

LABOUR RELATIONS BILL

A bill containing proposed changes to the Labour Relations Act was tabled in Parliament at the start of the 1984 session.* The Bill which received considerable attention in the press, contains the state's first direct response in the form of legislation to the development of in-house collective bargaining by the independent unions. The Bill was introduced in Parliament without an opportunity being given for the proposed changes to be discussed in public, as has been the case with other amendments in recent years. If enacted it will be the fifth amendment in as many years to the Act since the major amendments of 1979. The Bill seeks to prevent various bargaining agreements from being enforceable in any South African court of law including the industrial court. In practice, this could mean that where a union has entered into an agreement with an employer who refuses to honour the terms of the agreement by ignoring the procedures contained in it, the union could not go to court to force the employer to follow the procedures. The bill will have no effect on contracts of employment between individual workers and their employers, or on agreements entered into in terms of a statute such as an Industrial Council or Conciliation Board agreement.

Most importantly, no agreement between a trade union and an employer (or a number of employers) will be enforceable unless the union complies with a number of provisions in the Act. These are contained in Section 4A(1) which requires unregistered unions to submit their constitution, head office address and names of office-bearers and officials to the Industrial Registrar and in Sections 8(5) and 11. The latter two sections apply to registered and unregistered unions, employer

*Labour Relations Amendment Bill B13 of 1984

organisations and trade union federations. All these organisations must meet the following requirements:

- Keep a register of members (indicating subscription payments); maintain proper books of accounts, which must be audited, and prepare an annual statement of income and expenditure;
- Retain these records and all other documents relating to the affairs of the union (including correspondence, minutes of meetings and payment vouchers) for at least three years. (This may be done on micro-film.)
- Submit to the Registrar year-end details of membership (by 31 March of the following year), the auditor's report and comply with any request by the registrar for information;
- Notify the registrar of the results of elections, changes of office-bearers or officials, change of head office (which must be in the Republic) and the establishment of any new branches;
- In the case of a union it is the duty of the secretary to perform these functions.

Agreements between a union complying with these provisions and any employer, a group of employers or an employers' organisation complying with these provisions will be enforceable.

Members of a trade union not complying with these provisions may not, independently of the union, enter into an agreement with an employer. A body that is not a trade union but has a purpose similar to that of a trade union will not be able to enter into an enforceable agreement with an employer.

The bill does not prevent unions and employers from entering into agreements under any circumstances. Its only effect will be on the enforceability of certain agreements. However its possible effects are extremely wide. It covers agreements on any matter that is of mutual interest to employers and employees, or regulates the relationship between the two, except those types of

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agreements specifically exempted. It covers both express agreements and those that have to be implied from the conduct of the parties. Conceivably it could cover any agreement entered into between a union and an employer. A high price is being attached to compliance with the administrative procedures contained in the Act.

A copy of all agreements entered into must be sent to a special inspector appointed for the purpose within 30 days of their being concluded. All agreements already entered into must be sent to the inspector within 30 days of the bill becoming an Act. Failure to do this will be an offence. Where an agreement was reached orally a written description of it must be submitted. Failure to submit an agreement will not effect its enforceability.

The other substantial change contained in the Act deals with appeals against exemptions from Industrial Council Agreements. Industrial Councils are empowered to grant exemptions from the terms of their agreements. For example, employers in a certain area may be given an exemption allowing them to pay wages below the minimum levels contained in the agreement for their industry. There is provision for an appeal against the decision to grant or refuse an application for an exemption. Since 1982 the appeal has been to the Industrial Court but the Bill proposes to restore it to the Minister of Manpower.

Decisions about exemptions from the provisions of closed shop agreements contained in Industrial Council agreements are likely to be the most controversial. In such cases all parties affected by the decision have a right of appeal to the Minister. In all other matters employers, employer organisations and trade unions have no right of appeal. The only people with such a right would appear to be individual employees affected by the decision.

A further provision is that unregistered trade union federations are required to submit copies of

their constitutions to the Registrar.

(Paul Benjamin, Johannesburg, March 1984.)

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