Fighting the LRA

by CAROLE COOPER

One of the most controversial sections in the Labour Relations Amendment Act promulgated last year is section 79(2) which makes it possible for unions, their officials or members to be sued for loss of production in the case of an unlawful strike. The section reads as follows: "Any member, office bearer or official of a trade union, employers organisation or federation who interferes in the contractual relationship between an employer and employee resulting in the breach of such a contract shall be liable in delict, and until the contrary is proved, be deemed to have been acting with due authority on behalf of the trade union, employers organisation or federation concerned."

Employers were quick to take advantage of the revised section, and it was reported in October 1988 that three Reef companies, Kwela Wholesale Meat supply, Ullman Brothers, and Pyramid Distributors, were suing three COSATU affiliates for a total of R4m for unlawful strikes. Although these actions were later suspended or dropped, the attitude of an industrial relations advisor for the three companies, Mr Phillip van Welbergen, was that unions should act responsibly if they wished to avoid the law being used to close them down.

While it has always been possible for employers to sue unions for damages in the event of unlawful strikes, what has been changed is the burden of proof. In addition, the actual wording has been expanded making it easier for employers to sue unions for actions of their members by bankrupting them.

NUMSA stands back

One of the ways of avoiding such action is for unions to withdraw from any involvement in unlawful strikes, and this has been a strategy adopted by the National Union of Metalworkers' of South Africa in a number of strikes in the metal industry in the last few months. The union has argued that the law, by forcing it to withdraw from involvement, will lessen the chances of speedily resolving the dispute, particularly in cases where management has to deal with a leaderless mass of workers. NUMSA's position has been that it will intervene only if management agrees to waive its right to sue under the new LRA.

NUMSA's strategy has been met with varying responses from the companies concerned. In all cases they have initially refused to agree to the waiver, preferring to take the workers or the union to court, or refusing to stick to the recognition agreement with the union.

In a strike of 1,200 workers at Haggie Rand in April, the company, faced

Strike at Haggie Rand
Photo: Labour Bulletin

with no union to bargain with and reluctant to agree to the waiver demand, went to the Industrial Court. It applied for a ruling that in not advising their members to return to work and in not playing a constructive role in settling the dispute, the shop stewards had committed an unfair labour practice.

The court action was delayed because hundreds of workers requested that their names be added to the list of respondents. The company, faced with a lengthy court action and a prolonged strike, finally agreed to the union's waiver condition and a settlement was reached. The company admitted that it had suffered substantial financial losses.

Bosses refuse to waive right to sue

In three other strikes, at Altron's Lascon Lighting and Standard Telephone Cables (STC), and Barlow Rand's Robor company, the companies refused at all to agree to waive the right to sue. Altron's decision was based on legal advice that it should not agree. It chose instead, in both strikes, to use the courts to attempt to defeat the striking workers. In the strike of 500 workers at Lascon Lighting, the company was granted an interdict in the Rand Supreme Court instructing the workers to return to work. The workers complied, but not before the strike had lasted 15 days.

In the STC strike of 200 workers, the company appealed to the Industrial Court for an interdict ordering the strikers to return to work. The court granted the order but later suspended it, urging the union and the company to negotiate instead. NUMSA agreed to negotiate even though the company had not agreed to waive section 79(2), because it felt that acting on the court's instruction gave it immunity.

A third response has been the attitude of Robor, which, when faced with a strike, tried to compel the union to get involved by referring to the union's obligations in terms of the recognition agreement between them. The union argued, however, that the amendment to section 79 had changed the position and that the union would only intervene if the company undertook to waive its rights under that section. The company refused and tore

up the recognition agreement. NUMSA has accepted this action but still insists that the company deals with the union over issues affecting the workers at the company.

What is clear from the above, is that section 79(2), designed to reduce industrial action, has in fact led to longer strikes. NUMSA's tactics have driven the editor of *Business Day* to write that Section 79(2) should be scrapped as a "striking failure", as "management cannot go on trying to deal with an amorphous mass".

There are signs that the Department of Manpower probably agrees. It recently instructed the National Manpower Commission to review the entire Labour Relations Act.

NUMSA's response, it seems, has been a succesful one. To quote a spokesperson of the union, "The act will either kill us or we will kill it". ☆

The I G Metall Code, the LRA and disinvestment

by CAROLE COOPER

The intention of the Labour Relations Amendment Act (LRA) promulgated in September 1988 has been to undercut the hard-won gains made by unions over the last decade. Concerned about this attack, the German union, I G Metall, approached the South African Co-ordinating Council of the International Metalworkers' Federation (IMF) to discuss solidarity with I G Metall.

I G Metall is the union for metalworkers in West Germany, and it is the largest union in the country. Two working groups from I G Metall visited South Africa in 1988 and had discussions with the IMF unions here. After the discussions I G Metall drew up a 14-point code. The code aims to pressurise German companies operating in South Africa to sign the code as a standard which will govern relations between the company and the union. The code goes a long way to restoring those rights removed by the LRA as well as addressing problems of workers which arise from the system of apartheid in general.

Companies signing the code must:

1. Remove the 'exploitative advantages provided by apartheid laws', in particular in relation to the homelands.
2. Not take advantage of the use of security and emergency laws, and in particular continue to pay the wages and employ detained employees, as well as those who have been sentenced under security legislation.
3. Show a readiness to negotiate at company level with the representative trade union regarding all internal company affairs.
4. Grant unions right of access to company premises.
5. Provide facilities for meetings and voting on company premises without interference from manage-