

Sit-ins: A Management Perspective

The following is a summary of a talk given at the Institute for Industrial Relations by Andre Lamprecht - Group Legal Advisor for Barlow Rand - on the subject "The legal implications of sit-ins". Mr Lamprecht began by stating that his perspective was that of a businessman and of an industrial relations manager, and not a purely legal approach. He went on to make the following points:

1. Different responses are possible to the same issues. In these early days of building an industrial democracy there will be excesses. But should management simply react by curbing these or try to deal with the circumstances which cause the excesses?
2. Part of the task of promoting an industrial democracy is to promote collective bargaining. Sit-ins are preceded by situations where collective bargaining has broken down due to resistance to collective bargaining or lack of experience.
3. Any discussion of sit-ins must be within the context of a growing industrial democracy which includes the right to strike. Drawing on USA experience, Mr Lamprecht, argued that there was a right to withhold labour and to try to stop production - thus the right to picket is essential. However, this does not amount to an absolute right to prevent management attempts to maintain production. There must be checks and balances.
4. Sit-ins need to become part of the collective bargaining process. The sit-ins will continue but they can be regulated if unions and managements bargain about what is permissible. If this is done the courts could then be used only in exceptional circumstances: eg. where there is disregard for property, access is denied to management, or sabotage takes place.
5. We should therefore distinguish different types of sit-ins: where workers merely maintain a presence on site as against an actual seizure of the plant with a view to preventing access.
6. Methods for dealing with sit-ins depend on circumstances.
 - (a) First there is a fundamental difference between a strike/sit-in which takes place in breach of procedures and one which occurs only after procedures have been exhausted. In the second case the workers have a right to take action.
 - (b) Except in extreme cases - where there is danger to life or property - the police have no place in industrial relations.
 - (c) Court interdicts should be used sparingly. A frequent use of court orders - especially where workers have gone through

the procedures and feel a genuine grievance - will engender disrespect for the law. This will not aid the process of moving towards democracy. It is also important to provide opportunities for communication. Management should give unions notice of their intent to apply for an interdict. Moreover, it is important that a temporary interdict be sought to give the other side a chance to reply before a final order is made.

- (d) Dismissals must not be used to undermine the right to strike and should be used exceedingly sparingly at this time in the history of South Africa. Business cannot isolate itself from what is happening in the wider society. Dismissals should be used only where there is the most fundamental breach of procedures.

Mr Lamprecht made the following points during question-time:

- (i) Managements should push for the removal of impediments to picketing.
- (ii) For management the sit-in at least has one advantage: workers' representatives were available for negotiation and the union side could make immediate report backs to members.
- (iii) Managers had to take what measures were necessary for the long-term well-being of the plant. In some cases, especially where the union has acted correctly in terms of procedure, this may mean closing down production for a while in order to maintain good industrial relations. In other cases, for example in a continuous process such as in the foundries, then production has to continue even if this means bringing in scabs. But in the present abnormal period managements should, where practical, "forgive" rather than react to these situations.
- (iv) Mr Lamprecht pointed out that unions had made gains under the system of collective bargaining - they could not exist outside of it and they had as much of a stake in the collective bargaining system as did management.
- (v) Mr Lamprecht reiterated that the issue of sit-ins must be seen within the broader context of a developing industrial democracy and that all sides must commit themselves to the collective bargaining process - and this means scrupulous attention to procedure in an attempt to win moral superiority in order to exert a moral pressure over the other side.

(SALB correspondent, May 1986)