legal notes

# Recent developments in labour law


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## New labour relations law

1995 will be the year in which South Africa finally has a new labour relations law to replace the Labour Relations Act 28 of 1956 (the LRA). In August this year the new Minister of Labour, Mr Tito Mboweni, announced the appointment of a drafting committee to prepare a draft Act for submission to the National Manpower Commission. The committee has been given a period of six weeks to prepare the new law with the assistance of international experts. From October onwards, the committee's proposals will be debated in the NMC, the Parliamentary committees and the Houses of Parliament.

The law that is produced by this process will probably be the basis of our labour laws for many years to come. Trade unions will therefore have to prepare their positions for the debates in the rest of this year and next year. If they lose this opportunity, they may pay the price for many years to come.

One of the key issues for the drafting committee is the need to harmonise our labour relations laws. The intense legislative activity during the last year of apartheid government has left us with four labour relations laws (the LRA, the Agricultural LRA and the laws for the public sector and teachers) as well as labour regulations for the Police Force, not to mention the further confusion of homeland labour law. The committee will make proposals for a single LRA for all sectors of the economy - a demand that COSATU has made for many years. The enactment of such a law will require the support of not only the Minister of Labour, but also the Ministers responsible for the public service and public education.

During the 1980's the LRA was amended virtually every year. The result of all these changes is that the Act is technical, complicated and confusing. It is unions and workers who have suffered because of these technicalities. Many cases in the Industrial Court have been lost because of technical objections. Most importantly, the provisions concerning ballots (which have been criticised by the Internal Labour Organisation) have been used by employers to stop strikes, the best known case being the national metal strike of 1992.

The appointment of the drafting committee has been extremely controversial and received considerable press coverage. The reason for this was the view held by some people that the appointment of such a committee undermines tri-partism. They felt that the Act should rather be drafted through the National Manpower Commission. But the NMC has not been a success in drafting legislation. It has appointed committees to produce a new and consolidated LRA since the end of the 1980's but this has not led to new laws. The process set up by the Minister will allow the NMC to debate the draft prepared by the appointed committee, which will make for quicker process.

## The 1994 International Labour Conference

One result of South Africa's return to the international community was the participation by a tri-partite delegation in the International Labour Conference in Geneva in June this year. The Conference marked the 75th anniversary of the ILO. South Africa's achievement of democracy was one of the dominant themes of the Conference. The government's acceptance of international standards and the significant tri-partite developments in the country were seen by many speakers at the conference as a major vindication of the values of the ILO. Minister Mboweni addressed a plenary session of the Conference. He committed the South African Government to the full implementation of the ILO Fact Finding and Conciliation Commission Report of 1992. He also expressed his support for the central ILO standards and said that he would recommend South Africa's adoption of the most important conventions on collective bargaining and freedom of association. The Minister expressed the view that development should not occur at the expense of human dignity and minimum standards. This was seen as an important indication of South Africa;s support for the enforcement of minimum social standards through trade - one of the most important debates in the international community at the moment with the establishment of the new World Trade Organisation.

The Conference saw the end of the Declaration Against Apartheid. The resolution dissolving the Committee on Action Against Apartheid establishes a technical assistance programme to assist in the construction and development of a democratic South Africa. This programme will cover areas including technical assistance for labour legislation reform, human resources development and management, affirmative action, occupational health and safety and capacity building for the trade unions.

The Conference adopted a convention and recommendation on part-time work. The central theme of the convention is that all employment and social security benefits should be available for part-time employees on a proportional basis. The convention will certainly focus attention on the approach in South African law to part-time workers; for instance, workers employed on three or less days a week for an employer are not entitled in terms of the basic Conditions of Employment Act to annual leave or paid sick leave.

Representatives of the National Union of Mineworkers, the Chamber of Mines and the Government Mining Engineer all took part in debates over the development of a convention on mine safety and health. This process will continue in 1995 and should then lead to the adoption of a convention in this important area.

Shortly after the end of the Conference a


Commission of Inquiry into Safety and Health in Mines in South Africa began to sit. The Commission consists of a judge and three expert commissioners (two from overseas). Extensive reliance has been placed in the Commission on international standards and the three major parties have all accepted that South African law must be changed to bring it into line with appropriate international standards.

## A victory in the Appeal Court

In March the trade unions won one of their most important victories in the labour courts. This came in the case of *NUMSA v Borg-Warner* – a case involving a company's refusal to comply with an agreement to re-hire retrenched workers. The Supreme Court in the Eastern Cape had held that a "selective re-employment" could never be an unfair labour practice as the dismissed workers were no longer employees for the purposes of the LRA and therefore could not bring a case to court. This approach gives employers the leeway to deal with strikes by a dismissal followed by a selective re-employment; it created what one writer has described as a "secret weapon against strikes".

The secret weapon has now been destroyed. The highest court in the land (the Appellate Division, Bloemfontein) has accepted that a refusal to re-employ dismissed workers can be an unfair labour practice. This will restrict the employers power in two situations: where an employer dismisses strikers and then wishes to re-employ some of them selectively and where an employer has undertaken (as in the *Borg-Warner* case) to re-employ retrenched workers and fails to do so.

The case also reveals one other feature of our labour law. The retrenchment agreement in issue was signed in 1986 and the employer's refusal to comply with it happened in 1988. It took another six years for the case to be resolved.

Hopefully, the new law will make delays of this type something of the past. ☆