this week in an attempt to iron out differences which have prompted Myburgh to consider resigning from the bench

Myburgh confirmed at the weekend he was "considering resigning", but refused to be drawn on the reasons behind this until after his meeting with Omar

Omar's spokesman, Paul Setsetse, said the minister was unaware that Myburgh might resign and a final date was yet to be set for the meeting this week

Sources said, however, that Myburgh considered resigning after Omar's office indicated that he might not get the position of judge president of the Johannesburg High Court, once it was established

They said Myburgh had been assured of this position during the Judicial Service Commission hearings for the position of Transvaal judge president, which was given to Judge Bernard Ngoepe

They indicated that Myburgh had been informed by Constitutional Court

president Arthur Chaskalson and Chief Justice Ismail Mohammed that he would get the post of Johannesburg judge president That would require an act of Parliament, which Myburgh was told would be passed before the end of this year

Although Omar's spokesman said no guarantee had been given to Myburgh, other sources said he had been promised the post of acting judge president as soon as the new division was established The position would be confirmed when the commission next sat in April next year

Chaskalson could not be reached for comment yesterday However, two weeks ago Myburgh was informed by Omar's office that his position was not automatic and depended on whether Judge Mohammed Navsa made himself available for it Navsa declined to discuss the issue

It is understood that Navsa is uncertain whether he wishes to take up the position as he is not certain whether he has sufficient experience for the position of judge president after close to three years on the bench

However, he is known to be highly regarded by a number of his colleagues who feel he is more than capable of taking up

the position

Setsetse said no guarantees were made and no open assurances could be given before the commission hearings for the position A final appointment depended on the outcome of the hearings

However, Omar had indicated that Myburgh would be one of the strongest contenders for the Johannesburg position in view of his experience

Speculation was rife that Myburgh intended taking up a position at Anglogold, if he did resign

His resignation could leave a void in the Labour Court, which Myburgh established in 1996 in line with the new Labour Relations Act

There has been speculation that Labour Court Judge Ray Zondo could be a strong contender for Myburgh's position However, in terms of the act, a judge of the labour appeal court has to be a judge of the high court

Zondo's appointment could hence be facilitated by him being appointed an acting judge of the high court In the interim the deputy judge president, Johan Froneman, could act as judge president of the Labour Court

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# Mabuza resigns from CCMA

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CT(BR) 7/12/98

LUKANYO MNYANDA

Johannesburg — A senior official of the Council for Conciliation, Mediation and Arbitration (CCMA), formerly suspended finance manager Stan Mabuza, has left the council after clinching a "confidential" agreement with Thandi Orleyn, the director, last week.

According to documents leaked to Business Report, Mabuza, who was suspended for four months earlier this year, was due to face a disciplinary hearing for, among other things, refusing to carry out his duties and behaving in a manner "extremely detrimental" to the efficiency of the organisation.

The CCMA, formed in terms of the Labour Relations Act to resolve labour disputes, has been in the news for labour problems of its own in the past few weeks.

The crisis culminated in the staff association handing Orleyn a list of allegations against the office of the national registrar



## 'DIFFERENCES SETTLED'

Thandi Orleyn of the CCMA

At least five senior members are believed to be quitting this month, either for better positions or because of dissatisfaction with the organisation.

According to an unsigned draft notice of a disciplinary investigation by the director's office, Mabuza stood accused of not carrying out his duties since May, after a change in the CCMA structure saw his portfolio being

integrated under administration, with a new appointment, Haroun Moolla, as his head.

Moolla has subsequently quit his position as head of the department of finance and administration.

Orleyn and Monde Zimema, the national registrar, confirmed on Friday that they had reached a "confidential" agreement with Mabuza but declined to say whether he had left or not.

"I am not instituting anything against him. We have settled our differences," Orleyn said. She declined to elaborate and said the details were confidential.

Zimema added: "We reached an agreement acceptable to both parties, but the contents of that agreement are confidential."

Mabuza confirmed that he was no longer employed by the CCMA but declined to provide details of his financial package or other agreements reached.

He said he had not seen the draft notice of an investigation from Orleyn's office against him.

# Mdladlana upbraids CCMA over scandals

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**FRANK NXUMALO**

LABOUR EDITOR

Johannesburg — The department of labour had problems with the "public airing" of problems in the Commission for Conciliation, Mediation and Arbitration (CCMA), Membro Mdladlana, the minister of labour, said last week

Up to a week ago, the CCMA had been rocked by the resignations of high-profile commissioners amid accusations and counter accusations of racial discrimination and autocracy

Mdladlana told the third annual CCMA commissioners' annual conference in Esselen Park, "An institution which is surrounded by controversy does not inspire the confidence of the public and the people we aim to serve

"I do not need to remind you what happens during strikes.

"It is possible the intense emotion and conflict that tend to occur in these periods can be directed towards growth

"I challenge the staff and the management of the CCMA to respond to the present challenge in a creative and pro-active way"

Mdladlana said by the end of next year the CCMA should be able to handle disputes arising not only out of the Labour Relations Act (LRA) but also out of the Basic Conditions of Employment Act (BCEA) and the Employment Equity Act

The minister said he hoped that by that time the CCMA should also be able to devote more energies and resources to

disputes resolution than to unfair dismissal cases, as had been the trend up to now

Mdladlana said CCMA statistics showed 75 percent of its work to be related to unfair dismissal cases, especially in the retail, security and public sectors

"The BCEA and the Employment Equity Act will create additional work, but also will increase the significance of the CCMA as a key institution in the world of work," Mdladlana said

"Our challenge as partners in the labour market is to develop a holistic approach in respect of the implementation of these new labour laws.

"A contract of employment as is argued by the BCEA reduces the possibilities that need to be dealt with under the LRA. Similarly, good employment practices mean that

disputes of unfair discrimination in terms of the Employment Equity Act are less likely to rise"

He said the third challenge faced by the commission related to strike resolution

"The fourth challenge I would like to refer to relates to bargaining councils and workplace forums," Mdladlana said

"Last week we heard about the demise of the Gauteng Building Council

"Some of our detractors argued that this is an indication of an invisible trend away from sectoral bargaining

"However, if indeed any trend can be discerned only two years after the new LRA came into effect, the trend is in the opposite direction," he said

**'An institution surrounded by controversy does not inspire confidence'**



# CCMA reports a 35% increase in cases

Reneé Grawitzky

BD 28/12/98

UP TO 35% more disputes were referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) this year than last year, with 321 referrals being received on average a day

At the same time the Independent Mediation Services of SA (Imssa), a private dispute resolution agency, saw a 30% increase in the referral of arbitration this year. This may be partly due to a backlog at the CCMA.

The commission reported that 13 843 cases were arbitrated this year while a further 8 030 were

scheduled for hearings next year. To date, 328 arbitration awards have been taken on review to the Labour Court with only 47 being successful

This year, 80 795 disputes were referred to the commission, compared with 60 000 last year

Since its inception in November 1996 — when the new Labour Relations Act came into operation — more than 143 000 disputes have been referred to the commission. The body expected to face about 40 000 cases a year

Imssa support services director Mark Turpin said Imssa panellists were assisting the commission in an

informal way to reduce its backlog of cases. Imssa's approach was to support the CCMA, rather than to compete with it

Turpin said there were indications from the CCMA that where parties could pay their way they "should be encouraged to go to Imssa". He expected Imssa's work to increase by 10% to 15% in the year ahead

The CCMA said the Gauteng region continued to face the largest caseload, followed by KwaZulu-Natal and the Western Cape. Individual dismissals accounted for the majority of disputes. The retail sector accounted for 20% of cases referred

(165)

## CCMA to discuss renewal of contracts

Reneé Grawitzky

THE Commission for Conciliation, Mediation and Arbitration (CCMA) has entered into talks with its employees' association over the renewal of employment contracts for commissioners, amid low staff morale and concerns over the possible outcome of the talks

The commission will meet with the association tomorrow in an attempt to deal with staff concerns.

The association is believed to be keen to avoid conflict on the matter and is pressing for an amicable resolution

In terms of the Labour Relations Act,

CCMA commissioners were employed on fixed three-year contracts and the terms of those employed at the commission's inception in November 1996 will expire from June onwards. Commissioners will not automatically be re-employed, but have to re-apply for their positions

Sources said this had caused tension within the organisation and that staff morale had started going down in December after commissioners were notified of the impending expiry of their contracts

The CCMA said the renewal of contracts had also raised crucial questions about the criteria to be used for re-employing commissioners

(165)

BD 28/1/99

CCMA AWARDS FORMER EMPLOYEE

# NGO found to be 'unfair'

ET 1/2/99

(165)

**THE COMMISSION** for Conciliation, Mediation and Arbitration has criticised several public figures for ignoring subpoenas to give evidence in a recent hearing

**L**ONG-STANDING ANC member and anti-apartheid activist Yasmina Pandy has won an R81 000 award from the Commission for Conciliation, Mediation and Arbitration (CCMA) for the manner in which she was dismissed from a non-government organisation

CCMA commissioner Ghaleb Galant found that Pandy's dismissal from the Khululekani Institute for Democracy (KID) was substantively fair but that there was "gross procedural unfairness"

Galant was scathing about a number of KID board members, in particular chairperson Smangaliso Mkhatshwa and Bernard Ncube — both of whom are ANC MPs, and Mkhatshwa the Deputy Minister of Education — who ignored subpoe-

nas to give evidence

"Neither of them bothered to apologise for their absence. This I regard as contemptuous of the operation of the Commission

"The fact that Father Mkhatshwa and Sister Ncube are public figures exacerbates this situation," said Galant

"Similarly Dr S Ncube (a director of the Development Bank of Southern Africa) and Ms Priscilla Jana decided to ignore their subpoenas without explanation"

The award Galant made in favour of Pandy is equal to the remuneration that she would have been paid from the date of her dismissal to the last day of the arbitration hearing — November 24, 1997, to December 12 last year

However, Pandy said when she

telephoned KID director Campbell Lyon last Friday to ask if they would honour the award, he told her the organisation was taking the matter to the Labour Court

Pandy joined KID in 1996 and was employed as a parliamentary liaison officer. She was required to support committees, write speeches for MPs and do community education

She reported directly to executive director Xoliswa Sibeko, now public relations manager for President Nelson Mandela, but the relationship soured and Pandy and a fellow employee, Ingrid Poni, submitted a motion of no confidence in Sibeko's abilities

KID produces a publication called *Network* and in November 1997 there was great urgency to produce a record of the organisation's work for the year

Pandy asked Poni, who was in charge of the edition, to hand in four of the eight reports. Poni

agreed but on the due date Pandy handed in no reports, Sibeko testified, and refused to do the report

Pandy and Poni then submitted a vote of no confidence in Sibeko

Pandy was served a notice to appear before a disciplinary inquiry on charges of "gross misconduct consisting of insubordination, verbal abuse and setting a poor group example" and "refusal/failure to submit reports"

She was subsequently found guilty on both charges and dismissed on November 24, 1997

Galant found the board's decision was taken on untested allegations that Pandy had attempted to defraud KID subsequent to her dismissal, by forcing the KID administrator to sign over cheques to which she was not entitled

This was a serious procedural defect and Pandy was not given an opportunity to address the board — Staff Writer



# Chief must face music for firing union member

Pietersburg -Trade unionists in Northern Province are set to make history this week when they bring a traditional leader before the Commission for Conciliation, Mediation and Arbitration for alleged unfair labour practices

A Zebediela tribal chief, Kgoshi Sello Kekane, will have to explain tomorrow why he had fired his administrative clerk immediately after she joined the Trade Union of

South African Authorities Kekane is the first traditional leader to be called before the commission and will serve as a test case for tribal law versus new labour regulations

The union lodged a complaint against Kekane last week after its new Northern Province secretary, Josephine Kekane, complained that the chief had dismissed her

Kekane, who is not related to the chief, said she had been

ordered to vacate her office at the Zebediela Mandehle tribal authority by February 28

"It's a blatantly unfair labour practice and he'll have to explain his actions whether he is a chief or not You cannot fire someone just because they join a union," said union secretary-general Nakedi Mogale

Confirming that the union had targeted tribal employees during a recruitment drive over the past six months,

Mogale said the union believed the hearing would serve as a test case

"A lot of our new members in tribal offices have begun receiving threats or are being harassed Chiefs seem to think the unions will undermine their traditional authority and are therefore fighting us," he added.

Josephine Kekane claims she received six death threats from various unknown people - African Eye News Service

(165)

Stan 23/2/99

# SA mediators' feud has the public fretting

(17/3) (16/1)  
Internal problems constrain the CCMA, writes **Reneé Grawitzky**

MD 17/3/99  
THE Commission for Conciliation Mediation and Arbitration (CCMA) had done little to allay public fears on its continued effectiveness following reports of internal disputes, labour consultants said yesterday.

The commission has in recent months been portrayed as an organisation embroiled in internal divisions which have led to low staff morale and resignations at a senior level. The suspension two weeks ago of national registrar Monde Zimema has underlined these concerns.

Durban-based consultant Pat Stone said the commission could not keep its legitimacy in the eyes of members of the public — who were the ultimate users — if the organisation was perceived not to be able to manage its own internal affairs.

Sources said the organisation was developed with the expectation that it would handle a case load of 40 000 a year. From its inception in November 1996 to November last year, the commission handled 131 000 disputes. The huge case load did not bode well for a new institution employing close to 400 people and this in itself created tension as commissioners had huge caseloads.

Commission sources said the CCMA lacked management structures and proper reporting lines when it was established. This led to a situation where individuals, without having the authority, established themselves and yielded great power in the organisation.

The sources said tension existed because there were competing management structures. At the outset senior commissioners and registrars in the provinces were of equal status. This created tension in the provinces over who was in charge. This situation has been clarified and now senior convening commissioners are in charge in the provinces.

The CCMA said yesterday proper management structures were now in place and proper reporting lines had been established. This was stabilising the situation.

A number of consultants, while acknowledging that the commission was overburdened and underfunded, questioned the quality of the service being provided.

Andrew Levy & Associates consultant Jeremy Crawford said the experience of "our clients has not always been positive".

Consultant Gavin Weiner said some strange and unreasonable decisions were being handed down, while there was increasing concern over the rising backlog in arbitration cases.

Crawford said there appeared to be significant structural problems in the organisation while the capability of certain commissioners was questionable, particularly with regard to certain jurisdictional issues and an understanding of certain legal principles.

Consideration, he said, should be given to amending the Labour Relations Act to grant a limited right of appeal as opposed to the current situation where there was a limited form of review.

A source close to the process said the commission's success rate in resolving disputes had to be measured against the success rate of the dispute resolution procedures stipulated under the old legislation.

The commission's success rate in settling disputes was about 70% compared with the old industrial court and conciliation board's 20% to 30%.

# CMMA brokers new wage deal for municipal workers

(165) (240)  
FRANK NXUMALO

CT (MR) 14/5/99 LABOUR EDITOR

Johannesburg - The Commission for Conciliation, Mediation and Arbitration (CCMA) yesterday brokered a wage deal between the South African Municipal Workers' Union (Samwu) and the South African Local Government Association (Salga)

"The deadlock-breaking settlement of the greater of R230 per month or 5,5 percent is a figure on which Samwu compromised significantly," said Dale Forbes, the Samwu collective bargaining officer.

Forbes said this had been an improvement on last year's increase of R202,50 or 5 percent.

Samwu said for the first time, municipal workers would be getting a minimum wage of R1 335 a month, which would in turn bring much-needed improvement to the living standards of those now on about R600 a month in small and rural municipalities.

As part of the agreement, a sliding scale would be introduced in next year's wage negotiations to correct distortions in the salary structure mainly affecting workers in the clerical, supervisory and artisan grades

"The ongoing dispute that has disrupted the focus on the forthcoming elections has ended, and now the union is keen to redirect its focus to supporting the ANC," Forbes said.

"Samwu believes that the positive approach from Salga evident in the last round of negotiations will continue in other matters confronting local government," Forbes said.



# Labour director's rights violated, commission finds

RONALD MORRIS

(165)

ET 28 15999

THE Human Rights Commission has found that a refusal by the director-general of the Department of Labour to hand over information on which he decided to suspend provincial labour director Brian Williams was, on the face of it, a violation of his constitutional rights.

The commission has given director-general Sipho Pitjana

until noon today to respond to complaints by Williams that he had not been given copies of "strengths and weaknesses" reports compiled after a training programme and that a prohibition on speaking to the media was a violation of his constitutional right to freedom of expression.

Williams was suspended, on a charge of misconduct for allegedly disobeying an instruction, but was

remanded. However, his human resource management functions were withheld.

In October he was again suspended by Pitjana and charged with misconduct on the grounds that he had involved himself in a human resources management function.

At an internal disciplinary inquiry which started in December, Williams pleaded not guilty

Zwe Ndiala, Pitjana's lawyer, argued that even if Pitjana's instruction was unlawful, as contended, Williams was dutybound to obey it.

Ndiala was removed as Pitjana's legal representative when it emerged that he had telephoned presiding magistrate Liana Myles at home days before she was due to rule whether Williams should face misconduct charges.

She told the inquiry that Ndiala threatened that she would be removed if she did not rule in the department's favour.

Myles said she had been placed under duress and had been intimidated to the point where she offered to recuse herself. She was later replaced and the inquiry started from scratch when Pitjana appointed Thabani Jali as the presiding officer.

# Commission that cools tempers (165)

*The Commission for Conciliation, Mediation and Arbitration is functioning very well, writes Luvuyo Kakaza*

MTS 30/4 - 6/5/99

It's Friday morning and the modest headquarters of the Commission for Conciliation, Mediation and Arbitration (CCMA) in downtown Johannesburg are buzzing with activity.

It is in this commissioner's noisy corridors that reluctant management teams and angry workers start to lobby before talks in an attempt to reach speedy solutions to simmering labour disputes.

Last Friday it was time for the transport industry to confront their employers over a wage dispute. Around the negotiation table, the CCMA's director, Thandi Orleyn, and another commissioner were goalkeepers. The four unions — the Transport and Allied Workers' Union, the Transport and Omnibus Workers' Union and the Western Cape Omnibus and Salaried Staff Union, were demanding a 10% increase while employers were offering 7%. Initially the unions demanded 13% while the companies offered 4.5%. Harsh words by unionists were used against employers and the two parties were separated to cool off tempers.

However, a last-ditch effort by CCMA to end the strike failed. Instead, trade unions accused employers of arrogance and criticised their unwillingness to reach an agreement to end the nationwide strikes by thousands of transport workers. In the corridors the wagging of fingers at employers were the order of the day. "Abejanga abosiboni [White people don't respect us!]," retorted one unionist.

According to commissioners, the use of bad language between opposing parties is a normal trend. "People come here with all sorts of attitudes and allegations and we have to oversee that the mediation process is carried out peacefully without taking sides," says commissioner Rob McGregor.

Unresolved strike disputes that result in heated arguments between workers and employers are not new to the commission. However, a lot of strike disputes were resolved over the past three years.

Since its inception, in terms of the new Labour Relations Act, the CCMA has mediated in a number of wage strikes last year in the sugar, transport and private health sectors as well as in national chemical, mining and construction sectors, and made a major contribution to the drop in labour walkouts.

About two-thirds of the CCMA's first 58 000 disputes last year were resolved. This resulted in last year's 64% drop in union strike actions. This year 38 432 disputes were mediated, and 26 344 were settled by conciliation. About 5 642 cases were settled by conciliation at an arbitration hearing.

While strikes are the most powerful weapon of any union, Orleyn is convinced that the decline coincided with the implementation of the Labour Relations Act in 1996. The Act codifies issues that in the past were considered to be good labour practice, like retrenchments.

Under the auspices of the Act, she adds, the CCMA has acted to bring about the speedier resolution of disputes. Many unresolved cases go to arbitration, which means, says Orleyn, that the disputes will be resolved faster and cheaper than via litigation through the courts.

Trade union movements like the Congress of South African Trade Unions (Cosatu) agree that the CCMA, replacing the Industrial Court, is a most important and speedy system.

"Attitudes among workers are slightly changing and they rather reach a deadlock in their negotiations with management before they can strike," says Orleyn. Strikes are a last resort in terms of reaching an agreement.

Though the system has created a friendlier working relationship between workers and employers, it has not been totally favourable to domestic and farm workers.

Orleyn agrees that the commission has not



**Workers' rights: Strikes such as these could be a thing of the past because of the work that the Commission for Conciliation, Mediation and Arbitration is doing**

satisfactorily spread its wings to these sectors. "We must understand that these are not easily reachable sectors as they are not represented by unions." Literacy has also been cited as one of the contributing factors, and rural areas have been left uncovered by the CCMA's actions.

This year the commission promises to focus on promoting effective strategies for dispute prevention. "More of our resources will be ploughed into public education," says Sithembu Tshewe, the CCMA's representative.

Public education projects based on the CCMA's work are planned together with the

SABC's educational radio, to be transmitted next month in all official languages.

Trade union movements like Cosatu, labour analysts and workers feel the CCMA has become their next home, where disputes in the workplace can be resolved to the benefit of the country's economy.

"If South African business is to compete with the world's economy, management and labour have to find ways of relating to each other," says Orleyn. "There is need to a shift towards joint problem-solving and better communication in the workplace."



# Landmark ruling backs mothers-to-be

RONALD MORRIS

THE protection of the rights of pregnant women in the workplace was given teeth by a landmark Labour Court judgment on Friday when Woolworths was ordered to pay a woman R200 000 after it refused to offer her permanent employment because she was pregnant.

The court found that Beverley Whitehead was unfairly discriminated against as an applicant in a R300 000-a-year human resources job and had been a victim of unfair discrimination.

When Whitehead was interviewed for the job on December 17, 1997, she was satisfied that all that was required was for the interviewer to make a final decision.

A message left on her telephone two days later, which stated that Woolworths "wanted to finalise the paperwork", according to her confirmed that a contract of employment had been concluded.

However, Woolworths withdrew the offer four days later and offered her a

fixed-term contract for five months. The reason for the withdrawal was because of her pregnancy.

Whitehead contended that this was a breach of contract which constituted an unfair labour practice in terms of the Labour Relations Act.

However, Judge Bastein said that Whitehead, whose employment would only have started on January 12 last year, could not in the circumstances claim to be dismissed as she failed to qualify as an employee as provided for in the Act.

On her alternative claim that she had been discriminated against because of her pregnancy, the court investigated whether the discrimination complained of was unfair and based on arbitrary grounds.

Woolworths said there was no differ-

ent continue to employ the incumbent after he has recuperated? Do either of these options not make nonsense of the requirement of uninterrupted job continuity?"

Judge Waglay said if the need for uninterrupted job continuity was of such importance, he had no doubt that some impediment would have been placed upon the incumbent from being free to sell his labour wherever he pleases.

"That there was no impediment gave credence to the belief that the discrimination based on the condition of uninterrupted job continuity was nothing other than discrimination that was unfair and based on an arbitrary ground."

Woolworths said there was no difference in an accident or, is taken unexpectedly ill and is unable to perform his duties for a period of 12 months.

"What happens in that case? Does the respondent dismiss him? Does the respon-

*We live in a constitutional state. It is such a duty to give effect to the Bill of Rights.*

CT 31/11/99

See Business Report (1657)



# 'Williams has the right to talk,' HRC tells Labour

RONALD MORRIS

THE Human Rights Commission (HRC) has recommended that the Department of Labour remove a ban on speaking to the media slapped on Brian Williams, the provincial director suspended for alleged misconduct.

The HRC has further recommended that the department review and amend internal policies where necessary in order to ensure compliance with the Constitution.

The recommendations came after the HRC received a complaint from Williams that the ban violated his constitutional rights to freedom of expression and access to information.

The High Court has already ruled that Williams' constitutional rights had been violated when he was refused access to documents on which the decision to suspend him was based.

Williams, who has pleaded not guilty to the misconduct charge at an internal disciplinary hearing, has also challenged the legality at the Commission for Conciliation Mediation and Arbitration (CCMA) of the decision to suspend him.

At the CCMA Deon Haasbroek,

chief director administration and Williams' manager at the time, testified that an important report, in which it was decided to suspend Williams, was withheld from him on the instructions of Siphos Pityana, the director-general.

In her report, Faranaaz Veriava, an advocate with the HRC, expressed concern over a statement in the department's response that the matter was "merely an internal departmental disciplinary inquiry and to evoke the provisions of the Constitution in respect of it (is) disproportionate in respect of the issues to be decided." Veriava said central to the development of a rights-based and open democracy was the belief that rights guaranteed in terms of the Constitution, and the values underpinning these rights, informed decision-making at every level and that "internal matters" were not immune from constitutional scrutiny.

In order to justify the ban on speaking to the media, the department argued at the HRC that a disciplinary inquiry was underway and therefore the proceedings were still *sub judice*. The HRC, however, found that *sub judice* did not mean that the parties concerned were automatical-

ly prohibited from making statements to the media.

The HRC said in any event the media ban was not restricted only to statements pertaining to the disciplinary inquiry but a general prohibition pertaining to matters beyond the disciplinary inquiry.

In response to a claim by the department that Williams may make damaging or untrue statements to the media in respect of the inquiry or departmental matters at large, the Commission said there had been many media reports, some of them at a level of detail that would be peculiar only to Williams.

The ability to discuss matters in the public domain was consistent with the government's commitment to open and transparent government and the department could use other legal remedies, the Commission said.

Veriava said the various arguments put forward by the department was not in line with the constitution.

These arguments undermine the nature and meaning of the rights as set out and placed an undue restriction on this guarantee of the right to freedom of expression, the HRC said.

(16h)

ET 5/6/99

# New chairman at CCMA

(165)

By ELIAS MALULEKE

AXED Gauteng government director-general Vincent Mntambo has been appointed for three years as chairman of the governing body of the Commission for Conciliation, Mediation and Arbitration (CCMA)

Mntambo left government last year after an apparent fallout with the then Housing MEC Dan Mofokeng

The CCMA is an organisation consisting of representatives from government, organised labour and business which resolves labour disputes

The governing body oversees the strategy and sets policy direction for the CCMA.

Minister of Labour Momboti Mdladlana has expressed his confidence in Mntambo and the governing body

He said they would further build, consolidate and guide the

destiny of the CCMA, to ensure its success during their term of office

Since leaving government as the first director general of Gauteng, Mntambo has focused on consulting and advising top managers in both the private and public sector in the areas of strategy and transformation

He is one of the five founding partners of Sediba Consulting.

He is also the executive director of Everest Systems, a black economic empowerment information and technology company, and serves on the the Board of Trustees of the Independent Mediation Service of South Africa (IMSSA).

Dr Michael Gering, former director of KPMG and now a partner at Sediba, said Mntambo was a top mediator, facilitator and process consultant and the commission would benefit greatly from his experience and skills

# CCMA chief in at deep end

CT(BR) 6/7/99

(165)

FRANK NXUMALO

LABOUR EDITOR

Johannesburg – Vincent Mntambo, the new chairman of the governing body of the Commission for Conciliation, Mediation and Arbitration (CCMA), joins the commission at a time when the institution is experiencing a record escalation in labour relations disputes.

The incoming chairman, who was the director-general of Gauteng's public service department, will serve a three-year term.

A constitutional and international lawyer by profession, Mntambo spent some time teaching law in the US and at the universities of Natal and Unisa. He brings to the CCMA experience in conflict resolution spanning some 10 years.

Mntambo said last weekend he would be responsible for giving strategic direction to the work of the CCMA and ensuring balance between the interests of labour, government and business. The biggest challenge remained the growing workload at the commission.

"It takes up to three months from the moment a case is lodged with the CCMA up to the time it is finally resolved. We have to find a way of improving on that time frame," Mntambo said.

But Mntambo(42) is privileged to be presiding over a new era at the CCMA because, for the first time ever, the institution credited with having been a brainchild of the revolutionary Labour Relations Act, will be outsourcing its service by accrediting Independent Mediation Services of South Africa (IMSSA) and bargaining councils to handle cases referred to it.

He believes this arrangement will cut the CCMA's workload in half, although it is not a permanent solution. The tax-funded institution still has to subsidise its new partners



**VISIONARY** Vincent Mntambo contemplates the challenges he faces in his new job as CCMA chairman

PHOTO JOHN WOODROOF

before a longer-term solution is found.

Bokkie Botha, the outgoing chairman of the governing body, said the record escalation in cases placed an enormous strain on commissioners. He believed Mntambo had the energy and experience to lift the institutions out of the doldrums.

Botha said he did not see the growing preference for IMSSA over the CCMA as a "competitive issue" because the latter had been established as only one part of a range of dispute-settling organisations including IMSSA, the industrial court and statutory council. He said it was surprising that big companies preferred the CCMA to other alternatives.



# Lawyers call for changes to labour act

Rensé Grawitzky

BD 30/7/99

(165)

(166)

A CUT in the budget of the Commission for Conciliation, Mediation and Arbitration, about which it was only recently informed, has prompted labour lawyers to call for changes to the "Rolls-Royce" legislation which established the commission.

Lawyers said yesterday that the underlying premise of the Labour Relations Act, which came into effect in 1996, was too ambitious and, as a result, the commission's performance was being hampered by inadequate state funding.

Labour director-general Siphosiyana said this judgment was premature as the provisions of the act had not been fully explored. The act did not en-

visage the commission as the only institution for dispute resolution.

He said resources had been misallocated within the commission. All parties agreed there was a need to restructure and rationalise the operation so resources could be transferred to wherever they were most needed.

The commission's budget was reduced from R128m to R125m a year, prompting the governing body to decide not to ratify an in-principle wage agreement between the commission's staff association and management.

In view of the organisation's huge case load, it decided to increase the number of commissioners, reduce the number of case management officers and put more resources into ensuring the effective screening of cases.

This has exacerbated tension in the organisation as the governing body attempts to finalise the reappointment of commissioners whose contracts have expired. There has been speculation that retrenchments will take place.

The department said, however, that the commission was not "seeking a reduction in the total staff complement".

Lawyer John Brand said the commission had done all it could have been expected to do to provide a service within its severe capacity constraints. It was doomed the minute it opened its doors because the legislation was never properly costed.

Another lawyer said government was warned during the drafting of the act that a professional conciliation service would exceed budget allocations.

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# Labour warned on litigation perils

CT 13/8/99

**A RETIRED magistrate, appointed by Sipho Pityana, the director-general of the Department of Labour, warned in October last year that the department would "come off second best" if the withdrawal of Brian Williams' delegations resulted in legal action** **RONALD MORRIS** writes

In a letter Johan Wepenaar said "My opinion is also that the Department of Labour in its handling of Mr Williams has made certain footwork errors

"In one respect I refer specifically to the withdrawal of delegations from Mr Williams at the beginning of this year. I think this was handled rather clumsily. Various steps to ensure procedural justice were not applied.

"Very briefly, the department will come off second best if this matter goes to litigation with all the financial and other implications attached to such a process," Wepenaar said.

In a report in October last year Barney Jordaan, a law professor, said that *prima facie* Williams' suspension was both unfair and unlawful.

At an arbitration at the Commission for Conciliation, Mediation and Arbitration (CCMA) where Williams challenged the lawfulness of his suspension, Pityana relied on a single witness, Dean Haasbroek, chief director of administration, who on numerous occasions declined to answer questions put to him by Graham Taylor, counsel for Williams.

Williams was suspended on a charge of misconduct for disobeying a lawful instruction when he intervened to successfully resolve a labour dispute between the Public Service Association and the Department of Labour about an alleged unfair procedural transfer of an official from Bellville to Cape Town.

Haasbroek conceded at the CCMA that in resolving the matter, Williams may have saved the minister embarrassment, and the department money.

Pityana claimed Williams' action violated an instruction not to get involved in human resource management. Williams was subsequently reinstated but his human resource management functions were still withheld.

Pityana also claimed that Williams' suspension followed persistent problems, which included conflict with staff and the mismanagement of state resources.

However, in his evidence at the CCMA, Haasbroek testified that this allegation was not true and conceded that no investigation or inquiry found that Williams had violated any staff code or policy in regard to his staff.

An internal disciplinary enquiry which started in December last year Williams pleaded not guilty.

Officials investigated allegations of irregularities regarding transformation, the appointment of officers in acting capacities and staff selection committees.

The commission found the source of the letter, on a union letterhead, was a single individual and not the union and rejected the allegations as lacking in credibility and integrity.

In a report dated September 20, 1996 the commission said Williams had been "over democratic" in respect of the publication of the selection process of staff.

Williams, who had been trying to obtain documents from the department since March 1984, on no less than 19 occasions to prepare for the CCMA hearing, was forced to launch High Court action for an order compelling the Minister of Labour and Pityana to hand over the documents.

Pityana opposed the application and his counsel argued that the documents were not relevant and that Williams could apply for them through other channels such as the CCMA.

Judge Jeanette Traverso said it was clear that Williams' human rights were violated by the refusal to give him the documents and ordered that they be handed over to him "forthwith" and not later than the commencement of the CCMA hearing on June 3.

On May 27 Zwe Ndlovu, Pityana's representative, revealed to Williams for the first time which documents the department intended using at the CCMA.

Evidence by Haasbroek at the CCMA subsequently was that the court order was not complied with because a key report, a strength and weaknesses report on Williams was not included in the bundle of documents handed to Williams — this was on the instruction of Pityana, he testified.

An allegation that the department's Internal Audit Report revealed a mismanagement of state resources and a failure to exercise adequate controls was contradicted by evidence at the CCMA based on a financial report on state of expenditure as at May 31 1998 in which the Western Cape was rated the best performing province.

Audit reports also showed excellent control over cars, subsistence and travel costs and that no fault could be found with training work shops, Williams had arranged.

Williams' representative, revealed to Williams for the first time which documents the department intended using at the CCMA.



NO BASIS Sipho Pityana, the director general of the department of labour has been accused of violating the rights of Brian Williams.

nation in Cape Town.

In addition the department's own documents showed "there is no evidence of a leak or any mishandling of the document in the Cape Town office of the Department of Labour".

In response to a claim that Williams was provided with "24-hour police protection by the department" after he had alleged complaints that his life and the lives of his family was threatened Taylor has advocated said "this is a complete and utter falsehood".

Meanwhile the Human Rights Commission (HRC) investigated a complaint by Williams and found that Pityana had violated Williams' constitutional rights with regard to freedom of expression and recommended that the department remove as a term of the suspension order the condition which banned Williams from speaking to the media.

The HRC expressed concern that the department's claim that the disciplinary inquiry was "merely an internal matter" and for Williams to invoke the provisions of Constitution was "disproportionate".

Fatanaaz Vernaava, an advocate with the HRC, said in her report that central to the development of a rights-based and an open democracy was the belief that rights guaranteed in terms of the Constitution and the values underpinning these rights informed decision making at every level and that "internal matters" were not immune from constitutional scrutiny.

The ban however is still in place because Pityana claimed at a press conference this week that he had not received any official letter from the HRC.

## Pityana's letters of warning to Williams aired at hearing

BRISCELLA SINGH (165)

THE second day of the internal disciplinary hearing against suspended Western Cape director of Labour Brian Williams got underway yesterday, with Williams leading evidence.

The department had ordered a disciplinary hearing for Williams on charges of "gross insubordination arising from a direct violation of instruction", from Labour director-general Sipho Pityana, not to operate Human Resource Management (HRM) delegations.

Months of controversy and intense media interest has dogged the Williams saga, more recently the refusal of retired magistrate Llana Myles from the hearing, which delayed the process until his resumption on Wednesday.

In papers presented to chairperson Thabane Mole (who replaced Myles), Pityana had written to Williams in March last year to say that his (Williams) office "continued to be a source of great embarrassment to the department".

"You will no doubt understand that this costs (sic) a lot of doubt on your leadership, consequently I have decided to put the Williams directorate under observation based on

### Fact file:

- In 1987 Sipho Pityana completed his degree in public administration and sociology
- Shortly afterwards he worked for the International Defence and Aid Fund.
- In 1988 he studied for his masters degree in politics and sociology at the University of London and in 1989 he co-ordinated the Mandela International Reception Committee.
- He returned to South Africa in 1991 as the deputy director of a Johannesburg-based research organisation, Community Agency for Social Inquiry.
- In 1993 he became the registrar of the University of Fort Hare.
- In early 1995 he was appointed Director General in the Department of Labour.
- Pityana is married to Nkulile and they have two children, both boys.

### The HRC says ...

RESPONDING to Sipho Pityana's statement to the *Cape Times* this week, that he had not seen or received a copy of the letter from the Human Rights Commission (HRC) asking him to lift gagging order from Brian Williams, Fatanaaz Vernaava of the Human Rights Commission issued this statement:

"The South African Human Rights Commission (SAHRC) concluded its investigation into the complaint of Mr Brian Williams against the Department of Labour on 2 July 1999. A report detailing the SAHRC's investigation, its findings and recommendations were forwarded to both Mr Williams and the Department of Labour on 2 July 1999.

The SAHRC found that the Department of Labour had violated Mr Williams' right to freedom of expression by preventing him, as a term of his suspension order, from speaking to the media. The SAHRC recommended that:

- 1 The department remove as a term of the suspension order the condition regarding the prohibition from making statements to the media.
- 2 The department review and amend internal policies to the extent necessary in order to ensure constitutional compliance.

The SAHRC today received a letter from the department acknowledging receipt of the report dated 2 July 1999. The department also informed the SAHRC of its intention to follow the recommendations contained in the report. The SAHRC commends the Department of Labour for agreeing to implement the recommendations contained in the report.



Graham Taylor, counsel for Williams, said he had not seen any evidence of a leak or any mishandling of the document in the Cape Town office of the Department of Labour.

In response to a claim that Williams was provided with "24-hour police protection by the department" after he had allegedly complained that his life and the lives of his family was threatened, Taylor, his advocate, said "this is a complete and utter falsehood".

Meanwhile the Human Rights Commission (HRC) investigated a complaint by Williams and found that Pityana had violated Williams' constitutional rights with regard to freedom of expression and recommended that the department remove, as a term of the suspension order, the condition which banned Williams from speaking to the media.

The HRC expressed concern that the department's claim that the disciplinary inquiry was "merely an internal matter" and for Williams to invoke the provisions of Constitution was "disproportionate".

Faranaaz Verava, an advocate with the HRC, said in her report that central to the development of a rights-based and an open democracy was the belief that rights guaranteed in terms of the Constitution and the values underpinning these rights informed decision making at every level and that "internal matters" were not immune from constitutional scrutiny.

The ban, however, is still in place because Pityana claimed at a press conference this week that he had not received any official letter from the HRC.

In his closing address to the CCMA, Graham Taylor, counsel for Williams said Pityana's failure to testify and explain why he had suspended Williams had materially damaged the department's case.

Williams' human rights were violated by the refusal to give him the documents and ordered that they be handed over to him "forthwith" and not later than the commencement of the CCMA hearing on June 3.

On May 27 Zwe Ndaba, Pityana's representative, revealed to Williams for the first time which documents the department intended using at the CCMA.

Evidence by Haasbroek at the CCMA subsequently was that the court order was not complied with because a key report, a strength and weaknesses report in the bundle of documents handed to Williams — this was on the instruction of Pityana, he testified.

An allegation that the department's Internal Audit Report revealed a mismanagement of state resources and a failure to exercise adequate controls was contradicted by evidence at the CCMA based on a financial report on state of expenditure as at May 31 1998 in which the Western Cape was rated the best performing province.

### The department will come off second best if this matter goes to litigation with all the implications attached...

Williams' suspension on a charge of misconduct for disobeying a lawful instruction when he intervened to successfully resolve a labour dispute between the Public Service Association and the Department of Labour about an alleged unfair procedural transfer of an official from Bellville to Cape Town.

Haasbroek conceded at the CCMA that in resolving the matter, Williams may have saved the minister embarrassment, and the department money.

Pityana claimed Williams' action violated an instruction not to get involved in human resource management. Williams was subsequently reinstated but his human resource management functions were still withheld.

Pityana also claimed that Williams' suspension followed persistent problems, which included conflict with staff and the mismanagement of state resources.

However, in his evidence at the CCMA, Haasbroek testified that this allegation was not true and conceded that no investigation or inquiry found that Williams had violated any staff code of policy in regard to his staff.

At an internal disciplinary enquiry which started in December last year, Williams pleaded not guilty.

The enquiry resumed on Wednesday morning and Williams took the stand yesterday.

Evidence before the CCMA and at the disciplinary inquiry was that in August 1996 a commission comprising Haasbroek and three other

judges Jeanette Travesso said it was clear that Williams' human rights were violated by the refusal to give him the documents and ordered that they be handed over to him "forthwith" and not later than the commencement of the CCMA hearing on June 3.

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Audit reports also showed excellent control over cars, subsistence and travel costs and that no fault could be found with training workshops Williams had arranged.

A claim that Williams had mismanaged confidential information in the Saldanha Steel project was investigated by the National Intelligence Agency (NIA) which found there was no evidence of a leak or mishandling of the information.

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## to Williams aired at hearing

PRISCILLA SINGH (165) et/13/s/99

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Months of controversy and intense media interest has dogged the Williams saga, more recently the refusal or retired magistrate Lana Myles from the hearing, which delayed the process until its resumption on Wednesday.

In papers presented to chairperson Thabane Jali (who replaced Myles) Pityana had written to Williams in March last year to say that his (Williams) office "continued to be a source of great embarrassment to the department".

"You will no doubt understand that this costs (sic) a lot of doubt on your leadership, consequently I have decided to put the Williams directorate under observation based on:

- Audit reports revealed a lack of sufficient control regarding the utilisation of government transport, subsistence and travel expenditures and workshops.
  - Unhealthy relationships between Williams and certain members of his staff and
  - Mismanagement of confidential information."
- Pityana alleges that in March last year, a confidential report on the labour conflict in the Saldanha Steel intended for the ministers of Labour, Finance, Trade and Industry, and Intelligence was leaked.
- Yesterday Uyen Bunssee, the department's legal adviser, objected to the relevance of Williams' evidence and arguments, saying that it did not pertain to the issues at hand.
- Williams' legal representative Advocate Graham Taylor responded that they were attempting to establish that there had been no basis to remove Williams' HRM delegation. "The facts on which Pityana relied on to remove Williams' HRM delegation, had no basis," Taylor said.
- The Department says its HR department was on the brink of resolving a dispute over the alleged irregular transfer of an employee from Bellville to Cape Town, allegedly done by one of Williams' foes, Meko Magida.
- "Despite the fact that his HRM delegations had been withdrawn, Williams unilaterally entered into an agreement with an employee organisation on the matter. This not only compromised the department financially, but violated the Director-General's instruction that he not exercise any HRM functions," Pityana said.
- On October 1 Williams was charged with gross insubordination and suspended from duty. Williams referred the matter to the Commission for Conciliation, Mediation and Arbitration and a ruling is pending.
- The department's hearing continues today.

## The labour department says ...

The following statement to the Cape Times was issued by Annette Gressel, Director of Communication, Department of Labour

"A NUMBER of reports have painted a picture of suspended provincial director Brian Williams as an anti-corruption crusader victimised by a ruthless department.

The evidence, however, points to the opposite.

Williams has frequently used unfounded allegations of fraud to pursue his own agenda and has not been consistent in his approach.

A false impression was created that the Department of Labour removed Williams in order to irregularly release R1,9 million for training at the Wild Coast Spatial Development Initiative.

Interestingly, Williams never raised his concerns about this with the department's director general.

To allay public concerns on the matter the director general asked the Auditor General to investigate the matter. The Auditor General found that no irregularities had occurred. This incident begs the question of why this false impression was created.

In January 1997, Williams again levelled allegations of corruption, this time against the department's training sub-directorate.

An investigation by both the police and the

department's internal audit found no evidence of this. It would appear that the allegations were instead a manifestation of a conflict between Williams and some of his colleagues in the provincial office. However, the damage had been done and the allegations stained relations with some stakeholders and staff.

When Williams alleged that his life was under threat as a result of this investigation, the department arranged 24-hour police protection.

However, when provincial official AK Adams received death threats ostensibly arising from Adams' attempts to uncover fraud, Williams failed to provide him with the same support.

Williams instead wrote to Adams demanding an explanation as to why Adams was investigating corruption without Williams' knowledge, a step difficult to reconcile with encouraging staff to root out corruption.

Long before his suspension, Williams attempted to obstruct an internal audit investigation into Unemployment Insurance Fund fraud in the Western Cape.

The investigation uncovered evidence of fraud resulting in the suspension on misconduct charges of a provincial official, a close associate of Williams.

Williams also strayed the outcome of an independent investigation, instituted prior to his suspension to resolve the problems plaguing the office under his management.

Headed by retired magistrate Wepernaar, its brief has been to investigate human resource management, inter personal conflict between Williams and his staff, irregular transfers and alleged victimisation of staff, as well as management systems and efficiency, a lack of financial controls and the mismanagement of confidential information.

Williams at one point threatened legal action to stop the investigation.

He later reluctantly agreed to participate in it, but has to date failed to do so.

The question remains: If Williams is so keen on the truth, why has he delayed a legitimate process instituted at his insistence?

Corruption is a serious concern in government. Its elimination requires a common effort by both citizens and those in the service of the public.

The Department of Labour is committed to ensuring this. However, unfounded allegations of corruption cannot be used as a smokescreen to avoid accountability or to settle scores arising from petty personal squabbles.

This undermines the very goals which the anti-corruption campaign seeks to achieve."



# Desperate plea from 'clogged-up' CCMA

CELEAN JACOBSON

A DESPERATE Thandi Orleyn, the director of the Commission for Conciliation, Mediation and Arbitration, has called on trade unions and management to stop clogging up mediation services with petty cases — including thousands of shoplifting complaints

She was speaking as the government announced that 3,8 million man-days were lost because of strike action over the last year — the highest figure since apartheid-era confrontations in the early '90s

Orleyn said "Research in the retail sector shows that a major issue is theft and shrinkage"

She said the sector did not have a central bargaining council where disputes could be re-

solved This meant that almost every issue was referred to the commission and there were no uniform codes of conduct with which to solve disputes

"There is also an adversarial relationship between employers and employees It is a very fragmented sector, with much competition between unions Unions don't want to lose support if they refuse to refer cases They may follow the right pro-

cedures but they also clog the system and we are trying to be more effective It is taking up a lot of energy and public funds," she said

The commission's annual report, released this week, shows a 35 percent increase in cases referred to the body last year

Most of the 60 000 cases referred to the body — some 20 percent — came from the commercial or retail sector

ST 12/9/99 (167)

# Aspirant labour judges put through tough interviews

9D b/10/99

(1b5)

Taryn Lambert

ASPIRANT Labour Court judges were subjected to grueling interviews by the Judicial Service Commission in Pretoria yesterday.

The commission interviewed five nominees for four vacancies in the Labour Court and one candidate for a position on the Labour Appeal Court.

Adv. Mahomed Jajbhay was questioned at length because his name appeared on a National

Party (NP) list of candidates for the 1994 elections. Jajbhay said he had never shared the NP's philosophy and that his uncle had put his name on the list without his permission.

He said he had written to Roelf Meyer, who was then a high-ranking NP member, to ask that his name be immediately removed from the list.

Federal Alliance leader Louis Luyt, who was recently appointed to the commission, said Meyer denied Jajbhay had sent him

the letter. A visibly upset Jajbhay said he stood by his word.

Thabam Jali, who has also been shortlisted for positions in the Cape and Kwazulu-Natal high courts, said he had been exposed to various branches of the law after working for a leading law firm in Kwazulu-Natal for 15 years. He has served as an acting judge in the labour court on three occasions and in the high court in Kwazulu-Natal.

Jali was recommended for the position by the current Act-

ing Judge President of the Labour Court, Ray Zondo, who said in a written submission to the commission that he had "demonstrated a sound knowledge of the law" and "worked well under pressure".

However, Chief Justice Ismail Mahomed rapped Jali over the knuckles after it emerged that the law firm in which Jali is one of 12 attorneys employs only one candidate attorney.

It emerged through questioning by commissioner George Bi-

zos that on average 100 law students passed their final exams in the Durban area every year, 50% of whom were from "disadvantaged backgrounds". Only half of the graduates were likely to find employment, Jali said. Attorneys are allowed to employ two candidate attorneys each.

Mahomed said Jali could have done more for "black advancement". One must walk the "extramile," he said.

Judge Nigel Willis, the only candidate for the Labour Appeal

Court, has been a high court judge for almost a year. He said he firmly believed litigants were entitled to "speedily delivered" judgments, as some employers had to pay employees until cases were resolved.

Shortlisted candidates for the Labour Court are Commission for Conciliation, Mediation and Arbitration senior commissioners Ingrid de Vilhiers and Alan Rycroft, and attorney Basheer Magley, who has 10 years of labour law experience.

LABOUR CONFLICT Mediation body adopts industry best practises as it repositions

# CCMA swears in millennium commissioners

FRANK NXUMALO

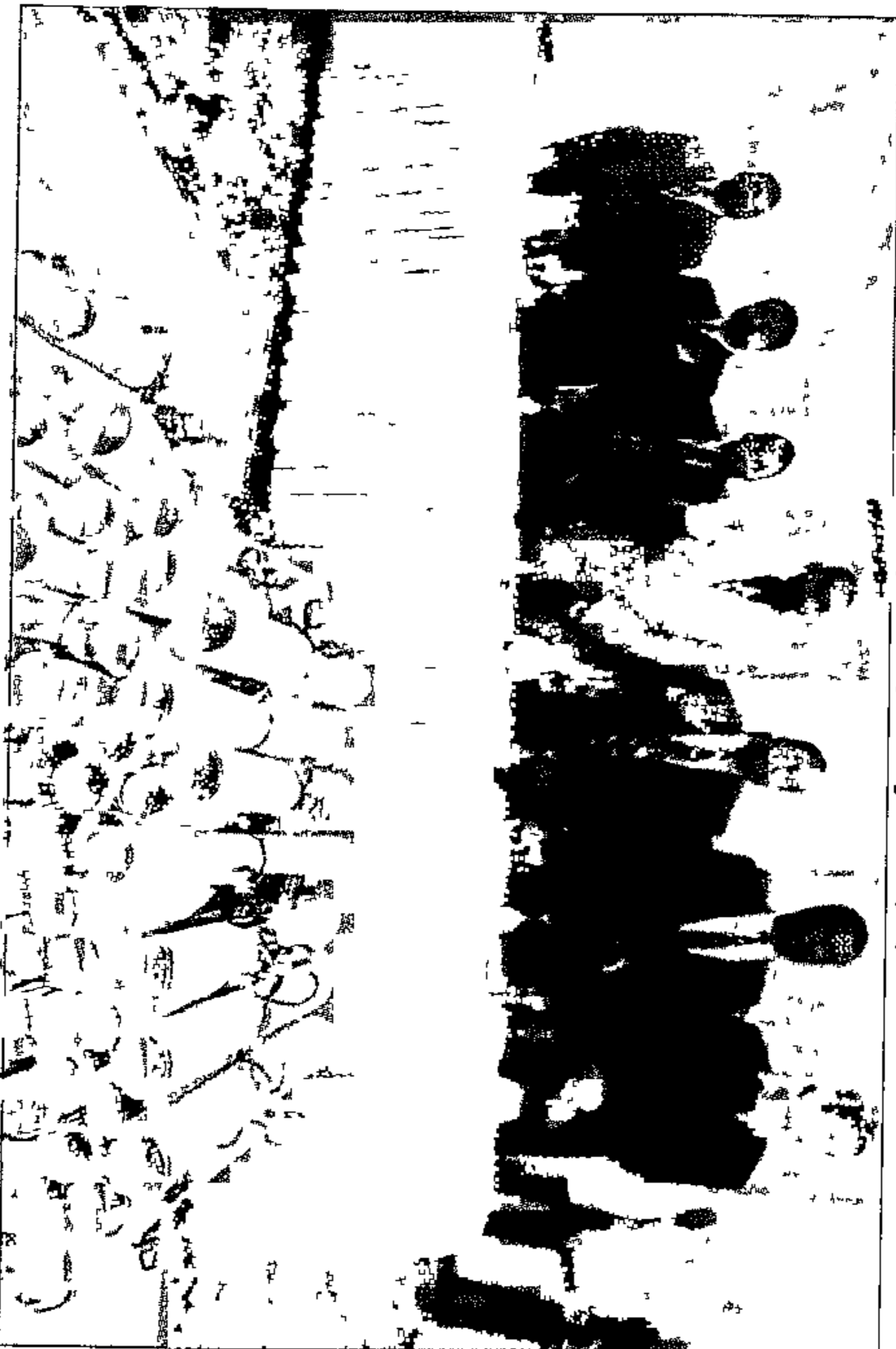
LABOUR EDITOR

Johannesburg – The shift of the Commission for Conciliation, Mediation and Arbitration (CCMA) from dispute resolution to dispute prevention was given practical expression yesterday when its director, Thandi Orleyn, administered the oath of office to 51 new commissioners for the Gauteng province

Dubbed the "millennium commissioners", the group was part of a total of 104 conciliators and mediators who would soon assume commissioner duties on a three-year contract

The strategic shift in the focus of the work of the CCMA had come about largely as a direct result of criticism levelled by the public at the organisation for the quality of its awards over its first three years to 1995

To achieve this aim, Orleyn said the millennium commissioners had been sensitised to best practices in industry and would be required to have a "thorough understanding of all labour market-related legislation and how it impacts on the labour market and the broader South African economy"



**PEOPLE WITH EMPATHY** The "new millennium" commissioners make their affirmations and take their oaths at an induction ceremony yesterday

PHOTO JOHN WOODROOF

She admitted that "experience suggests that the public has asked questions about the quality and substance of the work of the commissioners within the CCMA," but added that "this has not gone unnoticed by se-

nior management of this institution. Commissioners have been reviewed on the substantive and process issues around their work and effective training has taken its course to remedy this situation."

Acting Labour Court judge Ingrid de Villiers said that for the commissioners to be able to discharge their duties in line with the CCMA's vision of promoting social justice, economic growth and industrial peace,

they had to have well rounded conciliation and arbitration skills, a positive attitude towards their work and always be up to date with Labour Court decisions

De Villiers said the main conciliation skill was empathy – which could not and should not be faked

To master this skill, commissioners had to keep reminding themselves how painful the process was for both workers and employers

The judge said that re-trenched employees, for example, could not be expected to bother about globalisation of the world economy labour market policy or any other such issues. All they knew was that they had a job and then lost it

She said conciliation was equally painful for employers because they believed they had "done what they had to do"

Arbitration awards should be such that all parties go away feeling they had been treated fairly, the judge said. The decisions of the Labour Court, which are often based on a review of CCMA awards, provides a framework within which to locate a commissioner's work



# CCMA staff uproar

*Source: 11/11/99*

*(165)*

By Jimmy Seepie  
Political Correspondent

**T**HE Commission for Conciliation, Mediation and Arbitration (CCMA), created to speed up dispute resolution in the workplace, is itself embroiled in an internal crisis with staff calling for the dismissal of director Thandi Orleyn.

The commission's staff association has also warned that unless a recent wage agreement is reversed it will be forced to declare a dispute and possibly resort to industrial action.

The call is contained in a detailed memorandum compiled by the staff association, which lists levels of financial mismanagement against Orleyn.

Signed by the head of the commission's legal unit Advocate Russel Moletsane and Commission Staff Association (CSA) general

secretary Maynard Dyakala, the memorandum asks Parliament's public accounts committee to conduct an independent investigation into "financial irregularities at the CCMA".

Public accounts chair Dr Gavin Woods has confirmed receiving the memorandum. Woods said he had referred the document to the Auditor-General to assist him in investigating the allegations.

The staff association also alleges that racism is rife at the CCMA. It lists a number of alleged irregularities relating to the appointment of commissioners, flawed interviewing procedures and the uneasy climate relating to internal industrial relations.

"The Irish coffee syndrome continues to surface with regard to commissioners' appointments. Since the inception of the CCMA, capable black people have always found themselves at the bottom of the hierarchy," the CSA

says in the memorandum to Parliament.

It adds that "an investigation is required to check the level and speed of some white commissioners' promotions as against the tortoise speed with which blacks have risen in the organisation". According to the staff association, Orleyn is currently working without a comprehensive plan on equity and career pathing.

The association said it wants full disclosure of information with regard to the recommendations made for appointing commissioners. It said in different provinces differing reasons had been advanced for not appointing commissioners while some commissioners had been relegated or demoted.

The claims come at a time when the CCMA itself faces 20 cases of unfair promotion and appointments. The cases are currently before the Labour Court. Questions have also been raised about the

awarding of tenders to law firms without following proper tendering procedures.

The staff association's memorandum also accuses the director of abusing her power. "We are also privy to the trips undertaken by the director on CCMA funds. Investigations should be conducted as to who approved the trips and whether the money was paid back to the CCMA," the memorandum says.

The staff association submitted a dossier of statements of account and other letters to subordinate claims made in the memorandum.

Orleyn said yesterday she was surprised by the existence of the memorandum and that it had been passed on to Parliament's public accounts committee. "I'm hearing it for the first time and don't have any comment to make. It's amazing that they (staff association) have gone to Parliament before discussing the allegations with the governing board," she said.

NATIONAL

IN BRIEF

Petrol price rising again

THE petrol price would increase by 1c/tomorrow, the minerals and energy department said yesterday. The price of diesel and illuminating paraffin would increase by 7c and 4c respectively.

The department said the international crude oil price and the rand-dollar exchange rate remained fairly stable between September 28 and October 21. However, it had been agreed that the wholesale margin of oil companies be increased by 0.5c/tomorrow, resulting in the petrol increases — Sapa

Sacob delves into permit problems

THE SA Chamber of Business (Sacob) called yesterday for an urgent meeting with Home Affairs Minister Mangosuthu Buthelezi to discuss work permit and immigration problems.

Sacob noted with concern the problems being experienced at departments responsible for processing the applications of foreign companies. They challenge the department to investigate devolving certain powers to the regions — Sapa

Grievances at labour commission

Call for dismissal of CCMA director for financial mismanagement

Simpliwe Xako and Renee Grawitzky

THE Commission for Conciliation, Mediation and Arbitration's (CCMA's) governing body met last night to formulate a response to latest claims of nepotism and financial mismanagement made by the organisation's staff association.

The association has demanded the dismissal of CCMA director Thandi Orleyn who has been accused of financial mismanagement and abuse of power. It has also claimed that racism is rife because white commissioners are being promoted faster than their black counterparts.

Many of the recent allegations made by the staff association have been raised repeatedly over the past two years since internal tensions and grievances began to emerge. Some of the claims of financial mismanagement originate from the auditor-general's report which was tabled in Parliament last month and which is currently being addressed in co-operation with the auditor-general.

Additional allegations presented to the parliamentary public accounts committee range from unauthorised overseas trips by Orleyn to costs incurred during the process of disciplining the former

national registrar Mendi Zimema. A CCMA official said management had been unable to resolve the continuing internal grievances which have dogged the organisation since tensions emerged around Zimema. He was dismissed five months ago but tensions remained, the official said. The commission continues to face allegations from nepotism and racism to sexual and staff harassment.

The restructuring of grievances by the staff association follows negotiations on the renewal of employment contracts for commissioners (CCMA commissioners

were largely employed on fixed three-year contracts which expired from June onwards. During talks with the staff association earlier this year it was explained that commissioners would not automatically be re-employed, but had to reapply for their position.

The association said commissioners believed they had a legitimate expectation that contracts would be renewed. About five commissioners, including some members of the staff association, were not re-employed while others were employed on contracts less favourable than previously partly

due to a change in the grading system of commissioners.

The staff association said its general secretary, Maynard Dyakala's, position was under threat while two former association presidents had been dismissed. These and other cases of unfair discrimination were being referred to the Labour Court.

A source at CCMA said allegations of incorrect appointments and nepotism were based on the perception that some individuals were promoted because of their close relations with senior CCMA officials. He said, however, that there was concern that the staff association was being used by a clique of opportunists.

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# New crisis as CCMA acts on leader

*Sowetan 4/11/99*

**By Jimmy Seepe**  
Political Correspondent

**T**HE Commission for Conciliation, Mediation and Arbitration could be plunged into a new crisis following a decision by the organisation's governing board to institute a disciplinary hearing against one of the leaders of the staff association

The commission's staff association general secretary Maynard Dyakala told *Sowetan* yesterday that the CCMA management took a decision to bring disciplinary charges against the commission's legal unit head, Advocate Russel Moletsane, who co-signed a memorandum submitted to Parliament

The memorandum, which was submitted to Parliament's public accounts committee, called for an investigation into charges of financial mismanagement against the CCMA director Thandi Orleyn

The CCMA governing body, which met following publication of the staff grievances in *Sowetan*, had agreed to meet the staff association to discuss their grievances

The staff association has since expressed doubts about whether it will meet the governing body following the decision to have Moletsane appear before a disciplinary hearing next week as a result of his part in drafting the memorandum

Dyakala said the decision to put Moletsane

before a disciplinary committee was a clear example of union bashing on the part of the CCMA

He said the association now fears that the CCMA was planning to fire Moletsane after his appearance before the disciplinary hearing

"Their actions are tantamount to a plan to divide and silence the staff association," he said "This is clear harassment and does not augur well for the CCMA"

In a document submitted to the public accounts committee, the association alleged that racism was rife within the CCMA

It also listed a number of alleged irregularities relating to the appointment of commissioners, flawed interviewing procedures and the uneasy climate relating to internal industrial relations

"The Irish coffee syndrome continues to surface with regard to commissioner's appointments

"Since the inception of the CCMA, capable black people have always found themselves at the bottom of the hierarchy," the CSA memorandum said

The association also called for an investigation into claims that the director had abused her powers by making irregular trips overseas

The CCMA spokesperson, Sithembele Tshwete, promised to come back to *Sowetan* with reasons behind placing Moletsane before the disciplinary committee but failed to do so at the time of going to press



ST 7/11/99 (165)

# Internal dispute rocks labour conflict body

SOUTH Africa's first statutory body set up to resolve and avert industrial conflicts is embroiled in a dispute over racism, nepotism, sexual harassment and financial mismanagement, writes CELEAN JACOBSON

The staff association at the Commission for Conciliation, Mediation and Arbitration this week called for director Thandi Orleyn's dismissal amid allegations of mismanagement

A memorandum signed by the head of the commission's legal

unit, Russel Moletsane, and the staff association's general secretary, Maynard Dyakala, and handed to Parliament, also alleged that racism was rife

The association's Gauteng branch has also referred the CCMA to the Human Rights Commission for alleged violations of members' rights

Moletsane, meanwhile, faces disciplinary charges for circulating a petition supporting the association's president, Ace Magogodi. He, in turn, is being

disciplined for attacking a senior commissioner and allegedly defaming the organisation

Disciplinary action will also be taken against Dyakala for his part in writing the memorandum and bringing the organisation into disrepute

It has also emerged that Moletsane and a former association president, Sipho Mahlobo, who has been dismissed, were implicated in the hearing of national registrar Monde Zimema, who was fired in

September  
Zimema was convicted on about 20 charges, including sexual harassment, gross insubordination and negligence

CP 7/11/99

# Orleyn is just a (1b5) scapegoat – CCMA

THE Commission for Conciliation, Mediation and Arbitration on Thursday came out in support of its director, Thandi Orleyn, saying allegations levelled against her and the commission by a staff association were scurrilous and untrue.

The staff association demanded Orleyn's dismissal, accusing her of financial mismanagement and abuse of power

It also claimed racism was rife because white commissioners were being promoted faster than their black counterparts

The national directorate, consisting of senior management, said in a statement on Thursday it had reviewed all the allegations and found them to be without foundation

"We affirm our admiration and support for the director and the effort she has made to improve good governance of the commission and efficiency of service to the public," said the directorate.

The statement said it appeared staff association general secretary Maynard Dyakala and other staff members were discontent, and "in the face of a disciplinary inquiry into their misconduct saw fit to denigrate the director and the governing body of the CCMA".

The allegations by the staff association have been raised repeatedly over the past two years

The claim of financial mismanagement originated from an auditor-general's report submitted to Parliament in September this year and is being dealt with in co-operation with the auditor-general

Other allegations presented to the parliamentary public accounts committee involved unauthorised overseas trips by Orleyn, and the discipline and dismissal of national registrar Mondli Zimema

The resurfacing of grievances followed negotiations on the renewal of employment contracts for commissioners

Commissioners were on three-year contracts which expired in June

Some commissioners were not re-employed while others accused the CCMA of employing them on contracts less favourable than those they previously had

The national directorate said it had taken the auditor-general's report very seriously.

A thorough check was made of the CCMA's IT system, and national registrar Zimema — who as chief operating officer was responsible for all financial security and controls — was disciplined and dismissed

The head of the finance department and the CCMA's accountant chose to resign after being suspended

Regarding the employment of commissioners, the directorate said all appointments were the function of the governing body, which comprised elected representatives of organised business, organised labour and government

"All disputes over commissioner recruitment are therefore disputes with the Governing body."

On allegations of racism and nepotism, the directorate said "The Irish Coffee comment that has often been used since inception to describe the racial composition of the CCMA, with its implication that white staff are located at the top of the structure with a large black staff contingent below, is as inaccurate as it is offensive"

Of the 11 members of the National Electorate, six were black, two were white, two Asian and one coloured 85 percent of the staff were black, they said

The directorate said Orleyn had been on five official overseas trips since her appointment in December 1997 Some trips were sponsored by international funders and others by the CCMA, all with the governing body's approval

The governing body met on Monday to formulate a response to the claims against the CCMA

It expected to release a statement soon — Sapa

## POLITICS

# CCMA to meet staff association

(165)  
Sowetan 9/11/99

By Jimmy Seepe  
Political Correspondent

**T**HE LONG awaited meeting between the Commission for Conciliation, Mediation and Arbitration and its staff association will be held this week. It will aim to resolve simmering tensions that have bedevilled the organisation during the past week.

The meeting comes at a time when the staff association is contemplating industrial action against the CCMA following the suspension of its secretary general Mr Maynard Dyakala over a memorandum he co-signed with the head of the legal unit, Advocate Russel Moletsane.

Members of the staff association, who are now afraid of talking publicly, are accusing the CCMA management of union bashing as result of the actions taken against Dyakala and Moletsane.

It is understood that the association, which now appears divided, plans to lodge a protest and petition against Dyakala's suspension.

The scheduled meeting also comes as representatives from the CCMA's governing body reaffirmed their support for the activities of the commission.

The governing body consist of the Congress of South African Trade Unions (Cosatu), Business South Africa, the National African Congress of Trade Unions and the Department of Labour.

The CCMA has interpreted recent allegations as an attempt to destabilise its activities and said it had devised "a plan of action to deal with any acts of misconduct by any member of staff".

CCMA spokeswoman Ms Sue King said that the decision to suspend Dyakala related to his public comments published last week in *Sowetan*, which brought

the commission into disrepute.

King said that their action to suspend Dyakala was not an attempt to cripple the staff association activities within the commission.

"We refute claims that there is union bashing in the CCMA," said King, while adding that she could not answer other questions regarding Dyakala's suspension because it is *sub-judice*.

She said Dyakala, although suspended, will be welcome to attend the proposed meeting between the CCMA and the staff association.

In a statement to *Sowetan* the commission said "The CCMA holds dear its commitment to good industrial relations, respect for organisational rights and collective bargaining both within the institution and in the labour market."

"The CCMA management welcomes the opportunity to continue to engage with the staff association and to build its relationship with the association."

In a memorandum to Parliament's public accounts committee, the staff association earlier called for an investigation into charges of financial mismanagement against the CCMA's director Ms Thandi Orleyn.

The association also called for an investigation into irregular appointments and claims that the director had abused her powers by making several irregular trips overseas.

The CCMA has rejected all claims against Orleyn.

"The CCMA director is expected to represent the institution in both national and international forums as an essential function of the job," King said in the statement.

"The director sits on a number of boards, which form part of her contract. Travelling commitments for this work are covered by these boards, again with the governing body's knowledge."



# CCMA's third birthday marred by staff wrangles

168

Bitter divisions and tension refuse to go away as management; staff fight each other, writes **Reneé Grawitzky**

BD 15/11/99

THE Commission for Conciliation, Mediation and Arbitration (CCMA) celebrated its third birthday last week amid rising concerns about whether it can fulfil its mandate as spelt out in the Labour Relations Act

Like most institutions, the commission has its fair share of problems. But its high profile has ensured that these have entered the public domain.

Renewed tensions between management and employees surfaced when the staff association raised a number of grievances in the media and demanded the dismissal of national director Thandi Orleyn.

The staff's complaints range from charges of nepotism, financial mismanagement, abuse of power, sexual and staff harassment to claims that racism is rife because white commissioners are being promoted faster than their black counterparts.

Many of these allegations have been raised and dealt with in the past, while the claims of financial mismanagement originate from an auditor-general's report which was tabled in Parliament in September and is being dealt with in co-operation with the auditor-general.

Additional allegations range from unauthorised overseas trips by Orleyn to costs incurred when the commission disciplined its former national registrar, Mondli Zimema.

The commission's governing body has dismissed claims of unauthorised trips, while management believes the renewed tensions stem from the dismissal of Zimema.

Zimema was employed by former director, Charles Nupen, and was given greater powers than his job required.

On the first anniversary of the institution, the governing body restructured the organisa-

tion in a bid to curb Zimema's powers and reduce his influence as he had begun to build his own power base. It was acknowledged at the time that the tensions that were plaguing the commission emanated from the office of the national registrar.

When Orleyn took over from Nupen, Zimema challenged her leadership when he, in fact, was supposed to report to her.

In the period leading up to Zimema's suspension, the commission's managers appeared to be protecting him despite claims of sexual harassment and other irregularities.

He was eventually dismissed in September and found guilty of 20 charges ranging from gross insubordination and attempts to undermine the authority of the director, to gross negligence in the performance of his duties and failing to respond to queries raised by the auditor general.

In addition, he was found guilty of sexual harassment and of making an irrevocable offer on behalf of the commission to enter into a lease with Liberty Life when he did not have the authority to do so.

Management claims that immediately after his dismissal, "those who supported Zimema" began to challenge them.

However, a former commissioner says the organisation's problems cannot all be blamed on Zimema.

Although management now seems to be asserting its leadership, there is a view that it has not always acted decisively. This goes back to when the commission was established.

A commissioner says "Lawyers do not generally make good managers." A source close to the organisation says there are real problems that need to be addressed.

A former commissioner says

"All those who work for the commission are acutely aware of their rights. So, more than in any other institution, employees will challenge what they perceive to be any form of infringement of these rights."

Another commissioner says the organisation is full of precious egos. "Everyone thinks they are good and the institution will collapse without them. Commissioners feel they need special treatment."

Another source acknowledged that people might appear to be complaining excessively, but this was a reflection of the sort of job they performed. "Commissioners spend the whole day in meetings to resolve other peoples' disputes. They operate in an environment of conflict and become very negative. That becomes their modus operandi."

Dissatisfaction among commissioners, a source says, is partly related to the fact that their expectations of what the organisation would become did not materialise.

Despite the mud slinging, the organisation has attempted to deliver. More than 220 000 cases have been referred to it since its inception, and 74% of these have been resolved.

But backlogs are being experienced with arbitration.

For many, harping on about the problems is becoming tiresome and is discrediting the young institution.

## GETTING IT RIGHT

ALMORIE M... of Engen, not Rob Angel... Business... reported on Friday

**O**  
*Independent investigation will look into allegations*

## Facilitator appointed to heal rifts at CCMA

ET(BE) 25/11/99 (165)  
FRANK NXUMALO

LABOUR EDITOR

Johannesburg - The governing body of the Commission for Conciliation Mediation and Arbitration (CCMA) yesterday decided to appoint an independent facilitator to mend damaged relations between management and staff following allegations that have threatened to tear the organisation apart.

The CCMA gave the facilitator three months in which to complete an investigation into the allegations and report back to the governing body.

A separate investigation into allegations of financial mismanagement against Thandi Orleyn, the director of the CCMA, by the Auditor-General would run at the same time.

Allegations including unauthorised overseas trips, financial mismanagement, nepotism, abuse of power and racism were presented to the parliamentary public accounts committee.



*Vincent Mntambo, the CCMA's chairman*

The head of the CCMA's finance department and the head accountant chose to resign after being suspended.

Vincent Mntambo, the chairman of the CCMA's governing body said the in-fighting had not damaged the organisation's ability to function and that the independent facilitator had been appointed to avoid pre-judging issues on the strength of the allegations.

"These problems have not impacted on delivery, our dispute settlement rate has been improving over this whole year. This organisation is functioning and I wouldn't make an irresponsible statement if weren't delivering," Mntambo said.

"Since it was established three years ago, the CCMA had dealt with an average of 296 conciliations a day and 117 arbitrations a day, the national conciliation rate for October 1999 was 74 percent," Mntambo said.

He said the in-fighting within the CCMA was restricted to the Gauteng region.

The facilitator would be testing the allegations with each of parties concerned, including the staff association, management and the tripartite governing body, and would present a report at the end of the investigations, he said.

"A lot of CCMA-type organisations are going through this growth and development process. It may be that the CCMA attracted disproportionate attention."

# CCMA hit by internal wrangling

STAFF REPORTER

South Africa's labour dispute facilitator, the Commission for Conciliation, Mediation and Arbitration (CCMA), must now itself engage a facilitator to sort out internal wrangles between staff and management.

This emerged yesterday at a media conference in Johannesburg.

The CCMA has been embroiled in con

troversy recently following allegations by the CCMA Staff Association (CSA) against management. The allegations include financial mismanagement, nepotism, abuse of power, and racism.

Following a meeting between the CSA, management and the governing body yesterday, it was resolved that a facilitator be appointed to look at all allegations.

There will be a special audit by the Auditor-General at the same time.



Sewethan 30/11/97

# CCMA head in funding scandal

By Jimmy Seepie  
Political Correspondent (16/5)

A DAMNING new report compiled by the internal auditor of the Commission for Conciliation, Mediation and Arbitration (CCMA) has shed serious concern about allegations of financial irregularities levelled against the commission director M. Thandi Orleyn, suggesting that criminal charges be considered.

The report - in *Sowetan* - poses serious implications for Orleyn in irregular management and financial activities. The report was handed to the public prosecutor Advocate Selth, Barendse, last week. It calls for "appropriate investigation" to be taken.

Internal auditor Ms Jabu Mogadime, who detailed various attempts by Orleyn to try and all the audit reports work.

Copies of the report were also handed to Orleyn. In addition, general secretary of the CCMA's governing body, Thandi Orleyn, who is the secretary of the commission staff, relation.

legal work for the CCMA during a period when he was still working as a senior commissioner for the CCMA.

Arendse is alleged to have pocketed R135 774 within a period of 20 days for CCMA. He did not quite apart from the salary he earned in his position as commissioner.

The report says that "during March and June 1999, Arendse was engaged by the director to handle the national registrar's disciplinary inquiry.

For the first 10 days, the director (Orleyn) paid Arendse R5 000 per day plus a daily out-of-pocket allowance of R300. On 10 days, the report says, for the remaining 10 days, the fee for Arendse increased to R18 000 a day. He was paid R135 774.

Mogadime was not paid for the 10 days, but she was paid for the 10 days. She was paid R5 000 a day for the 10 days. She was paid R18 000 a day for the 10 days.

R66 234 made out to Arendse in June revealed an irregularity in the head of department's authority's signature: "Sewethan, in administrator's name is not the head of the department and therefore does not have the power to authorise this payment," the report states.

The internal auditor raised a further question about a payment of R66 759 to a former secretary of the CCMA governing body Ms Nthabiseng Nkomo, who was called to testify against former national registrar Mr Monde Zimema. The report says: "The director bribed Ms Nthabiseng Nkomo to provide a statement on her behalf in her favour against the national registrar Monde Zimema."

The auditor said Nene was now willing to give evidence before the public prosecutor about the alleged bribery.

The auditor called for a further investigation into the director's overseas travel expenses. Although the director's account books do not show the money had, the auditor said she does not know why she only paid it after the matter was raised.

Zimema's disciplinary hearing is still in progress. The auditor said she was not satisfied with the hearing and that criminal charges should be considered against the director. The director's disciplinary hearing is still in progress.

Orleyn's return to the commission is still in progress. The auditor said she was not satisfied with the hearing and that criminal charges should be considered against the director. The director's disciplinary hearing is still in progress.

JFK WILL NOT BE WITH... change So... The situation is so dire that...

million  
ies Justin Palmer

# Allegations fly, but life and work go on at the CCMA

(165) ED 14/12/99

## Orleyn says inquiries will decide, writes Simphiwe Xako

INTERNAL division, backstabbing and acrimony have rocked the Commission for Conciliation, Mediation and Arbitration (CCMA) this year. Nevertheless, director Thandi Orleyn is upbeat about the organisation's role in labour relations.

First came the claims of financial mismanagement, nepotism and corruption by the CCMA staff association against Orleyn. Then internal auditor Jabu Mogadime issued a report supporting the association's claims.

Orleyn has, however, continued to maintain her silence concerning the allegations, saying she awaits the outcomes of three inquiries.

Public protector Selby Baqwa, together with the parliamentary public accounts committee and an internal investigation appointed by the governing body, is looking into the matter.

Commission insiders say the feuding was partly sparked by the nonrenewal of some commissioners' contracts after they had expired. Most staff members believed their tenure would be automatically renewed.

The commission dismissed national registrar Mondli Zimema six months ago for alleged misconduct, including mismanagement. The case is still in dispute. It also suspended its staff secretary, Maynard Dyakala, for "bringing the CCMA into disrepute".

Orleyn says many CCMA staff members "do not understand matters of governance. I am also on contract and any time the governing body terminates it, I'll have to go — simple."

Despite the CCMA's woes, Orleyn is proud of the work performed by the body thus far.

In October this year, the commission mediated and conciliated 71% of the disputes that were referred to it — with each commissioner faced with a mammoth task of wading through 25 cases a month. This year the body, which has 146 full-time and 250 part-time commissioners, handled on average 7 000 cases a month.

In October the commission

### CCMA director Thandi Orleyn is upbeat about the organisation's value to labour.

handled 367 cases a day, with more than 380 referrals over the past 12 months. Only 1.1% of disputes were not arbitrated within the mandatory 30 days this year.

Government, business and the trade union movement — the so-called social partners — last month reaffirmed their mandate and support for the CCMA in the face of newspaper editorial calls for it to be scrapped.

Some staff members have accused management of union-bashing and being opprobrious. Orleyn denies this. She says it is every organisation's right to call members to order when they tarnish its image.

Observers accuse the CCMA of inefficiency, claiming that some parties never attend arbitration, causing cases to drag on without reaching a settlement.

Orleyn says the commission has powers to subpoena anyone avoiding a hearing. She admits that suspicion by either management or unions is a problem.

"Initially companies were sceptical of the CCMA, thinking it was somehow linked to government. But because most dispute-resolution results have been in management's favour, we have gained the confidence of all parties," she says.

The CCMA is a central structure in the Labour Relations Act. Parties can contract out of the commission and opt for alternative mediation and arbitration,

such as the Labour Court.

But SA needs the CCMA due to the fractious nature of its industrial relations. Some of the disputes settled by the commission involve the Douglas Colliery strike, the national bus strike and last year's chemical industry dispute.

The body is currently mediating in the Igoh 2000 dispute, where municipal workers oppose plans by the Johannesburg metropolitan council to corporatise and privatise some of its assets.

The CCMA is also focusing on the security and retail industries, where there are no bargaining councils, and allegations of exploitation are rife.

The CCMA also played a significant role in the establishment of the public service bargaining council.

Although her name has been dragged through the mud and she has faced allegations of being frivolous and taking unauthorised expensive overseas trips, Orleyn still accepts her work with great enthusiasm.

She says she learnt to keep calm in the face of public anger over reports of internal commission disputes. She also says she drew inspiration from President Thabo Mbeki's election campaign because it also garnered some unfavourable media reports.

"By answering to all the false and malicious accusations, I will be giving credence to these people's unfounded claims. Rather let all legal processes take their course."

"Believe it, or not, every morning I find myself eager to reach the office and focus on what I do best — work."

Orleyn agrees that it is rather ironic that the CCMA, with a brief of settling the country's labour disputes and other related developments, is leading by example.

Once investigations are concluded and findings are made public, the CCMA governing authority will have the final say as to which heads might have to roll. But the organisation still has a crucial role to play in SA's labour relations.