

# LRA

## Backfire on bosses?

Since the LRA was promulgated on September 1 1988, trade unions have demonstrated a resilience which has flown in the face of bosses' expectations. The legislation, intended to curtail industrial action, has had the opposite effect: strikes and work stoppages have more than doubled since last year, particularly in the last quarter of 1989 (see Trends).

However, the anti-LRA campaign - although aggressively, if unevenly waged - has failed to prevent the state from implementing the Act.

Last year the government introduced the Act despite a massive three-day stayaway from June 6.

The stayaway campaign prompted a two-pronged response from employers. The South African Co-ordinating Council on Labour Affairs (Saccola), the biggest employer federation, showed a willingness to pursue discussions on the Act with trade unions.

When large-scale dismissals and disciplinary action followed the stayaway, Cosatu and the National Congress of Trade Unions (Nactu) threatened further action. But support for the dismissed workers was not forthcoming and workers often found themselves alone in drawn-out fights for reinstatement. Many workers lost their jobs permanently.

Initial anti-LRA action ceased, leaving a relatively calm industrial relations climate in which talks with Saccola continued. But with bosses playing a wait-and-see game and little visible shop-floor pressure, Saccola began to backtrack. By September 1,



*The anti-LRA campaign bolstered union confidence and militancy*

there was little to prevent the promulgation of the LRA, leaving unions to face the challenge of devising new strategies and responses to the legislation.

Cosatu general-secretary Jay Naidoo, speaking at Cosatu's third national congress, pointed to weaknesses in the labour movement's responses to the Act. One such weakness had been a dependence on negotiations to deliver the goods. Another was the failure to sustain the pressure imposed by the stayaway.

Developments in the period prior to the promulgation of the Act were also significant for the long-term growth of the union movement. Cosatu, Nactu and 43 independent unions overcame ideological differences and joined ranks to oppose the LRA. The Workers' Summit in March 1988 highlighted the potential for working-class unity.

Soon after the promulgation of the Act, employers began testing the terrain with contentious clauses. Section 79, the clause which gives bosses the right to sue for damages resulting from strikes, became the one most feared by unions. Although no union has yet paid any damages, and the bigger corporations have not yet re-

sorted to Section 79, it remains a threat for unions.

Unions, in particular the National Union of Metalworkers of South Africa (Numsa), have been devising their own strategies to counter the use of this clause. Numsa has, in more than 40 cases, refused to take responsibility for strikes or to negotiate with bosses unless they had waived the right to sue. This has meant that bosses would have had to sue workers in their individual capacity - a pointless exercise as workers are unable to pay.

A Transport and General Workers' Union (TGWU) official noted that 'bosses would much rather negotiate with unions than with masses of workers under no structured forum, resulting in chaos and stronger conflict. This is one of the reasons why they have refrained from using Section 79 which could theoretically completely destroy the unions'.

In recent talks between the unions and Saccola, Saccola agreed to have the clause scrapped because of its impracticality. Recommendations regarding the clause have now been made to the Manpower Commission. Other sections of the Act which severely restrict the unions' power are Sections 27 and 35 which involve time

limits and technicalities around declaring disputes.

These sections have also complicated existing procedures, thus placing great strain on unions. The procedure for appeal against industrial court decisions has changed so industrial court rulings can now go on appeal to the special labour court without interim relief being granted - a process which can drag on for years while workers go without wages. The LRA also allows bosses to ignore the principle of last in, first out, enabling bosses to selectively retrench workers and thus erode union leadership on the shop-floor. With unfair labour practices defined in the Act - rather than by the industrial court - sympathy strikes are now illegal.

Unions are also facing the increased use of interdicts, lockouts and dismissals. Since the LRA, bosses have been flooding the courts seeking interdicts and interim relief - and have had them easily granted.

Backed by the LRA, bosses have become more aggressive and confident. Against this background Cosatu, Nactu and the independent unions met again at the second Workers' Summit in August 1989. Hampered by a government restriction order and police presence, 'political' discussions were almost impossible. One note of discord was over the proposed dates for an anti-LRA stayaway, with elements in Nactu arguing that it should be divided into two, with one day coinciding with the anniversary of the death of Steve Biko.

Unlike the 1988 response, the second Workers' Summit attempted to ensure an ongoing campaign including an overtime ban, a consumer boycott, work stoppages and demonstrations.

The September 6 stayaway, coinciding with the white elections and a national protest action called by the MDM and other organisations, received massive support nationally. On September 5, the stayaway was partial, due to confusion stemming from the Workers' Summit. And on Biko Day a negligible stayaway was reported.

As a runner-up to the September 5 and 6 stayaway, the summit decision on factory level action was implemented

in the form of one- to two-hour work stoppages or lunch-time demonstrations. However, the action was only partially supported and had little impact on its own. A two-week consumer boycott, which began on a high note on September 26 in the Eastern and Western Cape, had much less support in other regions. Shops in Johannesburg's city centre were not significantly boycotted and the level of support elsewhere declined after a few days. In all, the boycott was largely ineffectual.

The ban on overtime, implemented shortly after the consumer boycott, is still continuing in varying degrees in different sectors. A Labour Monitoring Group survey of unionised companies on the PWV employing more than 100 workers, showed that there was an average 36% support for the ban in the first four weeks, though level of support varied in different sectors.

Most employers reacted by threatening to restructure their labour force and changing the shift system to obviate overtime work. Others began interdicting unions.

The overtime ban entered its eighth week unmonitored, but union organisers in the different regions report that support has dwindled. Bosses have clamped down on workers and there was also poor co-ordination in regional structures.

In the midst of mass marches and protest action throughout the country, Cosatu also called on workers to march against the LRA in the country's major cities. In Johannesburg, unions hoped for 100 000 workers. Only 15 000, among them students and political activists, participated. In Cape Town, the march drew stronger support.

With national strategies seemingly exhausted at least for now, individual unions are pursuing their own strategies at plant or company level. A popular strategy is one whereby unions have negotiated that employers voluntarily disregard the LRA. While there are few formal contracting-out agreements, in some cases managements have indicated that they will not use the more contentious LRA clauses.

Within unions, there has been some debate as to whether contracting out has not detracted from the anti-LRA campaign. Unions using the strategy - the South African Clothing and Textile Workers' Union (Sactwu) already has about 25 000 workers covered by contracting-out agreements - say the battle against the LRA is being pursued at all levels and that their members, whether contracted out or not, continue to support the campaign.

While some gains have been achieved since the implementation of the campaign, it is evident at this stage that it has not met its original objectives. Unions have admitted that regional and local campaign co-ordinating structures have not functioned efficiently and in some cases links between union leadership and workers on the shop-floor have been weak.

Despite these setbacks, the LRA campaign has had an impact on management and employers, who more recently have backed down in the face of some union demands. At the Saccola talks on October 18 and 19, Saccola agreed:

- \* to scrap the technicalities and time limits for bringing disputes;
- \* that appeals to the special labour court be quick and that the court should be staffed by experts;
- \* to revert to the pre-September 1988 position in regard to damage claims;
- \* that industrial court judgements be published unless the courts decide otherwise;
- \* that International Labour Organisation (ILO) guidelines apply on dismissals for incapacity, misconduct and retrenchment; and
- \* that the clause defining an unfair labour practice be restructured.

The commitment to change or to scrap these clauses does not mean the struggle against the LRA is over. But the campaign will be judged by the extent to which it has added dynamism to the trade union movement - much as the Living Wage Campaign did in 1987. Combined with other factors, it has indirectly bolstered union confidence and militancy and led to a substantial increase in industrial action after the huge lull of 1988.