Legal Notes

The 1991 Labour Relations Amendment Act

The CENTRE FOR APPLIED LEGAL STUDIES (CALS) (WITS) gives an overview of the 1991 LRAA

The 1991 Labour Relations Amendment Act was passed by Parliament on 14 February 1991. It is expected to take effect on 1 May - an appropriate date for the first labour law to have emerged from consultations involving the independent unions. The Act repeals the most controversial features introduced into the Labour Relations Act by the amendments of 1988. Much of the Act is based on the agreement between COSATU, NACTU and SACCOLA (the 'CNS accord'). In the 'Laboria minute' of 13-14 September 1990 the Department of Manpower committed itself to piloting a law based on the 'CNS accord' through Parliament. In this note we set out the changes made by the new law.

The Unfair Labour Practice

The detailed unfair labour practice definition is replaced by a wide definition. This is more or less the same as the pre-September 1988 definition, and will restore the powers the Industrial Court used to have before 1988. Strikes and lock-outs are once again excluded from the definition of an unfair labour practice. The court can still interdict an *illegal* strike, but now it cannot interdict a legal strike on the grounds that it is unfair.

It is expected that in the near future the National Manpower Commission will publish a code of fair and unfair labour practices to give clarity as to what labour practices are acceptable.

Strikes and lock-Outs

As strikes and lock-outs can no longer be unfair labour practices. However the court now has express power to interdict or grant any other order against *illegal* strikes and lock-outs.

Frequently employers have been able to interdict strikes with little or no notice to the union. For the first time the Labour Relations Act now has a section to regulate the issue of interdicts and other orders in respect of strikes and lock-outs. No court (including the industrial court) may grant any order which would stop a strike or lock-out unless 48 hours notice of the application is given to the person or organisation against whom the order is sought.

There are however two exceptions to this rule. Firstly, an order

COSATU general secretary Jay Naidoo shakes hands with Manpower director E J Knoessen during COSATU's sit-in at the Manpower offices in June 1990 - one of the many actions by unions which contributed to the government's decision to revise their controversial Labour Relations Amendment Act

Photo: Peter auf der Heyde/Afrapix

may be obtained on less than 48 hours notice if the applicant gives notice, on a prescribed form, of his/her intention to get a court order. The applicant will have to indicate when and in what court it is bringing the application, describe in brief the court order it wants, and name his/her legal representatives. If notice is given in this way, the court may grant relief against a strike or lock-out, but only if the applicant proves that there is good cause for going to court on less than 48 hours notice and that the respondent has been given a reasonable opportunity to be heard before a decision on the application is made.

Where a union or employer planning to stage a strike or lock-out gives at least 10 days notice of its intention to do so, a court order may not be given against the strike or lock-out unless *at least five days' notice* of the application to court is given.

These rules do not apply to disputes involving essential service industries or local authorities: in these workplaces strikes and lock-outs are totally prohibited.

What is meant by 'notice'? In the case of a strike, must the employer give the union the facts (usually in an affidavit) on which it bases its application for an interdict? Hopefully the court will decide that this is so, because this will organisations facing interdicts the opportunity to get the evidence they need to challenge the application. A respondent must have a 'reasonable opportunity to be heard' in applications brought on less than 48 hours notice. This should also include an opportunity to produce evidence needed for opposing an interdict.

Unlawful strikes

The 1988 amendments presumed that trade union members, office bearers or officials who call, or participate in, an illegal strike are authorised to do so by their union. This was the most controversial of the 1988 amendments. It meant that the union could be sued for damages by the company during an illegal strike. Many

trade unions refused to intervene to settle illegal strikes unless the employer agreed not to make use of this clause in court. Employers began to realise that the 1988 amendments were unworkable. The 1991 amendments repeal this provision.

Industrial Councils and Conciliation Boards

The procedures for referring disputes to industrial councils and applying for the establishment of a conciliation board are simplified:

1. The requirement of a letter of deadlock introduced by the 1988 amendments is scrapped.

2. The certificate of compliance (saying that the union has complied with its constitution) is retained but simplified. It must still be attached but need no longer be signed.

3. The time limits are altered. There is no time limit for disputes which do not concern unfair labour practices. When a dispute does concern an unfair labour practice, the application or referral must be made within 180 days of the date on which the unfair labour practice started. If the referral is outside of this time period, the Director-General may condone this if there are good reasons.

4. A copy of the application or referral must still be sent to other parties to the dispute. However it can now be sent by either registered post, hand, telegram, telex, telefax or in any other printed form.

Other changes are:

- The Labour Relations Act will now cover employers and employees engaged in activities on the continental shelf off the coast of South Africa, for example on oil rigs.
- Trade unions with members in both the public and private sector (such as NEHAWU) may now register.
- Race cannot be used as a factor in the registration of trade unions. It will be more difficult for racially exclusive unions to prove they are representative and so obtain or maintain registration.
- Where there have been industrial council negotiations on wages and conditions of employment, a dispute need not be referred back to the council for settlement. Once the negotiations end, without a settlement, the parties can take industrial action.
- The procedure for referring unresolved disputes from an industrial council or conciliation board to the Industrial Court for determination as unfair labour practices has been changed. Previously disputes could only be referred to the court by the secretary of the industrial council or the chairman of the conciliation board. Now, any party to the dispute has 90 days to refer a dispute to the court. Where the dispute is referred late, this may be condoned by the court.
- A frequent problem has been that of the industrial council that stops operating but retains its registration. Such a council is not in a position to resolve disputes, but the Department of Manpower has often refused to appoint conciliation boards to resolve disputes within its jurisdiction. This position has changed. A conciliation board can be established within the jurisdiction of an Industrial Council that has ceased to perform its functions under the Act.
- The Act contains transitional provisions to deal with current disputes. Where any matter has already been referred to the industrial court, an industrial council or a conciliation board, it will continue to be dealt with under the old Act. Where this has not been done before the new Act starts, the new procedures will apply. Substantive provisions of the old Act will continue to apply to all events that happen before the new Act starts.

Therefore if (assuming the law starts on 1 May) a worker is dismissed on 15 April, and the application for a conciliation board is made on 15 May, the new procedures will apply. But the old definition of an unfair labour practice will have to be used to decide if the dismissal was fair or not. ✫