

LABOUR LEGISLATION - 1994

JANUARY - NOV.

# New rules for labour brokers

By MARTIN NTSOELNGOE

TIME is running out for the hated labour broker *CIPress 20/11/99*

The Department of Labour has promised 5 000 unemployed drivers – who want to deal directly with the department and not with labour brokers – that a legal task team has been charged with the reviewing of the Labour Relations Act, which would include a complete review of the provisions to labour brokers *(ldb)*

Labour brokers – described as a “den of unmitigated crooks” in a recent International Labour Organisation press release – supply clients with workers. The client pays the labour broker, and the labour broker pays the workers.

This provides clients with savings on wage costs, unemployment contributions and training requirements.

## Industrial courts to be revamped

# Labour Act to promote use of mediation

Biday 3110194

THE new Labour Relations Act is likely to promote actively greater use of mediation and conciliation to settle industrial disputes, and completely restructure the industrial court system.

This is according to a Labour Ministry document "Contextualising strike action in the current period" released yesterday, and a source close to Ministry adviser Halton Cheadle's task team charged with redrafting the Act.

It is understood that strenuous union lobbying for compulsory centralised collective bargaining has failed. It will remain up to unions and employers to negotiate desired levels of bargaining.

The draft legislation is expected to be handed to the National Manpower Commission for discussion late next month.

The Ministry document, presented to Cabinet last week by Labour Minister Tito Mboweni, while arguing that the recent wave of strike action was "nothing out of the ordinary", said the strikes showed "serious shortcomings in the laws and institutional capacities inherited from the previous government".

"Comparative evidence reveals that effective mediation radically cuts down the number of disputes that end in strikes or in the courts," it said.

A key aim, therefore, was to develop a mediation and conciliation service within the Labour Department. The possibility of using independent agencies to provide the service was being investigated.

The law, rather than setting out in detail procedures for dispute resolution as at present, rather focus on establishing concilia-

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tion institutions. These "conciliation centres" within the department should be staffed by trained mediators and conciliators.

The Ministry believed affirmative action and economic restructuring would require constructive conciliation mechanisms to resolve potential disputes.

The restructuring of the labour court system, to allow "cheap and expeditious" access, was also necessary to minimise the resort to strike action. (106)

The document proposed that the task team consider a "multi-tiered" approach with separate divisions for individual disputes such as dismissals and a division with higher status to deal with collective disputes.

It is understood that adjudicators for the individual disputes division would be appointed by a tripartite body. Employers and unions, unhappy with the quality of many Industrial Court members, are likely to introduce radical staffing changes.

There is said to be a heated debate over way as to whether the collective dispute division should be staffed by Supreme Court judges only, or whether other labour experts should have a prominent role.

Concerning the Labour Appeal Court, "consideration has been given to the establishment of a single national court to cut down the multiplicity of appeals".

The establishment of workplace forums, raised by Mboweni at a conference last week, was another important feature of

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## Labour Act

Biday 3110194

□ From Page 1

the draft legislation.

These would deal with such issues as corporate restructuring, retrenchment and health and safety issues.

At industry level, industrial councils would remain, as would their function and government's role of ratifying agreements and extending them to cover non-parties where considered appropriate. (106)

It is understood the draft Bill will not outlaw the dismissal of strikers, but would make this lawful only where "operational requirements" make this necessary.

The definition of "operational requirements" was still being discussed, the source said, but was expected to be linked to whether industrial action threatened the existence or livelihood of a company.

# Mboweni to propose longer leave, new working hours

CAPE TOWN — Proposals to change the number of working hours and make annual leave longer would be publicised in the first quarter of 1995, Labour Minister Tito Mboweni said yesterday.

His ministry was also finalising a strategic five-year plan, he said in reply to a question in Parliament.

The plan aimed to provide a vision of a Labour Department which would be centrally involved in economic policy and to place labour policy within the framework of the reconstruction and development programme.

The five-year plan would focus on labour law reform, covering a range of legislative changes that could be made to laws which affected conditions of employment.

"In this regard I intend to propose changes to the existing Basic Conditions of Employment Act, including the number of working hours a week and longer periods of annual leave, at the latest during the first quarter of 1995."

These proposals would be submitted to the National Manpower Commission or its substitute body for deliberation, negotiation and advice.

His department also intended taking steps to increase productivity, including the restructuring of the education and training system.

MUNGO SOGGOT reports Mboweni told the Sacob convention in Bloemfontein later yesterday that SA would have to consider whether the present system of wage negotiations — which involved new negotiations every year — could be replaced with

Political Staff

a system which imposed longer lasting agreements

He said there was a need to legislate for less adversarial labour relations. A key feature of the new Labour Relations Act would be to develop forums where management and labour could discuss a whole range of subjects — not just wage negotiations — including global competitiveness.

The spirit of consensus would be encouraged by the formation of the National Economic, Labour and Development Council which would bring together business, labour and government.

The SA business community had to allay foreign investors' fears and had to communicate with them to encourage investment.

He said SA would have to remove any anti-competitive tendencies and take action against monopolies which abused their positions.

There would have to be room for small and medium sized companies to empower a larger section of the population.

□ Sapa reports former General Workers' Union secretary Dave Lewis and Papi Moloto have been appointed ministerial advisers to Mboweni.

This was confirmed by Mboweni, who also said a legal team had been appointed to draft a new Labour Relations Bill.

The team's convenor was Prof Halton Cheadle, while the other members were R Zondo, A Armstrong, D Pillay, A van Niekerk and Prof W le Roux.

Mboweni considers 40-hour week

# Big changes to labour laws mooted

Bl Day 12/19/94

(16b)

SWEEPING changes to employment conditions — including reducing the working week to 40 hours — were under consideration, Labour Minister Tito Mboweni told delegates to Cosatu's fifth national congress in Soweto at the weekend.

Mboweni said his ministry was looking at phasing in a maximum 40-hour working week and believed the working day should increasingly be reduced to eight hours.

It was also considering increasing the statutory annual leave period from the current 14 days to 21 consecutive days. Employers would be prevented from dismissing staff for pregnancy or as a result of absence due to maternity leave, currently permitted by the Basic Conditions of Employment Act.

An amendment may also be made to ensure workers were entitled to inspect all employment records kept by companies in terms of the Act.

Part-time and temporary workers should enjoy annual and sick leave benefits in terms of the Act, Mboweni said.

An amendment to Section 100 of the Insolvency Act was also under consideration to rank workers' pay claims above those of other claimants.

The Pension Funds Act may also be changed to provide for equal representation of worker and employer trustees.

Mboweni indicated there were problems in combining all labour laws into a single statute. Farmers and public servants were opposed to separate labour relations laws being repealed and their sectors falling under the revised Labour Relations Act.

Mboweni appealed to Cosatu's public sector affiliates to support the single stat-

ERICA JANKOWITZ

ute as the Public Service Association had complained to the International Labour Organisation about the planned repeal of the Public Service Labour Act.

The redrafted Labour Relations Act should be ready for presentation to the National Economic, Labour and Development Council by the end of the month.

It would entrench organisational rights of representative trade unions, including access to information, appropriate allowances for meetings, shopfloor representation and shop steward training. A framework for more rational collective bargaining institutions at national, industrial and plant levels was also envisaged as was a simplified process to register trade unions and employer organisations.

Congress accepted the inevitability of tariff reductions. But, in a declaration proposed by the National Union of Metalworkers of SA against "the neo-liberal approach" to reductions, it said the working class should not bear the cost.

Industrial restructuring should be negotiated with representative trade unions and should include retraining of displaced workers and skills enhancement.

"Tariff reform which is not preceded by proper negotiation with trade unions, agreed social adjustment programmes and a restructuring package will be resisted."

On the issue of the final constitution, Cosatu called for the repeal of all laws conflicting with worker rights and the removal of a clause in the Bill of Rights protecting private ownership of the means of production. The right to strike should be

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## Cosatu

Bl Day 12/19/94

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enshrined, but an employer's right to lock-out removed.

Cosatu passed a resolution calling for the wealthy to contribute more to the reconstruction and development programme (RDP) than the poor through a special levy on incomes and profits. (16b)

Workers would be called on to contribute voluntarily "through devoting output, profits and earnings on selected days to the RDP fund, or through other means that may include financial contributions or the contribution of their labour". Unions should be able to influence the allocation of these funds towards projects which would

benefit workers and their communities.

The entire Cosatu national leadership was re-elected unopposed on Friday. Sam Shilowa remained general secretary with Zwelinzima Vavi his assistant.

John Gomomo accepted his nomination as president with George Nkadimeng as first and Connie September as second vice-presidents. Ronald Mofokeng was re-elected treasurer.

Gomomo appealed to delegates to consider making his position full time as he was hard-pressed to meet worker expectations while working at Volkswagen.

● See Pages 3 and 8

# Changes to employment Act mooted

Star 12/9/94

■ BY JOVIAL RANTAO  
LABOUR CORRESPONDENT

The Congress of South African Trade Unions wants a special levy on incomes and profits of the wealthy to ensure their contribution to the Reconstruction and Development Programme.

This is one of the resolutions adopted at the organisation's fifth congress which ended in Soweto on Saturday.

And the congress was told by Labour Minister Tito Mboweni that major changes to existing labour laws were being considered. These included the phasing in of an eight-hour working day and a 40-hour week.

Other amendments to the Basic Conditions of Employment Act being considered included

an increase of the minimum annual leave from 14 to 21 days

During the congress Cosatu also resolved to campaign for a voluntary contribution by workers in order for them to materially contribute to the RDP

## Details

This would be done through devoting output, profits and earnings on selected days to the RDP Fund

Details of the proposal were still to be worked out, Zwelinzima Vavi, the re-elected deputy general-secretary of Cosatu, told a press conference

Vavi said details on how the civics, students and business would contribute would also be

worked out at a later stage.

On participation in next year's local government elections, Cosatu resolved it would earmark resources for a campaign in the elections

However, the union federation decided not to produce its own list of candidates as had been done for the April election, but rather to support lists from mass democratic movement formations. This was to avoid another leadership drain, as was the case after the general election

Cosatu also emerged from the congress opposed to full-time paid councillors, and said councillors should be paid allowances for attending meetings or duties performed outside of normal working hours

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# Call for levy on rich to boost RDP

**JOVIAL RANTAO**  
LABOUR CORRESPONDENT

The Congress of South African Trade Unions (Cosatu) yesterday called for a special levy on incomes and profits of the wealthy to ensure their contribution to the Reconstruction and Development Programme (RDP)

"The implementation of the RDP should be the primary responsibility of all South Africans. The rich should contribute more than the poor," Cosatu resolved yesterday

In the same resolution — on the third day of its triennial congress held at the Vista University in Soweto — Cosatu resolved to campaign for a voluntary contribution by workers to materially contribute to the RDP by devoting output, profits and earnings on selected days to the RDP Fund

"Contributions from workers will be in the form of finance or the contribution of their labour. Details of the proposal are still to be worked out," Zwelinzama Vavi, the re-elected deputy general-secretary of Cosatu told a press conference yesterday

Labour Minister Tito Mboweni told the congress earlier that his department was expediting problems in its plan to introduce

a single Labour Relations Act for the whole of South Africa

Mboweni said that the Public Servants Association (PSA), the biggest union in the public sector, was vigorously opposed to the plan. The PSA had written to the International Labour Organisation voicing its objections, Mboweni said. "I'm in a difficult situation," he said, and appealed to Cosatu unions for support for his plan

## Simplification

Outlining the proposed law, whose draft is expected to be finalised at the end of the month, Mboweni said he planning legislation to ensure that there were organisational rights and access to information, the right to attend union meetings and shop floor representation

The new law, Mboweni said, would make it easier for trade union to register and introduce a more coherent system of bargaining at national, industrial and plant level. Simplified dispute resolution mechanisms were also envisaged

The draft Labour Relations Bill would be subjected to public debate, amendments and

To loud applause from delegates, Mboweni

announced that the following amendments to the Basic Conditions of Employment Act were envisaged

- An increase of minimum statutory leave from 14 to 21 consecutive days
- Stopping dismissals due to pregnancy and maternity demands
- Workers should be able to institute civil claims to fight underpayment by employers
- Temporary workers should qualify for annual and sick leave
- Consideration should be given to reducing the maximum working week to 40 hours through a phase-in project
- Working day should increasingly be reduced to eight hours.
- The Insolvency Act should be amended to ensure that workers were, ahead of banks and other creditors, high on the compensation list
- The Pension Fund Act be changed to allow for equal number of employers and employees on the trustee board
- The Agricultural Act be brought in line with the Labour Relations Act

# Public service 'being ignored'

PRETORIA — Labour Minister Mr Tito Mboweni is ignoring the public service in his revision of labour legislation, the Public Servants' Association of South Africa (PSA) charged here yesterday

It said this "negative approach could only stoke the fires of conflict" ~~(250)~~ (166)

The PSA said the committee appointed by the minister to review labour legislation had left for the International Labour Organisation (ILO) in Geneva at the weekend under a cloud of distrust

It seemed the committee aimed to gain the support of the ILO beforehand "and thereby sidestep any proper and meaningful negotiations in South Africa on labour legislation"

"We are still in the dark on the terms of reference of this committee and the aims of the government"

It warned Mr Mboweni could not achieve legitimacy on public service labour legislation without involving organised labour in the civil service — Sapa





## 'Widen labour law planning'

LABOUR relations were not the sole preserve of the legal fraternity — other important role-players should be able to take part in developing new labour legislation, NP spokesman on labour Mr Leon Wessels said yesterday *2 (166)*

The other role-players included commerce, women's organisations, economists and small business — Sapa

*27 11/8/94*

Minister Mboweni  
Mboweni has big plans for his department

A new labour

# bour era dawns

Star 6/8/94

THE Labour Ministry is determined to provide the best legislative framework possible to regulate and minimise industrial disputes. Plans are in the pipeline to have a revised Labour Relations Act on the statute book by this time next year, writes **PATRICK LAURENCE**.

**T**HERE will always be tension between capital and labour because they pursue fundamentally contradictory interests, Labour Minister Tito Mboweni remarks philosophically

Employers strive to increase their profits while employees seek to raise their wages. He quotes an aphorism coined by one of the legendary figures of South African trade unionism, Emma Mashinini: "Strikes will follow me for the rest of life"

Mboweni hastens to add that it is important to ensure that the adversarial relationship between owners, or managers acting on their behalf, and workers is not aggravated by inadequate legislation. His ministry is determined to provide the best legislative framework possible to regulate and minimise industrial disputes

Plans are in the pipeline to have a revised Labour Relations Act on the statute book by next year's round of wage negotiations.

Seated in his 12th-floor office in Cape Town's old H F Verwoerd Building — now simply known as 120 Plein Street — Mboweni offers a diagnosis of the present round of strikes, which has created images of incipient anarchy.

The period between March and August is wage negotiation time. Old agreements come up for reassessment and renewal.

While the Labour Relations Act provides for annual wage negotiations, the current succession of strikes must be seen in context.

The number of "labour hours" lost — Mboweni eschews the sexist phrase "manhours" — was high in 1990 and "very high" in 1991. In 1992 and 1993, however, the graph dipped as workers concentrated on mass marches and demonstrations. The trend continued in 1994 until Nelson Mandela's inauguration as president on May 10

"In June and July, people began to concentrate on wage negotiations." Some potential disputes were defused by wage agreements, notably in the clothing industry.

squabble — he appointed a mediator under the relevant section of the Labour Relations Act — helped end it.

**O**N THE dispute in the motor industry he expresses confidence that the maturity of both sides — the National Union of Metalworkers of SA and the Automobile Manufacturing Employers' Organisation — will result in a settlement (106) (105)

Mboweni returns to his initial point: the contradiction between capital and labour. The Government cannot hope to dissolve the contradiction. To expect it to do so is to misread the situation.

There is, however, another factor behind the rash of strikes.

Having helped end political apartheid, workers want to end racism in the workplace.

The conversation turns to another fundamental point of departure in the thinking of the Labour Ministry: the need to revise and update the Labour Relations Act

"Many difficulties are experienced with the present Labour Relations Act," Mboweni says. He enumerates some:

- Procedures for the settlement of disputes are too complex, a factor which might contribute to the loss of productivity through industrial disputes.

- Mechanisms for the registration of unions are similarly too complex (meaning, perhaps, that workers might operate outside the legislation framework).

- Restrictions placed on political affiliation by unions are too complex and might even be unnecessary.

The law "does not say anything about workplace democratisation", which is of central importance to workers because attainment of democracy in the political field has made them impatient with obsolete practices in factories and shops

There is another major deficiency: the Labour Relations Act does not cover all workers. Excluded from its ambit are many workers in the public sector, including teachers, nurses and public servants

The question of whether these workers should be brought under the aegis of a revised industrial relations law has to be addressed urgently.

On the danger of crippling strikes in



an  
exhibition  
of  
Bushman  
art

Burg Art Gallery tomorrow, archaeologist Thomas

PHOTOGRAPH MYKEL NICOLAOU

## es its place

among the politically correct, means "tramp", says Dowson. To escape the "hornet's nest" of this terminology, every time he uses the word Bushman in writing, he stipulates that there is neither racial nor gender implication.

The exhibition is impressive in its variety. With pride Dowson shows off the eland painted and engraved into rocks, explains linocuts and brightly coloured contemporary paintings. The care he has taken to release Bushman art from the minor role it

which serves to maintain ties with other groups of people outside of family and marriage relationships.

A quote from a Bushman text explains the idea well. *The worst thing is not giving gifts. If people do not like each other but one gives a gift and the other must accept, this brings a peace between them. We give to one another always. We give what we have. This is the way we live together.*

Mboweni hastens to add that it is important to ensure that the adversarial relationship between owners, or managers acting on their behalf, and workers is not aggravated by inadequate legislation. His ministry is determined to provide the best legislative framework possible to regulate and minimise industrial disputes

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"In June and July, people began to concentrate on wage negotiations." Some potential disputes were defused by wage agreements, notably in the clothing industry.

**H**OWEVER, these agreements have not been noticed or have been forgotten because of the prominence given first to the dispute between the South African Commercial, Catering and Allied Workers Union and Pick 'n Pay, and, more recently, in the motor industry.

Mboweni takes a positive view of these disputes. He says his intervention in the SACCAWU-Pick 'n Pay wage



**LABOUR MINISTER: Tito Mboweni takes a positive view.**

ment (166) (HSS)

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■ Restrictions placed on political affiliation by unions are too complex and might even be unnecessary.

The law "does not say anything about workplace democratisation", which is of central importance to workers because attainment of democracy in the political field has made them impatient with obsolete practices in factories and shops.

There is another major deficiency: the Labour Relations Act does not cover all workers. Excluded from its ambit are many workers in the public sector, including teachers, nurses and public servants

The question of whether these workers should be brought under the aegis of a revised industrial relations law has to be addressed urgently.

On the danger of crippling strikes in the public sector — where two of the most militant of the newer unions, the South African Teachers' Democratic Union and the National Education, Health and Allied Workers' Union, are preparing for battle on the wage front — Mboweni maintains a tactful silence

**I**T IS a problem which, for now, falls in the portfolio of Public Service Minister Zola Skweyiya.

"It is better not to say anything," Mboweni says.

Another problem demands urgent attention: the new order has inherited at least five different labour laws, one each from the old South Africa and the former states of Transkei, Bophuthatswana, Venda and Ciskei, which have left behind five departments of labour and five directors-general of labour.

These departments must be integrated into a single department, a complicated and exacting process which requires the removal of "dead wood" and elimination of replication.

Mboweni's vision of the Labour Ministry will leave much of the day-to-day administration to a new, unified labour department and will concentrate on research to enable it to make constructive interventions, espouse a labour policy which is enlightened and in tune with world trends, and help the public understand labour issues

WM(BM)5-11/8/94 (166)

## Ravi Naidoo reports on the consequences of the increasing incidence of labour brokers

**L**ABOUR broking — described recently as a “den of unmitigated crooks” by the International Labour Organisation — is becoming a headache for trade unions and permanent workers. And, as it exists now, labour broking is potentially harmful to many stakeholders in the economy, including companies themselves.

Currently, it is estimated that there are more than 3 000 labour broking agencies in South Africa, supplying more than 100 000 temporary workers across industries at any one time; and the number of agencies is reported to be growing.

This growth is not peculiar to South Africa, but is part of an international trend. The number of temporary employment agencies in the United States, for example, has increased from 2 000 agencies in 1968 to more than 14 000 companies with more than 20 000 offices in 1993.

The turnover of these temporary work agencies has increased thirtyfold between 1970 and 1992 to \$20-billion. In Switzerland and Britain, the num-

ber of private work agencies is growing by 10 percent a year. This trend is spreading to other countries too, and South Africa is particularly hard hit.

But what are labour brokers? Simply put, the labour broker merely supplies the client (for example, a building contractor) with workers. The client pays the broker, and the broker pays the workers. The broker is deemed by the Labour Relations Act to be the employer, and the client is not. So companies can have people do their work without having to take on the responsibility of being their employer.

Traditionally, the “letting out” of workers causes great confusion both for the authorities and for the workers. Labour brokers have deliberately exacerbated the situation by using third parties (ie, sub-letting), which renders the LRA definition useless.

Workers are also unsure what their rights are or to whom their grievances should be addressed, and the authorities do not have the capacity to cope with all the complications.

Labour brokers have been in existence in South Africa for many years, but were only included in the LRA in 1983 in an attempt to regulate them. That attempt at regulation has failed dismally for a number of reasons.

The most important reason is that

brokers have tried their level best to make evading minimum standards almost an art form. Secondly, brokers are aided and abetted by a grossly inefficient regulation and enforcement system (for example, the LRA did not foresee the use of sub-letting).

Thirdly, there is often collusion with companies which want to obtain cheap labour that they can easily dispose of. This provides these companies with considerable savings on wage costs, and other “burdens” such as unemployment contributions and training requirements.

Fourthly, the high level of unemployment has pressed many workers to take whatever they are offered and not to report abusive labour practices and non-compliance with minimum standards.

The net effect of all this is that brokers can do what they want to do, at a sizeable profit. Industry sources estimate that some brokers are able to turn net profits of almost R1-million a month. On the other end of the scale, most temporary workers get a bad deal, receiving far less than the minimum wage with no benefits to boot, and permanent workers (and their dependents) who are made redundant through the use of labour brokers lose even bigger.

An example of wages is:

R450 R488 R232 63%

Column D is the important one here.

It represents what the broker actually pays as a proportion of what the industrial council (in this case the Transvaal Industrial Council for the Building Industry, March 1994) stipulates should be paid. In the above example, the broker was employing a craftsman at 63 percent of the industrial council minimum wage costs (minimum wage rate plus stamp contributions).

Labour broking has tended to follow areas of increasing union density where there are ad hoc work processes. In those sectors, permanent employment declines and labour brokers, and other providers of temporary labour, fill the gap.

In the construction industry, for example, where it is relatively easy to fragment the work process, most of the actual labour is done by temporary and broker-supplied workers. Companies have reduced their permanent workforce to a minimum.

With this reduction, the influence of organised labour also comes under pressure; this is at least a secondary motive for companies to use brokers.

Labour broking would not be a problem if it contributed to effective job creation; instead it erodes permanent jobs and minimum standards. Moreover, brokers pose a serious

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## BUSINESS

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## JSE's RDP

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contribute to reconstruction and be an advantage to promoting black entrepreneurship,” says Andersen.

In addition, it is expected that the JSE will place a limit on how much money will be required by the company and also a restriction on the degree to which management will control the underlying entity.

Another safeguard for investors will be the implementation of a full prospectus, which is the normal pre-listing document. RDP sector companies will also be required to submit normal six monthly accounting statements to the JSE and all shareholders.

Another expected change to be introduced by the JSE listing department

relates to the VCM. Andersen says that at present JSE listing criteria do not generally make it easy for individuals to raise capital. The total lack of interest in the VCM has made this existing infrastructure available for change.

The JSE has not released details on what these changes will be, but market experts believe that a new RDP and VCM should raise “a great deal of interest in the market as a whole,” says a dealer. He believes that the success will be “similar to that achieved by the UK's Unlisted Securities Market (USM).” In this market, the UK exchange permitted companies to list on the exchange but to retain private status.

The USM was formed in 1980 and by mid-1986 over 460 companies had been floated, totalling more than R5,5-million. The advantages which this market provided for the public could certainly be

echoed in a South African RDP.

Firstly, companies would benefit in being able to obtain capital from the public instead of the laborious mechanism of asking individuals for funds. growth by acquisition becomes possible — organic growth is restricted in our present environment — and the company status is enhanced, enabling easier access to bank loans.

Secondly, the JSE could benefit through increased trade and thus improve liquidity. Other advantages for the exchange include a saving on advertising costs in floating an RDP type company and greater flexibility is obtained in determining what companies become listed.

While the idea of such a sector seems ideal, numerous pessimists say that in reality such a market is unlikely to take off in South Africa. Disadvantages, they

say, are vast. How does the exchange place a price on a company which has no profit history and when a price is finally determined, that price is not conclusive proof that it realistically represents the company's net assets.

These experts believe that prices would be influenced by the holding company's status and not necessarily related to the operating company's performance.

The true success of the RDP will not depend on whether private companies will be interested in listing, but in Roy Andersen's ability to persuade his fellow JSE board members to start such a sector. If he can do this, there is a real chance of the JSE taking on its true role in South Africa, that of providing a fair market for all businessmen to start and expand viable businesses without enduring restrictive and prohibitive interest rates.

# Timetable set for labour bill

Own Correspondent

JOHANNESBURG. — A draft Labour Relations Bill would be completed by the end of next month and tabled with the National Manpower Commission (NMC) on October 18 in terms of a timetable proposed by Labour Minister Mr Tito Mboweni.

The NMC approved the timetable this week

In a letter to the NMC Mr Mboweni proposed a timetable approved by the NMC on Tuesday, for the redrafting of the Labour Relations Act.

Mr Mboweni's spokeswoman, Ms Shareen Singh, said the timetable could change as it had to be discussed between Mr Mboweni, employers and trade unions.

The NMC has to finalise its re-

port and recommendations on the bill before the end of February next year

CT 4/8/94  
NMC chairman Mr Frans Barker said the commission also accepted the minister's proposal to appoint a drafting team by tomorrow

(166)  
It is understood the team will be headed by the minister's adviser, Mr Halton Cheadle.

Warning of petrol

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BUSINESS DAY, Monday, August 1 1994

**Call for labour democratisation**

ERICA JANKOWITZ

WORKPLACE democratisation had become a key demand in current labour disputes and unless progress on this front was made a severe crisis could be approaching, IR Network researcher Wendy Dobson said at the weekend *BID ay*

She said SA had witnessed more strikes so far this year than in any corresponding period except 1987 when the three-week miners' strike led to an all-time high of working days lost to strike action *118/94*

Dobson said workplace democratisation included eliminating wage differentials, abolishing discriminatory practices and embarking on human resource development.

"It implies a greater degree of worker participation in decision-making, to the extent that Cosatu thinks the whole idea of management prerogative should be discarded"

Dobson predicted that wage differentials would come under the spotlight, with management being increasingly pressured to close the gap between management and production worker remuneration. Redistribution was also a major contributing factor to current industrial unrest.

She agreed with other commentators' suggestion that the economic upswing together with heightened expectations had contributed to the surge of industrial action, yet discounted the theory that Cosatu was confronting the ANC *(ANC)*

Falling wage settlement levels over the past few years was also a factor. Dobson noted that average wage settlement levels had dropped from 19,65% in the third quarter of 1991 to 7,8% in the corresponding period of 1993. So far this quarter, wage increases had averaged 9,96%

**Work relations needs set down**

*BID ay*  
*118/94*

ERICA JANKOWITZ

SA NEEDS an enabling regulatory environment, especially in labour relations, to ensure wealth creation and economic growth, says Chamber of Mines chief negotiator Adrian du Plessis.

Addressing an AIC Conferences seminar last week on the future of mining, Du Plessis set out five key perspectives of a new labour relations Act. These were

- The Act should establish a floor of basic worker and management rights by fleshing out the limitations and duties attendant on the rights contained in current law;
  - A framework and not a model of labour relations should be established as models tended to be prescriptive and relied on compulsion to enforce their terms;
  - The Act should take established traditions of site- and industry-level collective bargaining arrangements into account as these processes were "pertinent to the overall balance of the labour relations system";
  - Flexibility should be allowed within the framework to take account of the enormous diversity of business processes and systems should be developed "which are sensitive to the needs of all parties"; and
  - An expeditious and efficient dispute resolution structure should be put in place with mechanisms which ensured devolution of the process to the lowest possible level, preferably the source of the dispute.
- Du Plessis said the rate of increase of gold production in the developed

world was declining relative to the developing world SA and other developing countries therefore stood to gain an increasing slice of world mine production "provided we can define and build upon our strategic competitive advantage"

To achieve this, an enabling legislative and regulatory environment would need to be in place to help define that competitive advantage, Du Plessis argued.

He warned there were several examples of legislated restrictions which strangled enterprise, and suggested the drafting of a new Act offered a real opportunity to ensure this was not the case in SA.

"Our Labour Relations Act has succeeded in securing a jurisprudence of labour equity and has also been in the forefront of the process of social change in SA. The Act now needs to address the kind of economic objectives that we will need to secure if we are to position SA for real growth and development," he said

Du Plessis stressed the need to involve government's social partners — labour and business — in the process of devising the new statute to ensure that the proper balance was struck between social and economic objectives. *(1bb)*

"SA is fortunate that, unlike many countries, it has real opportunities for a meaningful dialogue between the social partners on the kind of regulatory environment it wants and needs," he said

# Row over labour law group's end

Own Correspondent

JOHANNESBURG — The chairman of the National Manpower Commission's employment law working group, Mr Adolph Landman, resigned yesterday in the wake of weekend reports that the working group would be replaced by a commission charged with re-writing labour legislation

Mr Landman said in his letter

of resignation that he felt the group deserved better treatment than learning of its demise in a weekend newspaper.

Sources said Labour Ministry adviser and labour lawyer Mr Halton Cheadle, who was widely considered to be behind the proposed demise of the working group, was trying to put together a commission to rewrite legisla-

tion. He would be its chairman and would recruit local and international experts to ensure the quick drafting of a new Labour Relations Act.

Labour Minister Mr Tito Mboweni's office confirmed there was a proposal to appoint a legal team to draft the new statute incorporating the government's Reconstruction and Development

Programme — which contains a chapter on worker rights — and international standards. He reaffirmed his commitment to the government working with employee and employer bodies.

Sources said the working group had already made considerable progress in drafting a new act, after spending months last year drafting changes to the existing act which were never passed

# New labour laws on the cards

Star 18/7/94

## ■ POLITICAL STAFF

The Government — in a move which has helped to ease tensions between itself and Cosatu on the eve of a nationwide Pick 'n Pay strike — yesterday announced a new labour legislation package.

The package — announced by Labour Minister Tito Mboweni following a weekend summit between Cosatu and the labour minister — is to be drafted after consultation with trade unions, business and other stakeholders next week. It will be tabled in the next parliamentary session.

Mboweni said the statute would provide for equal opportunity in the workplace and public service and a framework for collective bargaining at all levels of industry (lab).

He stopped short of guaranteeing change to laws inhibiting the right to strike, saying these would be investigated.

Cosatu general secretary Sam Shilowa said changes to current labour legislation needed to reach further and to "decriminalise" strike action.

Cosatu expected cabinet ministers, many of whom were former Cosatu leaders, to support workers against employers by repealing repressive labour laws. The week-long strike at Pick 'n Pay by the Commercial, Catering and Allied Workers' Union (in the PWV) had illustrated the need to revamp the present labour law system, Shilowa said.

About 15 000 Pick 'n Pay workers are due to embark on a nationwide strike tomorrow in the wake of failed union/management talks.



Wednesday June 15 1994 SOWETAN

## NEWS 'Thinly veiled threat against

# Labour Act extended

By Josias Charle

THE labour legislation has been amended to cover thousands of civil servants in the former homelands

This move is expected to quell the restive labour situation in the former independent homelands and national states where workers have been on various forms of industrial action.

The Minister for Public Service and Administration, Dr Zola Skweyiya, announced yesterday that the Public Service Labour Relations Act was enacted on June 11 by means of a presidential proclamation in the *Government Gazette*.

The act extends labour rights to thousands of public servants who have not been covered by any labour legislation

The new act also provides for bargaining structures to be created in the new provincial administrations within 90 days

"The act will provide all public servants with effective collective bargaining structures at central, departmental and provincial levels and dispute resolution mechanisms such as access to the Industrial Court (166)

"I believe that this will make a significant contribution to the promotion of sound employer-employee relations in the public service," said Skweyiya.

The act also makes provision for employee organisations which are not part of the bargaining council to be admitted and to take part in negotiations at all levels of Government.

"With regard to the chamber at central level, a shortened admission procedure has been introduced for a period of three months. All employee organisations able to prove to the chamber at central level within this period, by way of verified membership figures, that they represent at least a thousand Public Service Act members, shall be admitted to the chamber."

# Civil servants in 'homelands' given labour rights

Political Correspondent

LABOUR rights have been extended to thousands of public servants from the former independent homelands and self-governing territories

The Public Service Labour Relations Act of 1994 was enacted by a presidential proclamation in the Government Gazette on Saturday, said Public Service and Administration Minister Zola Skweyiya

The new act provides for bargaining structures to be created in the new provincial administrations within 90 days

The Public Service Bargaining Council, established under the Public Service Labour Relations Act of 1993, will continue to exist

The act will enable employee organisations — which until now have not been members of the bargaining council — to

take part in talks at central, departmental and provincial levels.

ARGT 14/6/94  
A shortened admission procedure has been introduced for the central chamber, where salaries and other conditions of service are negotiated

The concession will operate for three months

All employee organisations able to prove in the next three months that they represent at

least 1 000 public servants will be admitted to the chamber.

"The act will provide all public servants with effective collective-bargaining structures at central, departmental and provincial levels, and dispute-resolution mechanisms, such as access to the industrial court

"I believe that this will make a significant contribution to the promotion of sound employer-employee relations in the public service," Dr Skweyiya said.

Act spells out employment conditions

# Contract the best bet

Star 11/5/94

FROM the beginning of this year the employment conditions of domestic workers are governed by the Basic Conditions of Employment Act. Inclusion under the Act has brought this previously excluded class of workers under the protection of the main labour statutes.

Attorney Brian Bleazard of Werkmans says it is desirable that the employment relationship between domestic worker and employer be rooted in a clear written contract. A contract, obviates the need for the employer to comply with certain procedural requirements of the Act such as keeping a daily record of time worked.

The Act sets out the minimum employment conditions for a domestic worker. Different conditions apply to the different classes of workers — generally speaking, live-in workers, workers who don't live in, and day workers. A worker who doesn't live in is one who does not live on the employer's premises

THIS is the second in a three-part series on contracts for domestic workers LEIGH ROBERTS here looks at a contract for a domestic worker who doesn't live in

but who works more than three days a week on a regular basis.

For a worker who does not live in but works five days or less a week any period worked over 9 1/4 hours a day is classified as overtime. There is a spread-over clause which limits the maximum daily hours (including overtime) to 12 hours for a worker who doesn't live in. This must fit in with the maximum weekly period of 46 hours.

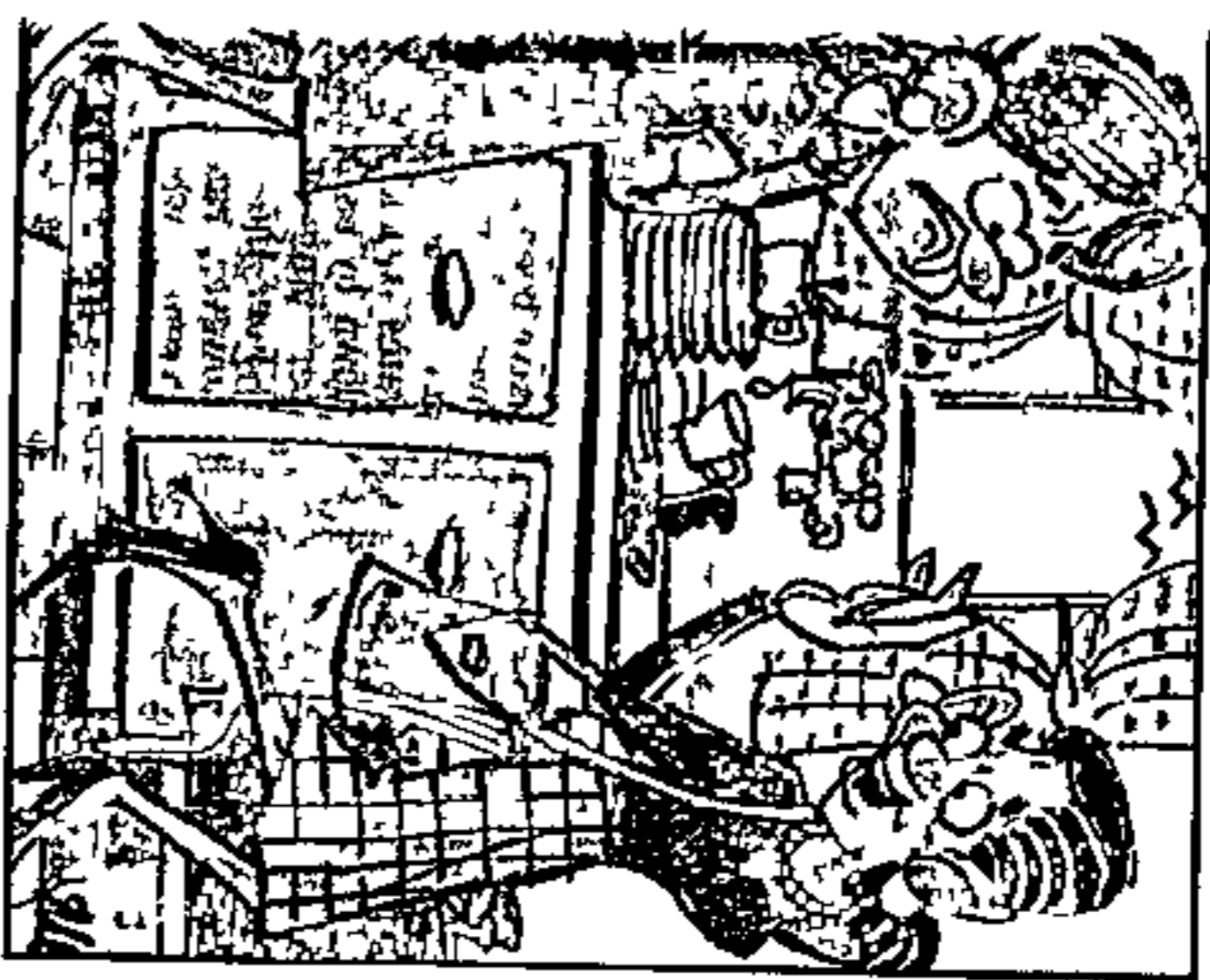
Over-time hours are limited to no more than three hours a day with a maximum of 10 hours a week — reasonable notice is required to be

given to the employee. The overtime pay rate is determined at 1 1/2 times the hourly rate.

Rules for work on Sunday are stringent. If the employee works for four hours or less a full day's pay is the minimum required. If more than four hours are worked double pay applies or 1 1/2 times the normal pay plus one day's leave on full pay.

The Act specifies that public holidays are treated as paid leave and the payment if the worker must work on those days. Annual leave is determined at 14 consecutive days at full pay, even if the employee works fewer than five days but more than three days a week.

Bleazard has drawn up a standard contract for a domestic worker who doesn't live in. Bleazard has included Soweto Day (16 June) as a public holiday in the contract though it has not yet been gazetted as such.



## STANDARD CONTRACT FOR A NON-LIVE-IN DOMESTIC WORKER WHO WORKS MORE THAN THREE DAYS A WEEK

between (insert name of employer) the employer and (insert name of employee) the employee

**1 SALARY**  
The employer shall pay the employee a salary of R \_\_\_\_\_ per month payable in arrears on the last working day of the month.

**2 HOURS OF WORK**  
(Ordinary working hours are a maximum of 46 per week)  
The hours of work of the employee shall be:  
Monday \_\_\_\_\_  
Tuesday \_\_\_\_\_  
Wednesday \_\_\_\_\_  
Thursday \_\_\_\_\_  
Friday \_\_\_\_\_  
Saturday \_\_\_\_\_  
Sunday \_\_\_\_\_

**3 OVERTIME**  
The employee undertakes to work no more than 3 hours overtime per day when required by the employer upon reasonable notice to do so, provided that the maximum overtime worked by the employee in any week shall not exceed 10 hours. The rate for overtime shall be calculated at 1 1/2 times the employee's hourly rate of pay.

**4 WORK OVERTIME**  
If the employee works on a Sunday for 4 hours or less he/she will be paid not less than 1 day's pay at the employee's basic rate of pay. If he/she works for more than 4 hours on a Sunday he/she will be paid either: (a) his/her normal salary for two days or at the rate of 1 1/2 times the employee's basic rate of pay for the whole day; or (b) the paid 1 1/2 normal pay rate for the whole day at the rate of 1 1/2 times the employee's basic rate of pay within 7 days of such day of leave on full pay within 7 days of such day of leave.

**5 PUBLIC HOLIDAYS**  
The employee shall be entitled to paid leave on the following public holidays:  
New Year's Day  
Good Friday  
Workers Day  
Soweto Day  
Republic Day  
Christmas Day

**6 SICK LEAVE**  
The employee shall be entitled to sick leave as prescribed by the Basic Conditions of Employment Act.

**7 LEAVE**  
The employer shall grant the employee 14 consecutive days' leave per annum.

**8 NOTICE**  
The employer or the employee shall give the other one month's written notice to terminate this agreement which notice must be given on or before the 1st day of such month.

**9 MEAL INTERVALS**  
The employer shall be granted an hour for meal intervals.

**10** \_\_\_\_\_

Signed at \_\_\_\_\_ on \_\_\_\_\_ 1994  
Signed at \_\_\_\_\_ on \_\_\_\_\_ 1994

(Name of Employer)  
(Name of Employee)

The employee acknowledges that this agreement has been interpreted into his/her vernacular language namely \_\_\_\_\_

and that he/she understands the contents hereof. (Covers if not applicable)

Source: WERKMANS

# Madams face fines for Eves

LEIGH ROBERTS

THE householder who has not complied with new legislation governing domestic workers could be in for a fine of R1 000 and be guilty of a criminal offence.

With effect from January this year, domestic workers — after many years of exclusion — are now covered by the Basic Conditions of Employment Act.

For some employers, this means that the previously informal agreement with the domestic worker has to be formalised either by a written contract signed (and understood) by both parties, or compliance with other labour procedures.

For domestic workers, it means a regulation of employment conditions — such as a maximum of 46 working hours a week, a set overtime rate with maximum overtime hours, formalised sick and leave provisions, and a notice period of one month.

In the May issue of the *Werksmans* publication *Employment Werts*, attorney Brian Bleazard gives two standard examples of employment contracts — for a live-in domestic worker, and for a domestic worker who does not live in and works more than

Star 4/6/94

three days a week.

Bleazard stresses, however, that his standard contracts do not cover every specific domestic-employer relationship.

For example, there are instances where hours can be extended for certain periods in the year provided they are reduced later in the year. Also, hours can be extended for employees who care for the sick and the aged.

Furthermore, he adds, more beneficial conditions of employment than those set out in the contracts can be negotiated.

The two main advantages of having a contract, says Bleazard, are that it makes both parties fully aware of their rights and obligations and that it obviates the need for the employer to keep a record of the daily hours worked and other prescribed particulars.

The sick leave provisions in the Act are complex, but effectively a new employee can accumulate one day of sick leave a month.

## Doctor's certificate

Bleazard says the employee who has worked for three years, six days or more a week, will have accumulated 36 working days' sick leave.

The Act requires that an employee who is sick for more than two consecutive days must obtain a doctor's certificate.

Regarding regular day workers who work three days or less a week, Bleazard says a separate contract applies as there are separate provisions in the Act in instances where employment conditions are more complex than the standard, he advises that help be sought from the Department of Manpower or a labour consultant or attorney.

## Example of a Contract for a Live-in Domestic Worker

between (Insert name of employer) and (Insert name of employer), and "the employer", and (Insert name of employee) "the employee".

1 SALARY

1.1 The employer shall pay the employee a cash amount of R. . . . per month payable in arrears on the last working day of the month.

1.2 In addition to this amount the employee's salary shall include the value of payment in kind in terms of which the employer provides food and living quarters for the employee which is determined in the sum of R100.00 per month (or a greater amount determined by agreement between the employer and the employee).

2 HOURS OF WORK

(Ordinary working hours at maximum of 46 per week)  
The hours of work of the employee shall be:

Monday	to	to
Tuesday	to	to
Wednesday	to	to
Thursday	to	to
Friday	to	to
Saturday	to	to
Sunday	to	to

In the event of a change in the hours of work such change shall be recorded in writing and signed by the parties.

3 OVERTIME

The employee undertakes to work no more than 3 hours overtime per day when required by the employer upon

reasonable notice to do so, provided that the maximum overtime worked by the employee in any week shall not exceed 10 hours. The rate for overtime shall be calculated at 1½ times the employee's hourly rate of pay (which rate shall be calculated to include the value of the payment referred to in 1.2).

4 WORK ON SUNDAYS

If the employee works on a Sunday for 4 hours or less he/she must be paid not less than a day's pay. If the employee has worked longer he/she must be paid either:

- 4.1 his/her salary for two days or at double his/her rate of pay for the whole time worked whichever is the greater; or
- 4.2 be paid 1½ normal pay rate for the whole time worked and be treated one day's leave on full pay within 7 days of such Sunday.

5 PUBLIC HOLIDAYS

The employee shall be entitled to paid leave on:

- New Years Day
- Good Friday
- Workers' Day
- Soweto Day
- Ascension Day
- Republic Day
- The Day of the Vow
- Christmas Day

If the employee works on any of the public holidays referred to above he/she shall be paid either:

- 5.1 double his/her normal rate of pay, or
- 5.2 1½ his/her normal pay and the

employee shall be entitled to a day's leave within 7 days of working on that particular public holiday, which rates of pay shall be calculated to include the value of the payment referred to in 1.2.

6 MEAL INTERVALS

The employer shall be granted a hour lunch break after not more than 5 hours' work on any day.

7 LEAVE

The employer shall grant the employee 14 consecutive days' leave per annum.

8 SICK LEAVE

The employee shall be entitled to sick leave as prescribed by the Basic Conditions of Employment Act.

9 NOTICE

The employer or the employee shall give the other one month's written notice to terminate this agreement which notice must be given on or before the last day of such month.

Signed at . . . . . 1994  
on . . . . . (Name of Employer)

Signed at . . . . . 1994  
on . . . . . (Name of Employee)

(The employee acknowledges that this agreement has been interpreted into his/her vernacular language namely . . . . .)

by . . . . . on . . . . . and that he/she understands the contents hereof. (Delete if not applicable)

Source: *Werksmans*

# Workers still face problems on farms

Star 21/5/94

BY ABDUL MILAZI

Mampuru Ngubelanga (68) wakes up at 4.30 am to begin work on his master's farm, and only when the master says so does he go home. Sometimes that's at 7 pm

Ngubelanga has worked for the "baas" on his Randfontein farm since he was a young boy. His R150-a-month starting wage has, to date, not improved.

Ngubelanga is one of hundreds of farmworkers who, until January this year when the Agricultural Labour Act was passed, had no protection against exploitation

However, the Farmworkers' Research and Resource Project (FRRP) says that although the Act has given farmworkers some rights, nothing has changed in the workplace

Low wages, long hours and unfair dismissals are some of the problems farmworkers face, the FRRP says

FRRP spokesman Bonginkosi Mfufi said the biggest problem with the implementation of the Act was the high rate of illiteracy among farmworkers. Few knew their rights or about the Act which entitled them to take their employers to the Agricultural Court over a dispute

## Workshops

Mfufi said his organisation had difficulty in holding educational workshops for these workers, especially in the Western Transvaal, because of the inaccessibility of many of the farms which were mostly owned by rightwingers or right-wing supporters

Mfufi said the passing of the Agricultural Labour Act and the extension of the Basic Conditions of Employment and Unemployment Insurance Acts to include farmworkers was their major victory. However, he said, without the co-operation of farmers, the laws amounted to nothing.

The Agricultural Labour Act allows farmworkers to join trade unions. They are still not allowed to strike.

The Department of Manpower has extended the deadline for farmers to register their workers to tomorrow, after only 28 percent of farmers registered their workers last month. Farmers who fail to meet the new deadline would then be prosecuted.

Although the new agricultural law looked good in print, the farmers' co-operation was the key to the success of its application, said Mfufi.

# Labour law reform mooted

star 25 15 1994  
POLITICAL CORRESPONDENT

Cape Town — South Africa's labour law is to be reformed to bring it in line with international standards, President Mandela said yesterday (16)

He added that apartheid vestiges should be removed from labour law to create more harmonious labour relations.

Organised labour's co-operation was crucial for the implementation of the Reconstruction and Development Programme

The Government would confront unemployment "forcefully" by creating jobs and not by way of handouts, and would focus on human resources development

"Both the public and private sectors will be encouraged to regard labour as a resource and not a cost. Education and training must therefore be looked at very closely to ensure that we empower the workers, raise productivity levels and meet the skills needs of a modern economy," Mandela said.

# MP calls for workers' rights to be codified

CHANGES were needed to a number of laws — including the Labour Relations Act and the Companies Act — to give employees their full rights as stakeholders in companies, ANC MP Marcel Golding said yesterday

He told a seminar on Business Law in Johannesburg that the industrial courts had to be overhauled, rights won by workers had to be codified, unions registered and the right to strike entrenched in law

Dealing with industrial disputes had become an inordinately lengthy procedure and now, if a dispute arose, the response was to strike rather than take the issue to the courts. For example, the strike at Doornfontein three years ago had only recently been resolved.

"We want to deliver justice fairly cheaply and quickly," Golding said. "The way to package a reform of the system would be to bring together the effectiveness of bodies such as the Independent Mediation Services of SA and the services of the industrial court."

It was also necessary to codify rights won by workers, such as the right of recognition of shop stewards, bargaining rights and the right to information. Recently there had been disputes, such as those at Kloof and Western Areas, over rights rather than over recognition.

The question of registration also needed reform, Golding said. Certification should be a way to recognise more trade unions,

especially as more were likely to emerge in certain sectors

Another important area of reform was the right to strike, since it was critical that strikes be minimised where disputes focused on rights (166)

"We need to promote a more equitable balance of power between employers and employees," Golding said. "This will encourage a greater willingness on the part of employers to resolve disputes."

The next phase of industrial relations would be to address the "production prerogative", which meant that trade unions would engage in politics through production issues.

SA's enterprises would have to become more competitive and viable in the changing global environment and the co-operation of the trade unions would be needed.

New reward systems and greater access to information would be the major issues over the next few years.

Tax Advisory Committee chairman Michael Katz told the seminar the committee was working on a consultative document which it hoped to release to the public for discussion by June on the question of when interest was considered to be accrued for tax purposes on financial instruments, including options, derivatives and hedging instruments.

Charlotte Mathews

# Employee benefits 'beyond' the law

B/D Day 16/5/94

ERICA JANKOWITZ

EMPLOYERS who did not treat workers equitably in terms of employee benefits and refused to negotiate these benefits could be committing an unfair labour practice as shown by recent Industrial Court decisions, says Old Mutual employee benefits principal consultant Peter Theunissen.

Writing in the latest edition of *Interface*, Theunissen pointed out a number of recent Industrial and Labour Appeal Court decisions which clearly indicated that such benefits were considered part of the total remuneration package and therefore part of the terms of employment.

"In forming part of the total remuneration structure, benefits should be dealt with in the same way as all other remuneration issues — they should be subject to the collective bargaining process."

In a recent Labour Appeal Court judgment, retirement benefits were found to constitute part of the terms and conditions of employment, meaning any employer which refused to consider benefits as part of the collective bargaining process would be deemed to be in breach of the recognition agreement and guilty of an unfair labour practice, Theunissen said.

"Where an employer, in terms of the rules of the fund, can exercise discretion when making decisions affecting employee

rights and benefits, a great deal of care must be taken in dealing with the issue.

"The employer must be objective, consider all the relevant issues and options of the parties concerned, clarify beforehand the criteria on which the decision will be based, and disclose reasons for the decision," he said.

In an Industrial Court case, a worker found his retirement benefits reduced after his company was bought by another concern which offered continued employment on terms and conditions no less favourable than those already enjoyed.

"The court found that the employee was entitled to expect all benefits in the new fund to be at least equivalent to those of the original fund. Even though all other benefits may have been superior, he was still entitled to compensation and the employer was ordered to make good the difference."

Theunissen concluded that employers had to look beyond purely legal principles.

"Equity, particularly the equitable treatment of parties in employee benefits practice, is becoming an industry buzzword. It implies looking beyond pure legal rights to whether a benefit or action is equitable, just and fair."



## Domestics overlooked

ERICA JANKOWITZ

NEITHER the Agricultural Labour Act nor the Basic Conditions of Employment Act covered domestic workers on farms, probably because of an oversight on the part of those who drafted the legislation, Industrial Court president Adolph Landman has said.

Landman said the Basic Conditions of Employment Act specifically excluded domestic workers on farms. *Biday*

Although the Agricultural Labour Act extended the Labour Relations Act to cover farm workers, it also excluded domestic workers. *4/5/94*

"It seems that, unintentionally perhaps, domestic workers on farms have been left out in the cold. Common law and its inadequate provisions continues to govern their conditions of employment. *(166)*

Landman also noted that workers would be prohibited from striking and farmers from locking out workers even if they opted out of the compulsory arbitration clause. *(166)*

# Task group's Industrial Court report is ready

18/12/94 18/4/94

**THE** National Manpower Commission's report on the functioning of the Industrial Court would be tabled tomorrow, Anglo American legal adviser and Manpower Commission task group member Andre van Niekerk said last week.

He said the task group had concentrated on cutting time lags, as well as improving certainty. (166)

In the past, the court had handed down some conflicting decisions because it was a court of equity and was not bound by the principle of precedent, Van Niekerk said. The over-

**ERICA JANOWITZ**

whelming majority of task group members decided the court should continue its equity-based jurisdiction.

But the task group recommended that the lower courts be bound by decisions of the Labour Appeal Court and that one higher court with national jurisdiction be formed.

He said the current position of having six independent appeal courts detracted from the certainty of decisions. The task group also recommended implementation of a

statutory code of practice to be regulated by the commission.

The task group added that the Industrial Court should be the appropriate court of first instance for all labour-related issues, including contractual cases, which were currently heard in a magistrate's court.

On the relationship between the court and the Manpower Department, the task group recommended establishing a separate directorate within the department to allow the court greater administrative and financial autonomy.

# Labourer puts case in historic new court

(166) ART 16/4/94  
SHARON SOROUR

Labour Reporter

IN the first historic sitting of the newly formed Agricultural Labour Court, a dismissed Stellenbosch farmworker has brought an unfair labour practice charge against his former employer

In papers before the court farm labourer Esau Booysen charged that in February he was unfairly dismissed from Helderberg farm without a valid reason

The case, heard on Wednesday, was referred to the specialised court by the Stellenbosch Advice Office, said coordinator Desmond Petersen

Mr Petersen appeared for Mr Booysen, Helderberg farm manager F A Badenhorst appeared for Helderberg

Presiding officer, Agricultural Labour Court president Adolf Landman, reserved judgment, which is expected next week

The court was established in terms of the Agricultural Labour Act — extended to the country's 1,2 million farmworkers in January

The new law extends amended provisions of the Labour Relations Act and the Basic Conditions of Employment Act to farming operations

It provides for overtime payment, leave, contracts and a prohibition on victimisation

Mr Petersen said the organisation welcomed the advent of the court because it afforded farmworkers an opportunity to resolve workplace disputes

"Previously there was no avenue for workers to air their grievances. We hope that the court will not give watered-down rights to farmworkers because like all workers they deserve to be protected," Mr Petersen said

Labour lawyer Sarah Christie said the court was a very important industrial relations development

"The court is going to be challenged to take into consideration the legitimate needs of employers, as well as the special character of agriculture," she said

"On the other hand, the legitimate interests of employees and their families who live on farms will also have to be taken into account"

In terms of an agreement between the farmers' South African Agricultural Union (SAAU) and trade union federation, Cosatu, none of the parties has legal representation

The SAAU could not be reached for comment

# Farm labourer wins back job

CT 23/4/94 (14) (166)

## Landmark judgment after brawl

A STELLENBOSCH wine farm labourer fired after a drunken Christmas Day brawl has been reinstated by the Agricultural Labour Court in a landmark judgment handed down in the city this week

In its first judgment, the court warned of the destructive heritage of the "dop system" when ordering the reinstatement of Helderberg farm employee Mr Esau Booysen

Court president Professor Adolf Landman presided over the unfair dismissal application brought by the Stellenbosch Advice Office

He found Mr Booysen's January 20 dismissal had been procedur-

ally unfair and his punishment did not fit the misdemeanour

Although his employers had 10 years ago taken the lead in scrapping the "dop system" — controlling labour by encouraging alcohol dependency — the effects of this malignant system would trouble agriculture for years to come, he said

Alcohol-related labour problems had to be dealt with appropriately, taking into account the commercial interests of farms, the relationship between farmers and labourers and rehabilitation

Mr Booysen, when drunk, allegedly fought with a man who tampered with his television set

He also hit his wife and daughter when they tried to restrain him, as well as a boy

Professor Landman ordered Mr Booysen to apologise to the boy, Carlo Sikes, and the farm's liaison committee for his behaviour

He ordered Mr Booysen be reinstated with retrospective effect on February 28, but not be paid any wages from then until April 13 — Sapa

# Union activity legalised in Bop

B1 Day 6/5/94

ERICA JANKOWITZ

BOPHUTHATSWANA's administrators have issued a decree bringing the territory's labour legislation in line with SA's and allowing SA unions to operate legally in the area. This was previously prohibited.

The controversial Bophuthatswana Industrial Relations Act was repealed and replaced with relevant SA legislation by a labour relations decree issued on April 25, the National Manpower Commission said in its latest newsletter

An commission delegation met the joint administrators of Bophuthatswana in April and recommended that Bophuthatswana labour law be replaced with the Labour Relations Act and Chapter 1 of the Agricultural Labour Act.

In terms of the changed legislation, trade unions registered under the Bophuthatswana Act would be given the same status provided, that they amended their constitutions within 90 days to bring them in line with the

terms of the decree

SA unions, on the other hand, would need to notify the Bophuthatswana registrar in writing of their operation in the territory (166)

In addition, the Industrial, Labour Appeal and Agricultural Labour courts of the Transvaal, as well as the SA Appellate Division, would have jurisdiction in Bophuthatswana after the Constitution of the RSA Act came into effect, the commission said

"Disputes which were pending before the commencement of the decree will be dealt with in terms of the Industrial Relations Act"

The commission also reported the Transitional Executive Council sub-council on foreign affairs had approved a recommendation that SA rejoin the International Labour Organisation as soon as possible

As a result a delegation of several advisers is to attend conference of the organisation in Geneva in June

# JOBS

# One last vestige of minority privilege

S Times (Bus)

12/03/94

By DAVID MATTHEWS

INCLUDED in the apartheid legislation to be inherited by the new government is a law which severely inhibits economic growth and job creation the Labour Relations Act.

The Act was designed to favour whites and exclude blacks from the skilled labour market.

Although racially based elements have since been removed from the Act, powers granted to a favoured minority have not. The law remains an entitlement to privilege and an obstacle to free and open competition.

The mechanism whereby this favoured status is granted is that of central, or collective, bargaining.

Central bargaining — usually defined as bilateral negotiation in a particular industry between employers' associations and trade unions — is accepted as a legitimate process. Its objective is to negotiate minimum pay and resolve matters the two groups decide are of mutual concern.

The most important forums for central bargaining in this country are the industrial councils which regulate specific industries in specific areas and whose agreements have the power of law.

But the term central bargaining is a misnomer. Agreements reached by employers' and employees' representatives in the industrial councils are

binding on all employers and employees in the given industry, regardless of whether they were party to them.

The term in its original sense merely means voluntary collective bargaining on a larger scale than one employer bargaining with his own employees acting collectively. It does not mean the coercive extension by the state of a private agreement reached by some employers and employees to all employers and employees in an industry or sector.

Many sectors, particularly those in government, the universities and the labour movement, regard state-enforced central bargaining as desirable. Apart from achieving greater regulation, it facilitates negotiations and promotes good labour relations.

The essentially coercive nature of the process is regarded as of secondary importance.

The argument for state-enforced central bargaining, however, has a fatal flaw, namely that all employers and employees in any industry are not all the participants in that sector. An industry is not a bilateral but a tripartite structure. The third leg consists of customers. Remove them and there would be no industry.

By excluding the customer from negotiations and permitting the other

two groups to strike a deal between them, state-enforced central bargaining does not in reality "regulate" an industry as it likes to claim, but encourages and legalises collusion and price fixing between two of the three constituents — to the detriment of the third.

Industrial councils, the employer associations and the trade unions horse-trade until they reach an agreement which they regard as being in their interests. This agreement, however, is by no means necessarily in the interests of everyone.

The terms and conditions are always defended in terms of achieving desirable social ends. But whatever they do, they drive up the costs in the industry, thus being helpful for the bigger businesses because it reduces competition, but bad for smaller ones. The entire process, needless to say, is a gross impediment to job creation and cost-effective production.

Industrial councils tend to be self-sustaining bureaucratic empires having assets of millions of rands and handsome income streams derived from large investments. They also frequently control pension funds worth millions of rands and, in one instance, more than a billion.

The industrial councils are to industry and commerce what the control boards are to agriculture.

David Matthews is head of the Small-Builders' Association.

# Employees take employers to court more frequently

ARL 24/1/94

132  
166

□ Bully-boy tactics may land business in labour case

**SHARON SOROUR**  
Labour Reporter

EMPLOYERS who make their staff members' working lives intolerable to force them to resign are having to defend their actions in court more and more often

More "constructive dismissal" cases were being brought before the labour courts, according to Lesley Grossett, industrial relations expert at human resource consultants FSA-Contact

Ms Grossett said labour courts recognised constructive dismissal as an unfair labour practice. The concept included key elements of coercion and

the clear intention of the employer not to perform obligations due under the employment contract

Elements which had to be present for constructive dismissal to be proved were force, fear, pressure or undue influence, as well as affording the employee insufficient time to consider his or her future

Ms Grossett said "The allegation of constructive dismissal has to be proven, and this is not always easy. For example the labour court found recently that an undertaking by an employer to promote an employee could not be proven"

But in another case the court ordered the reinstatement of

an employee who was presented with a choice of accepting unlawful deductions from his salary or resigning

"Where employers unilaterally change conditions of employment with the intention of driving employees to leave, the court would also find in the employees' favour," she said

Other factors recognised by the labour court as contributing towards constructive dismissal were

- Unlawful or intolerable conduct by the employer including unsubstantiated allegations

- Harassment

- Assault which directly led to the resignation or dismissal

of an employee

"In such circumstances, resignation is, in effect, the acceptance by the employee of the repudiation of the employment contract by the employer"

There were a number of remedies open to the employee who believed he or she had been constructively dismissed

"They could pursue the matter on the basis of an unfair dismissal which is clearly spelled out in the Labour Relations Act and declare a dispute

"Alternatively, under common law, the employee could cancel the contract on the grounds of it having been repudiated, and claim appropriate relief in this context," she said

# Industrial relations change on cards

Bill 194

ERICA JANKOWITZ

PROPOSED amendments to the Labour Relations Act, due to be debated at Parliament's next sitting, would have a marked effect on industrial relations practice, Unisa's Mercantile Law Department head, Prof Peter le Roux, says.

Writing in the latest issue of Contemporary Labour Law, Le Roux says the most important amendments relate to sections governing procedures for granting interim relief against unfair labour practices. These normally cover dismissed or suspended workers applying for payment until their status is decided by the Industrial Court.

In terms of the Bill, the process has been streamlined, allowing the court to be approached for interim relief

pending a final determination of the dispute. If the dismissal or termination is upheld by the court or an arbitrator, the employer would be entitled to recover the compensation paid by means of civil proceedings.

"An interesting innovation is that the Industrial Court or arbitration tribunal may order the employee to repay the amount paid."

Provision has been made to convert the interim order into a final determination if both parties agree

Le Roux draws attention to a possible flaw in that two different sections deal with the question of costs. In terms of section 46 (7), costs of proceedings may not be granted except

on the grounds of unreasonableness or frivolity by a party. But in terms of section 17 (12), the court is authorised to make orders as to costs according to legal requirements and fairness.

Final determination procedures have been little changed except in detail, he notes. One amendment may affect financial compensation orders, but the court has already strayed from its stand that a maximum of six months' pay could be ordered (166)

Le Roux says the most controversial aspect is the removal of restrictions on political affiliation and financing by trade unions. He notes that this section delayed the passage of the Bill and may find it being blocked by Parliament.



# Agriculture union angry at media

## 'slur' about relations with workers

□ Statement says farmers have abided by most of the regulations 'for years'

APR 24 1994  
SHARON SOROUR  
Labour Reporter

THE South African Agricultural Union has reacted sharply to media reports that farm workers would enjoy legal protection for the first time following the application of the Agricultural Labour Act

In a statement, the union - which represents farmers - said reports about comment on the promulgation of the Act, and that the SAU welcomed the Act, had been "confusing".

"The Agricultural Labour Act is no more than the implementation of an agreement which organised agriculture reached with the government and Cosatu in August".

It added that six of the eight labour laws already were applicable to agriculture - Of the six, four of them - the Workmen's Compensation Act, the Machinery and Occupational Safety Act, the Guidance and Placement Act and the Manpower Training Act - always had applied to agriculture

Two others, the Unemployment Insurance Act and the Basic Conditions of Employment Act, were applied to the sector in January and May last year, respectively

"The Agricultural Labour Act which came into effect on Monday, consists largely of stipulations in respect of labour relations in agriculture

"A substantial part of the stipulations deals with the establishment of mechanisms to settle labour disputes Of major importance is the establishment of an agricultural labour court", said the union

The union was compiling an information booklet dealing with the various ways in which disputes could be settled It would be released soon

The emphasis was on parties settling disputes themselves before resorting to formal court action

● Last year SAU affiliates in the Free State and the Transvaal refused to accept the draft legislation Rightwing farmers indicated they were opposed to the legislation especially under an African National Congress government

# New courts to settle farm worker disputes

ARCT 19/1/94 (166) (16)  
□ Cosatu hails 'major victory' over unfair dismissals

**SHARON SOROUR**  
Labour Reporter

FARMERS and their workers will be able to settle labour disputes in a special new court in terms of the historic Agricultural Labour Act promulgated this week.

The Act, which extends the provisions of the Labour Relations Act of 1956 to farming activities, was applied to agriculture's 1,2 million workers after protracted negotiations between government, trade union federation Cosatu and the SA Agricultural Union.

Manpower Minister Leon Wessels said in a statement the Act provided for the establishment of an Agricultural Labour Court to decide disputes over alleged unfair labour practices

"To provide an effective and accessible service to persons and organisations in the agricultural sector, facilitators will be available at offices of the department of Manpower. These officers will assist employers and employees

with the process of litigation in the Agricultural Labour Court"

Mr Wessels said Industrial Court president A A Landman and deputy president M A E Bulbulia would serve ex officio as president and deputy president, respectively, of the Agricultural Labour Court

Mr C W van den Heever (☎ 012 323 7643) has been appointed registrar

Cosatu hailed the promulgation of the Act as a "major victory for workers, Cosatu and Nactu"

Cosatu said farmers would no longer be able to "arbitrarily dismiss workers without any recourse"

"In the past thousands of farmworkers were dismissed and the unions did not have much leverage to defend them. The Agricultural Labour Act provides protection against unfair dismissals," Cosatu said

The Act also enabled workers to join any trade union of their choice

"In terms of the Act farmers

will be obliged to engage with the union on issues such as union recognition, stop order facilities and access to farms by union officials," Cosatu said

Cosatu wanted labour courts established throughout the country

"These courts should be expedient, cheaper and have simple procedures to make them accessible to farmworkers"

Cosatu said the Agricultural Labour Act was the product of a long and arduous "battle" with the SAAU and the government

"This battle was partly won last year when the Basic Conditions of Employment Act and the Unemployment Insurance Act were extended to workers"

But Cosatu said the battle in the farming sector was not over. A crucial issue under discussion was the Trespassing Act, which farmers could use to prevent access to voter educators on their property. This was receiving urgent attention and a strategy was being worked out to deal with it

# Agricultural court publishes guidelines

INTERIM guidelines for the Agricultural Labour Court, which came into being with the promulgation of the Agricultural Labour Act on Monday, were published by Industrial Court president Adolph Landman yesterday.

These guidelines, developed in consultation with Cosatu and the SA Agricultural Union, would remain in effect until permanent rules were passed and gazetted by Manpower Minister Leon Wessels.

Our Durban correspondent reports farm workers will now be covered by the Act, which was cautiously welcomed by organised labour and research organisations as important since it gave farm workers some organisational rights.

Landman and his deputy, Mohammed Bulbulia, were appointed to the same positions in the Agricultural Labour Court and more members would be appointed by the Minister as necessary, Landman said.

Initially the court would operate only in Pretoria, but there were plans to establish similar bodies throughout the country.

Manpower Department officials would act as facilitators in the process of litigation by advising the parties on procedures to contest an unfair labour practice dispute in court.

Before the dispute was heard in court, the presiding member would attempt to mediate the issue, unless it was decided no useful purpose would be served by this.

During a pre-trial conference, the presiding officer would try to narrow issues before the hearing.

B/D 19/1/94 (166)  
ERICA JANKOWITZ

Cosatu welcomed the passage of the Act as farmers would no longer be able to dismiss workers "arbitrarily" and without recourse. Farmworkers would be protected from unfair dismissal and be given the right to join trade unions. Thereafter, farmers would be obliged to negotiate recognition, stop-order facilities and access to farms with trade unions.

Cosatu warned it expected wide-reaching changes to the agricultural sector under the ANC's reconstruction and development programme, which would promote farm labour training in the context of "efficient, labour-intensive and sustainable" farming methods.

Cosatu also expected the introduction of enforced improvements to farmworkers' living and working conditions once the programme was implemented.

National Council of Trade Unions general secretary Cunningham Ngcukana said the Act would give unions scope to use the Industrial Court to fight for the rights of farm workers. He said the composition of the Agricultural Labour Court should still be discussed so it could become more representative.

The Centre for Rural Legal Studies said that for the first time requirements for fair labour practices would apply to farmers and farm workers.

The centre recommended that the Act provide for a simple, cheap and accessible process for adjudicating disputes.

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# Employers 'may fire domestics'

Staff Reporter

SOME employers of domestic servants have threatened to fire their full-time domestic workers and replace them with temporary staff in a bid to avoid adhering to the Basic Conditions of Employment Act, according to the South African Domestic Workers' Union.

The act, which came into force on January 1, sets out basic rights for the country's nearly one million domestic workers, covering hours of work, leave, sick leave and limits on overtime. It does not lay down a minimum wage.

National treasurer of the union, Mrs Myrtle Witbooi, said yesterday the act covered domestic workers employed by one person for three or more days a week only.

"Domestic workers have reported to us that that their employers have threatened to fire them, and take on someone who will work only two days a week. In that way they don't have to abide by the rules in the Act," Mrs Witbooi said.

She said other domestic workers had reported that their employers had said they would no longer employ them full-

time from this year, but only for two days a week. **CT 13/1/94 (166)**

"When we wanted to phone their employers they asked us not to in case they lost their jobs altogether," Mrs Witbooi said.

She said the union office had been inundated with queries regarding the act from employers and domestic workers.

"There is a lot of confusion. We have sent out over 100 faxes explaining the act and providing a contract of employment."

So far about 500 employers had signed the contracts of employment, "which is a good sign", Mrs Witbooi said.

etly to Durban

# Workers left in the lurch

Sowetan 13/1/94

**By Mzimasi Ngudle**  
Political Staff

TWENTY-SIX workers at a Johannesburg printing company claim they were dismissed unfairly when the company closed down and moved to Durban without notice during their Christmas holiday (1bb)

A shop steward for the Media Workers' Association of South Africa, Ms Caroline Hero, said the owners closed the company, Ticket Systems, on December 15 for the holidays and workers were told to report for duty on January 12.

"We were never told that the company was closing for good and they left with our money and unemployment insurance fund cards," she said.

Stunned workers yesterday found the doors locked, with a Durban telephone number scribbled on a note.

She said the company had also not paid workers' monthly subscription fees for December to medical aid and unemployment insurance funds and Mwasas.

Ticket Systems spokesman Mr David Ferro said the management decided to close the company following go-slow strikes and a high rate of absenteeism.

# Law helps farm workers

By BARRY STREEK

MODERN labour legislation is to be extended to South Africa's farm workers for the first time, in 10 days' time

The formal introduction of the Agricultural Labour Act, which was passed by Parliament earlier this year despite opposition from some farmers' organisations and the Conservative Party, will be on Monday, January 17

Notice to this effect has been published in the Government Gazette by the Minister of Manpower, Mr Leon Wessels

The new law, which will provide for overtime payment, leave, contracts and a prohibition on victimisation, could transform labour relations on farms

Although the number of farm workers declined by about 30%

between 1968 and 1988, it is estimated that there about 1,2 million farm workers, who until now have had no legal protection against abuses other than common law.

Until recently, industrial labour legislation was excluded from farm and domestic workers but this exemption has now been abolished

# Changes to labour law are delayed

Business Editor

166

THE fledgling Federation of Independent Business Associations of South Africa (Fibasa) is claiming an early success in delaying changes to the Labour Relations Act

Fibasa was formed in Cape Town last month by small and medium-sized companies who felt they were being ridden over by the unions and big business.

ARG 11/1/94  
In a statement, Fibasa said it had strongly objected to amendments to the Labour Relations Act, which had been proposed by the National Manpower Commission and had been due to be approved by parliament in its December sitting.

After representations to the parliamentary standing committee on labour relations it was agreed to delay passage of the amendments.

Fibasa and other interested parties have been given until January 17 to submit representations to the committee.

Fibasa has objected to amendments that would "permit trade union funds to be used for political purposes and authorisation for unions to support political parties".

It said other amendments heavily favoured centralised bargaining, which "encourages and permits collusion between a minority of employers and trade unions to fix labour and other costs".

LABOUR LEGISLATION - 1995

FEBRUARY - MAY.



# Plan for forums worryes unions

(166) ARCT 25/3/95

■ Controversy has erupted over aspects of the proposed Labour Relations Act, which are seen as hostile to the interests of South Africa's workers.

**MXOLISI MGXASHE**  
Weekend Argus Reporter

ONE of the contentious clauses in the draft Labour Relations Bill calls for the establishment of work forums at workplaces to serve as platforms of reconciliation and negotiation between bosses and workers

The clause reflects the general concern by government and employers on the need for a truce between workers and bosses. However, while the labour unions agree with this need, they feel it should not be at the expense of fundamental workers' rights

Colin Rani, Chemical Industrial Workers Union Western Cape secretary, said his union, which held a meeting in Johannesburg last Saturday to discuss, among other issues, the draft labour bill, had problems with the section dealing with work forums and a few other clauses

He said his union had "totally rejected" the work forums clause because it did not offer shop stewards the same rights it gave to management. He said the principle and practice of central bargaining were undermined in the bill

He said the Chemical Industrial Workers' Union would be holding another conference on March 31 to April 2 to decide what approach to adopt to force government and employers to reconcile with union positions

Similar views were embraced at a workshop organised by the Workers Defence Education Association, Wodea, attended by more than 50 shop stewards and labour activists in Woodstock recently

The proposed LRA, as the labour act is commonly known, is expected to be tabled by Labour Minister Tito Mboweni in parliament in August. His ministry has invited dissenting views to be submitted not later than April 30

The dissenting unions come from the left of the Congress of South African Trade Unions (Cosatu) and the National Council of Trade Unions (Nactu)

The Wodea participants were split into two positions — partial acceptance and total rejection of the bill

Those unionists who proposed total rejection of the bill argued that it made an "erroneous assumption" that there was a social contract between employers, the government and labour, and that it ignored the "fundamental social contradictions" between labour and management

They further submitted that the bill was bent on completely marginalising independent labour organisations, domestic workers, farm workers and the unemployed

Among the participants were representatives of unemployed workers, the Workers' Organisation for Socialist Action, the General Workers' Advice Centre, the Centre for Rural Legal Studies and individuals affiliated to the mainstream federations — Cosatu and Nactu

Section five of the bill was one of the targets of criticism. It proposes the estab-

lishment of the forums the government feels will facilitate a shift at the workplace from adversarial collective bargaining on joint problem-solving to worker participation

One of the clauses in this section makes the formation of work forums in workplaces conditional to the employment of no less than 100 workers. This is viewed by the critics as an exclusion of domestic workers, farm workers and others who may not fulfil the requirement of 100.

Those who favour partial acceptance of the bill do, however, acknowledge it is an improvement on previous labour acts

However they raised the rights of minority unions and the role played by paralegal units that support the workers' struggle as being other areas of great concern.

There was consensus on rejecting the bill's definition of "freedom of association" and it was argued that the "lock-out clause" only served to reinforce the "protection of property rights" as stated in the country's interim constitution

"The right to work is not entrenched in the interim constitution, and while the right to strike is there it does not, however, share the same status as the protection of property rights," said Wodea's interim co-ordinator Omar Parker

Wodea's annual general meeting would consider these positions

Mr Parker said there was consensus, however, on the need to force government and employers to accept changes to the provisions which they opposed

Wodea's attitude towards the bill differs radically from Cosatu's which has hailed it as a "culmination of struggles by workers over the years against apartheid's labour dispensation."

But in a comment on the draft bill Cosatu secretary general Sam Shilowa alluded to aspects his organisation did not like and others the bosses may not like

"The draft bill is only a draft and it has to be negotiated and agreed upon by all trade unions, business and the government," Mr Shilowa said

# Draft labour Bill contains a recipe for confusion and conflict

(166) CT(BE)21/4/95

In my last column I argued that the draft Labour Relations Act (LRA) put forward by Labour Minister Tito Mboweni's drafting team was correct to extend rights of information, consultation and joint decision-making to the workplace forums. In today's column, I discuss whether forums should be employee-based or union-based.

The drafters of the Bill favour a hybrid approach: employee-based representation with a highly significant role for trade unions.

All employees below the level of senior management are entitled to vote in elections for the forum, whether they are union members or not. However, a forum can only be established by a decision of the majority union — or group of unions — in the workplace. In addition, there are significant barriers to candidates being put up by any group other than registered unions.

Trade unionists have tended to argue strongly that this arrangement could undermine or marginalise the traditional trade union structure in the plant — the shop steward committee.

"We have been fighting for these rights for years," argued a shop steward at a recent shop steward council in the Witwatersrand region of Cosatu. "Why should they now be given to these forums?"

How would a union-based model work? One possibility is that all registered unions in the workplace can appoint their representatives to the forum, in proportion to their membership figures in the workplace.

There are some very powerful arguments in favour of such an approach.

□ There is at present no crisis of representation in the workplace. On the contrary, the trade unions have fought for and established a strong system of representation — the union shop steward committee. The shop stewards are elected by their members, and are accountable and trusted. This system should be built on, rather than destabilised by establishing a second, independent forum. If employees outside the company bargaining unit wish to be represented, provision could be made for the representation of staff associations.

□ Strong trade unions are a prerequisite for effective representation of employee interests and for negotiating change at national level and in the workplace. By granting the sole right of representation in the workplace to trade unions, employees are encouraged to join and strengthen them. The draft LRA should promote a strong, more unified trade union movement, not fragmentation.

□ The draft Bill's proposals are based on a separation between traditional collective bargaining over wages and conditions of work,



**DOUBTFUL:** Some workers fear forums could undermine the traditional trade union set-up

and production issues. In the modern economy this distinction is artificial. Training may mean higher wages and better productivity. Increased production may create poor working conditions. Improved quality might require better working conditions, and could improve bonuses. Shiftwork might improve production but lead to loss of overtime pay. It is essential for both management and employees to co-ordinate negotiations on all these issues — and the only way to do this on the employee side of the table is through the trade unions.

□ Trade unions are already negotiating a range of production-linked issues, mostly in centralised forums covering entire industrial sectors.

These include training, grading and pay systems, and productivity guidelines. According to the draft LRA, these union-negotiated frameworks will be concretised and implemented by non-union bodies in the workplace — the workplace forums. What do the shop stewards do as union representatives in the plant if the workplace forum flouts union guidelines? Go on strike? Again, co-ordination between industry and plant level is vital, and only the union can achieve that.

Finally, the draft Bill proposes two sets of elections in the workplace — one by union members to elect shop stewards, and one by all employees to elect the workplace forum. Two elections and two elected power bases are a recipe for confusion, competition and conflict.

in the workplace. There are always different groupings, different interests and rivalries among workers. The union's job is to organise, unify and accommodate these. The Bill's proposal may make this task more difficult, creating the scope for all kinds of divisions and conflicts as different factions vie for support. For example, the shop stewards could use collective bargaining to undermine or campaign against forum agreements, and vice-versa.

Clearly these are strong arguments for a union-based model for workplace forums rather than an employee-based model.

However, perhaps this debate has become exaggerated by a peculiarity in the drafting committee's approach. In countries with successful co-determination systems, strong centralised bargaining is a feature of the industrial relations system. Union-based collective bargaining focuses on the centralised bargaining level. Co-determination takes the form of residual collective bargaining and production issues which are negotiated through workplace forums. The drafters have chosen not to establish compulsory centralised bargaining. The result — two forums in the workplace, one for collective bargaining, one for co-determination.

Many international experts argue that centralised bargaining is essential to co-determination. This is also the trade unions' view.

Perhaps the minister, the drafting team and the employers should think again.

□ Karl von Holdt is consulting editor to the Labour Bulletin.

# A forum where the twain can meet

(166) (166) WM 24-30/3/95

**Glenn Adler** argues that workers and management alike should overcome their instinctive suspicion of the plan to create workplace forums

**T**HE proposal to create workplace forums — in the new Labour Relations Act (LRA) — is an attempt to bring South Africa's move to political democracy into the workplace

Political democratisation has created the opportunity to change labour relations and, in turn, workplace forums should strengthen the new political democracy by democratising the factory floor

Under conditions of globalisation, competitiveness comes about through "employee involvement" which has become a production imperative. Market demand for quality puts a premium on employee performance while new computer technologies decentralise decision-making and increase employees' influence

Management cannot simply tell employees what to do, but must trust them not to misuse their increased discretion. One approach is to increase employees' commitment to the enterprise

Some South African managers understand these issues and have instituted employee involvement schemes which often amount to discussion forums with little real decision-making power. As such, they are often distrusted by employees and opposed by unions

Under apartheid this was a rational response. Without a purchase on decision making in firms or government, employees could not enjoy the fruits of improved productivity. There was little incentive to improve work standards, indeed, ungovernability on the shop floor was considered virtuous as it speeded up the demise of apartheid. Now, however, the economy will suffer — and political democratisation will be compromised — if employees' "militant abstention" from production decisions continues

Political democratisation has given South Africa a historic opportunity to reverse these conditions by giving ordinary citizens a measure of influ-

ence over the most important decisions that affect their lives. The workplace and the economy more generally can be put on a different footing if the second transition, economic democratisation, is taken seriously

Chapter 5 of the LRA promotes economic democratisation by allowing for workplace forums in all workplaces with more than 100 employees. Because of employees' fears of liaison and works committees — apartheid-era "toy telephones" designed to undermine unions — the LRA insists that forums can be initiated only by a representative trade union. Once organised, the forums will be composed of elected representatives of all employees except senior management. Forums are by definition non-union bodies, but they will work best where unions are strong — both to trigger the forum and to service it once established

The forums will have extensive statutory rights to influence the most significant decisions in the workplace. These could include: major investment decisions, new technology, staff development, promotions, dismissals and retrenchments, and plant closure. The forums will generally be concerned with expanding the economic pie, rather than its division, and wages will remain the subject of bargaining between unions and management

In some cases forums will make these decisions jointly with management. In others, management must consult with the forum "with a view to reaching consensus" — the forum may present alternative proposals, and management would have to give reasons if it rejects them. The forum will have the right to all relevant information, and employers will provide facilities such as offices, secretarial support, and paid time off for members.

Once established, forums cannot be dissolved. Both sides are forced to co-operate in a "Catholic marriage" —



On strike: Proposed workplace forums will facilitate communication between workers and management and may prevent industrial conflict  
PHOTOGRAPH AVIGAIL UZI

they may not love each other, but they must learn to live together

Workplace forums should deliver the efficiency bonus essential for economic growth and increased competitiveness. With joint decision-making over staffing decisions employees can have confidence that efforts to improve productivity will not result in job loss. They can make criticisms of management without fear of prejudice to their conditions of employment. Finally, forums help ensure that employees' interests are given weight in key decisions. By removing the obstacles to participation, the forums encourage employees to share their intimate knowledge of the production process and thereby help improve productivity

Management, in being compelled to share information and to provide reasons for its decisions, will be forced to act with greater deliberation. The forums will slow down but also improve the quality of decision-making

Finally, the forums should help ease the often self-defeating and reactive

adversarialism that characterises South African industrial relations. They encourage the creation of consensus, but not through good will or an ephemeral balance of collective bargaining power — they encourage both sides to realise their interdependence in decision-making

**T**he strengths of workplace forums come about through a fundamental compromise. Employees contribute to efficiency because they know their interests will be represented, while management accepts such representation because it desires workers' co-operation with its goals

This compromise is also the reason forums are currently viewed with suspicion by management and unions alike. Management fears giving up its prerogatives while labour fears its powers will be diluted by entering a non-union institution in which it will have to take responsibility for "co-managing capitalism"

These fears are shortsighted. Management relaxes its grip on core pre-

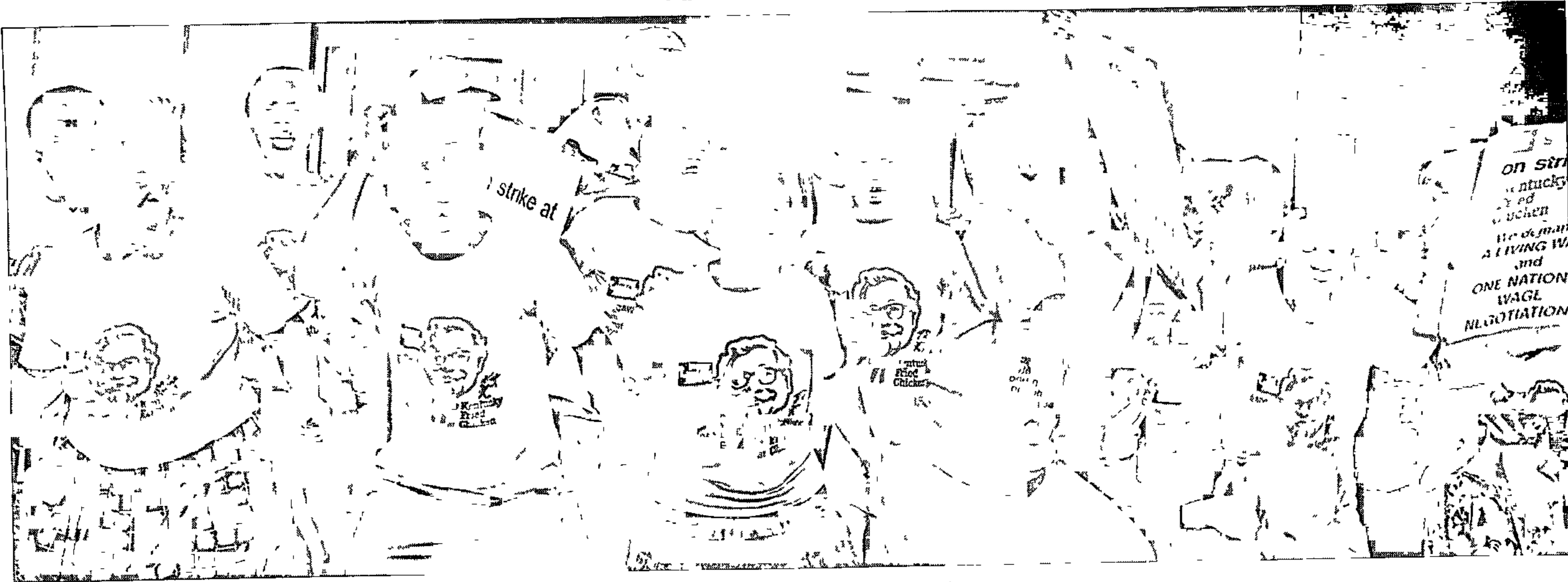
rogatives, but receives improvements in productivity while retaining legal authority over the enterprise. Trade unions lose nothing: astute unionists can place their stamp on the forums, expand employee participation, and use management-provided facilities to bolster capacity and organisation while returning important benefits to their members

Successful forums will require strong managements and strong trade unions, but such strength will be orientated toward new goals. This means — not an end to conflict — but a more sophisticated way of resolving differences

Workplace forums should be welcomed as the central institution in a new vision of industrial relations and economic development. The transition to economic democracy can remake the world of work and help build a firm bedrock for economic growth. In so doing, it will fundamentally reinforce the transition to political democracy

Dr Adler is a staff associate of Wits University's Sociology of Work Unit

## HARD LABOUR



**STRIKE ACTION:** Unions have accumulated the power to disrupt — now they need institutional power to participate in decision making

PHOTO WILLIAM MATIALA

# Workplace forums spark heated debate

(166) CT(BR) 10/4/95

Workplace forums outlined in the draft Labour Relations Act (LRA) are designed to fundamentally change relations between employers and workers in the workplace

It is not surprising, therefore, that the proposal has sparked heated debate among unionists and employers

In general, employers are objecting to the worker rights contained in the proposal, while unionists are concerned about the institutional nature of the forums

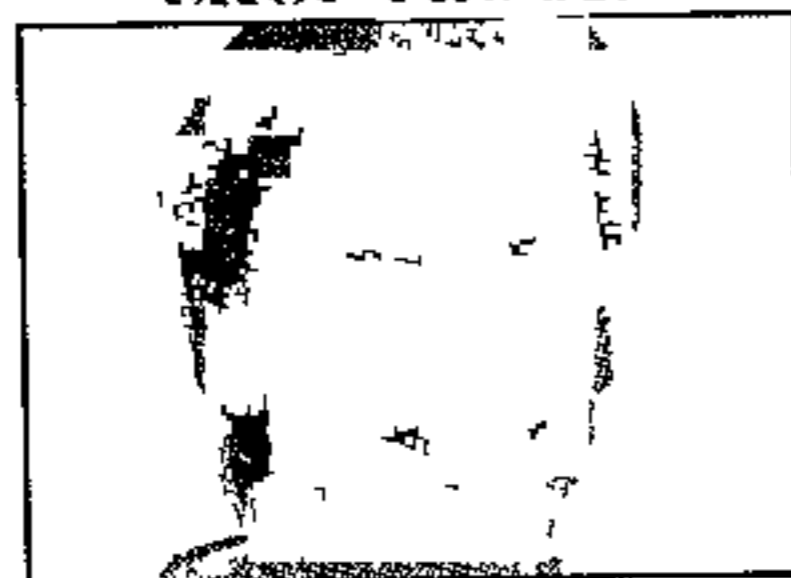
First, the rights the draft LRA provides that the majority trade union in a workplace, and only the majority union, may trigger the establishment of a forum, and it may do so whether the employer agrees or not

Once the forum is elected by all the employees in the workplace, the employer is obliged to provide it with information on a wide range of financial, production and employment issues

The employer is obliged to consult with the forum on some issues, and enter into joint decision-making on others. The company is also obliged to provide the forum with various resources

It is these rights that worry many employers. Duncan Innes gave voice to their worries in the latest issue of *The Innes Labour Brief* arguing that the legislation should make the establishment of forum voluntary as they were meant to promote

### SHOP FLOOR



By KARL VON HOLDT

*Proposed new bodies should improve, not undermine, labour relations*

joint problem solving and greater co-operation between employers and employees

For this reason they should be established only where both parties agree, and in a manner that both parties were "comfortable" with

This misses the point of the legislation and ignores the nature of the antagonism between employers and unions in South Africa

Relations between workers and management are highly unequal when it comes to workplace decision-making

Union experience is that when they demand information, consultation or negotiation on issues of company restructuring, management either meets their demands or enters into a negotiation on its own terms

In other words, the conditions for co-operation do not exist. The point of the draft LRA is that it establishes a cluster of

worker and union rights: rights to information, to consultation, and to participation

Should employees and their union choose to exercise those rights, the employer has no right to deny them

In other words, the draft LRA extends

rights of democracy into the workplace. The industrial citizen replaces the wage-slave

These rights establish greater equality between workers and their employers and thereby create the conditions for co-operation

If we are to wait until employers and workers feel "comfortable" with co-operation we will wait forever

Employers in general prefer not to cooperate with workers and unions — or at best to implement a stunted form of co-operation

Another objection raised by employers, and by Innes in his article, is that workplace forums are drawn from a foreign environment, Europe

While the European experience could be appropriate for South Africa, the argument goes, it would be counter-productive

to impose it on reluctant employers. The tacit assumption here is that co-operation preceded the imposition of co-determination on employers in Europe

In fact, the opposite is true. In Germany, for example, co-determination was imposed on reluctant employers in the steel and coal industry in the context of militant strike action by the unions

In South Africa relations between management and workers are highly unequal, authoritarian and structured by racism

In response to this the trade unions have emerged as a militant and well-organised force

Unions have accumulated the power to disrupt or block management initiatives. They do not have the power to propose and implement reforms in the workplace

Power based on disruptive action needs to be translated into the power to participate in decision-making — which is precisely what the draft LRA proposes to do through workplace forums

I would conclude, then, that rights of information, consultation and joint decision-making are well designed to overcome the crisis of workplace relations in South Africa. Only decisive state interven-

tion and regulation will curb management unilateralism, empower unions, and create the possibility for co-operation

But while the co-determination rights embedded in the forums are essential, the institutional design of the forums may be faulty

The union response to the section of the draft LRA dealing with the forums has tended to concentrate on this aspect, and this will be discussed in a future column

Whatever form they take, the establishment of workplace forums, with the rights outlined in the draft LRA, will fundamentally reshape relations among those in the workplace

Management will have to learn very new ways of doing things. It will have to demonstrate true leadership skills through winning the consent of workers, instead of relying on coercing them

Decision making will take longer, but decisions are likely to be sounder and be based on long-term plans rather than whims. Such changes would be a remarkable shift from the work-

place shaped by apartheid

This can only be a good thing both for our economy and our society

□ The writer is consulting editor at SA Labour Bulletin

**Management will have to win consent instead of relying on coercion**

# Draft Bill entrenches right to strike — and sets out procedure

(1bb) BD 3/2/95

THE draft Labour Relations Bill released yesterday entrenches the right to strike by guaranteeing strikers protection from dismissal provided they have adhered to dispute resolution procedures.

The Bill attempts to rectify problems in legislation, including the status of essential services, the complicated and technical pre-strike procedure, balloting, criminalisation of strikes and lockouts, the prohibition of socioeconomic strikes and the granting of interdicts and damages claims against strikers.

The procedure for a strike or lockout has been simplified to provide for a dispute to be either referred to a bargaining council, mediation or the Commission for Conciliation, Mediation and Arbitration (CCMA) for conciliation. Parties have to settle disputes within 30 days, if it remains unresolved employees may embark on a protected strike by giving 48 hours notice to employers. One of the most contentious changes to the dispute procedure is the removal of the need for a ballot before a strike.

Limitations on the right to strike and lockout exist where:

- The issue in dispute is regulated by a collective agreement,
- A peace obligation clause exists in a collective agreement,

RENEE GRAWITZKY

The issue in dispute has to be referred to arbitration in terms of an agreement,

Where a dispute of right exists, and

Essential services are affected.

Strikes in essential services designated by a committee yet to be established would not be allowed and strikers would not be protected. This committee, made up of labour law experts, would use the International Labour Organisation definition that essential services are those "whose interruption would endanger the life, personal safety or health of the whole or part of the population".

The Bill provides for a strike in a non-essential service which after a certain time may become essential due to the nature of the operation.

All disputes in essential services would be referred to compulsory arbitration for settlement.

An innovative development proposed is a "maintenance of minimum service" in an essential service, which could be ratified by the committee. This agreement could provide for a strike in an essential service if minimum service is maintained.

Strikes and lockouts in compliance with the procedures could not be interdicted or claims for damages

made for participation in such action.

Workers could not be dismissed for participating in a protected strike. The task team considered inclusion of a section permitting dismissal to avert irreparable harm to the affected firm, but instead has proposed that an employer facing bankruptcy may try to resolve the dispute, employ temporary alternative labour or dismiss on grounds of operational requirements. It could also agree with the union that members carry out essential maintenance — but this would preclude employing temporary labour.

The Labour Court may interdict strikes and award damages in regard to non-procedural strikes.

The Bill provides for orderly regulation of secondary strikes. A union may authorise a peaceful picket. Breach of picketing rules would be referred to the CCMA. Protest action for socioeconomic reasons could be protected — except in essential services — if it is authorised by a registered union or federation and 14 days notice is given to the National Economic, Development and Labour Council before action. An employer may approach the Labour Court for a declaratory order but the court would take into account several factors before granting it.

**S**outh African labour legislation, for decades riddled with contradictions and conflicts, is set to change drastically if proposed labour legislation is approved, writes Labour Reporter Justice Malala

# Lancing labour's ugly boils

166 SAN 3/2/95

The image has become etched on South African minds a protesting worker, fist raised in anger, leading others in protest. It is an image which has become increasingly frequent on the front pages of the country's newspapers since the 1970s.

From the miners' strikes of the 1920s to last year's flurry of wage strikes across the country, the local labour scene has been plagued by problems.

The release of Labour Minister Tlo Mboweni's task team's draft Labour Relations Bill yesterday is therefore both an attempt to bring legislation in line with new government policy and to bring stability to the already volatile front.

The need for change is urgent, as problems with existing legislation are legion. The task team, headed by Professor Halton Cheadle, identified the following problems:

- The multiplicity of laws regulating different sectors of the labour market. For example, the Public Service Labour Relations Act governs part of the public service while other sectors, such as educators, have their own separate Education Labour Relations Act.
- The statutory dispute resolution procedures are ineffective due to their lengthiness and complexity.
- Collective bargaining institutions are haphazard and unregulated. While bargaining at industry level is regulated by statute, bargaining at the workplace

has been left to the parties and the courts.

- There is no statutory support for worker participation in the workplace.
- There are an unacceptably high number of unnecessary and unprocedural strikes due to the absence of guidelines for the correct and effective mediation of disputes in the LRA.
- The system of adjudication of unfair dismissals is probably one of the world's most expensive.
- Existing statutes do not comply with the provisions of the Interim Constitution, do not give effect to the Reconstruction and Development Programme and do not accommodate the needs of small business.

The first chapter of the draft Bill, which deals with the scope and application of the Act, proposes a total shift from previous legislation. Unlike in the past, when several labour relations Acts were in place for various sectors, the Bill proposes that the new Act apply to all sectors with the exception to the defence force, the police and agencies established in terms of the Intelligence Services Act.

## Collective bargaining

"The exclusion of members from the draft Bill and the consequent restriction of their rights flows from the unique functions they perform," says the drafting team.

Chapter two deals with employees' right to freedom of association. It guarantees the

workers' right to form and join a trade union as well as the employees' right to join and take part in employers' organisations, and prohibits all forms of victimisation.

Chapter three, which dwells on collective bargaining, is notable by the absence of a statutory duty to bargain. The task team says it unanimously favoured a model which allows the parties to determine their own arrangements and adds that persuasion to bargain is given impetus by the draft Bill's provision for organisational rights and a protected right to strike.

"While giving legislative expression to a system in which bargaining is not compelled by law, the draft Bill does not adopt a neutral stance. It unashamedly promotes collective bargaining," say the drafters.

It also provides for registered trade unions and employers and employees' unions to conclude legally binding agreements enforceable by arbitration rather than through the criminal or civil courts.

Present legislation does not give effect to the right to strike and to lock out as guaranteed in section 27 of the Interim Constitution. This is entrenched in chapter four of the draft Bill.

The Bill provides for an essential services committee to be appointed by the labour minister which will determine whether a service is essential. If interruption of the service endangers the life, personal safety or health of the whole or part of the popula-

tion, it shall be deemed essential and no strikes will be allowed. Disputes in essential services shall be referred to compulsory and binding arbitration for resolution.

Unions' longstanding battle for greater involvement in management decisions is finally entrenched in chapter five of the draft Bill, which stipulates that at any workplace with more than 100 employees the union can apply for the establishment of workplace forums.

A major change introduced by the draft Bill concerns adjudicative structures. In the absence of compulsory arbitration as introduced for the determination of disputes concerning dismissal for misconduct and incapacity

## Commission

Registration of a union is no longer compulsory, but the constitution of every union and employers' organisation must state that no member shall be disciplined or expelled for failing to take part in a strike or lockout unless a ballot was held.

The most important innovation of the Bill is the establishment of an independent Commission for Conciliation, Mediation and Arbitration, which will be State funded.

"The commission performs the role of midwife to the workplace forum. It is the centrepiece of the system proposed by the draft Bill," say the authors.



Problem solver . . . Labour Minister Tlo Mboweni tries to bring calm to a volatile front. His task team's draft Labour Relations Bill attempts to bring legislation in line with new government policy. PICTURE ANTON HAMMERS

■ BY JUSTICE MALALA  
LABOUR REPORTER

South Africa's "new era" labour legislation has been warmly received by the major players in the field

Far-reaching changes to the country's labour laws — which could sharply reduce conflict between employers, workers and the Government — were set in motion by Minister of Labour Tito Mboweni yesterday

The proposals contained in a draft Labour Relations Bill unveiled by Mboweni in Johannesburg yesterday amount to a far-reaching overhaul of the present Labour Relations Act

They include steps designed to increase worker involvement in decision-making and to speed up dispute resolution mechanisms

### Lancing labour's ugly boils — Page 13

Early reactions of trade unions, political parties and business groupings were positive

Business South Africa chairman David Brink and Cosatu general secretary Sam Shilowa both expressed their support

Cosatu said in a statement that the proposals amounted to a significant breakthrough but Shilowa pointed out that intense negotiations on aspects of the draft legislation lay ahead

Brink also said business would be taking a close look at the proposals

Labour consultant Professor Duncan Innes said the proposals marked a "fundamental departure from previous legislation" and were "very positive for the whole labour front"

The draft Labour Relations Bill is based on models sup-

### PROPOSALS will put South Africa in line with countries with stable economies

plied by the International Labour Organisation

Mboweni said the success of the proposed legislation depended on the co-operation of all the players in labour and business.

In a break with past practice, all workers except members of the SA National Defence Force, the SA Police Service and agencies created under the Intelligence Services Act will be governed by the same labour laws.

The draft Bill proposes that strikes and lockouts will not be allowed in services identified as essential and that disputes in these services will be referred to arbitration

It protects workers' rights to legal and procedural strike action and cuts down on red tape in unfair dismissal hearings by introducing compulsory arbitration.

One major innovation is the entrenchment of a "workplace forum" in which workers will be able to contribute on issues such as retrenchment

The Bill also proposes an independent State-funded commission for conciliation and arbitration which would help resolve disputes more quickly.

The Bill was drafted by a task team led by Professor Halton Cheadle, appointed by Mboweni in August.

The team consulted extensively with the International Labour Organisation and drew on European labour models.

It will be tabled before Parliament this session

► To Page 3

*Overhaul of law aims at reducing conflict in workplace*

# Labour Bill welcomed

(166) saw 3/2/95

STW 3/2/95

**BILL WELCOMED:** South Africa's "new era" labour legislation has been warmly received by the major players in the field. Far-reaching changes, which could sharply reduce conflict and increase co-operation between employers, workers and Government, were set in motion by Minister of Labour Tito Mboweni.

(166)



# Workplace forums for interaction

(166) BD 3/2/95  
RENEE GRAWITZKY

The draft Labour Relations Bill proposes the establishment of workplace forums which would assist in providing a framework for interaction between employers and employees on the shopfloor.

The forums would "expand worker representation beyond the limits of collective bargaining by providing workers with an institutionalised voice in managerial decisions", while granting employers increased efficiency and performance.

In terms of the proposals, employers would be barred from implementing any decisions which fell within the ambit of the forums, unless there had been proper consultation with workers beforehand.

Should consensus not be reached, the representative trade union and the employer could agree upon a "deadlock-breaking mechanism" which could include mediation and

arbitration, or a combination thereof.

Where no mechanism existed, or the mechanism in place was not referred to arbitration, the employer could refer the matter to the proposed Commission for Conciliation, Mediation and Arbitration (CCMA).

The aim was not to create collective bargaining forums but rather to facilitate the sharing of information before decisions were taken.

Forums would deal with non-wage issues and would be established at the request of representative trade unions. However, the forums would include all employees, not only union members. They would be compulsory, at union request, in companies employing 100 or more employees.

The CCMA would facilitate the establishment of forums.

According to drafting team con-

venor Halton Cheadle, the forums would be established only at the request of trade unions, because unions would "fear competition" from forums.

Issues debated in forums could include restructuring of the workplace, health and safety, investment decisions and personnel policies.

The draft proposals have, however, outlined the type of information which could be presented at monthly forum meetings. This included reports on the financial and employment situation as well as performance and any discussions arising from the disclosure of these reports.

Finally, provision is also made for forums to request assistance from experts to help them carry out their duties, and the provision of facilities and paid time off for forum members by employers for training and forum business.

# Bill may find it hard to legislate co-operation

THE draft Labour Relations Bill's stated primary objectives are to promote economic development, social justice and labour peace. Quite a tall order to achieve in one statute. Whether it will be successful depends very much on the will of the parties to make it work.

Drafting a new Labour Relations Act to overcome the problems of previous legislation — which fostered adversarial labour relations — and so bring SA into the modern world of global competition is all very well, but is it possible to legislate co-operation?

Drafters will argue that their aim was to create a legal framework which would encourage collective bargaining, the resolution of disputes before industrial action is taken, encourage worker participation and a move away from litigation. But the reality of industrial relations is what actually happens on the shopfloor.

And currently government's social partners — organised business in the form of Business SA and the major union federations — are far from

united and focused. Business SA recently lost the National African Federated Chambers of Commerce as a member, a blow for a newly formed federation wishing to represent traditionally black and white commercial interests. Organised business will have to overcome sectoral interests, especially now that agricultural workers are covered by the Bill.

And, contrary to comments disputing this claim, Cosatu is not the federation it used to be. The depletion of its leadership ranks to government and private sector posts notwithstanding, Cosatu has acknowledged a rift between leadership and membership which can probably be attributed to the direction taken by labour under its former general secretary, Jay Naidoo.

During his time at the helm, Naidoo led Cosatu into essential macro-economic debates as well as ensuring its active participation in legislative reviews dealing with major concerns about previous statutes. These debates were critical to the

## ERICA JANKOWITZ

future of Cosatu, but the rapidity with which unions were thrust into playing such an active role in forging the future of political and socio-economic issues left many members confused and frustrated.

This legacy highlights the need for education to boost participation of the rank and file, and ensure that workers adhere to the agreed requirements of the new law. And there are plenty of requirements which are pretty onerous.

For example, interdicts can be issued against wildcat strikes and awards made for losses attributed to this action. This is designed to compel parties to make an effort to resolve disputes through the mediation and arbitration commission, and use industrial action as a last resort.

And whether unions will be tempted to instigate workplace forums

will be instructive. Although unions are theoretically in favour of participation and joint decision-making, forums have the potential of undermining unions by replacing them as the sole representatives of workers.

Forums will comprise worker rather than union representatives and are designed to facilitate discussions around non-wage issues, especially industrial restructuring. Productivity issues, new technology and such associated items will be discussed at these forums with the object of the parties reaching consensus. Again this will take dedicated effort and a real understanding of the intricacies of business for forums to be effective.

Again, the commission has a role to play in facilitating the formation of workplace forums with specialist members of the panel perceived as "midwives" in the process.

The Bill envisages three forms of participation at the forums, the first being information sharing with employers obliged to furnish employee

representatives with pertinent data. This has been an area of contention in the past due, in part, to the level of mistrust between workers and management. Whether establishing forums will end this situation will be a true test of the new dispensation.

The drafting team left Nedlac to decide on the issue of what "defined matters" employees must be consulted on. In three short months Nedlac will have its work cut out to settle contentious issues and fill in the gaps left by the task team in the belief they were more properly settled by negotiation.

All in all, the draft is an innovative piece of legislation which goes a long way to propelling SA labour relations into the 1990s, but whether it will emerge from the Nedlac process intact or with some of the coherent whole missing will be its first test.

Thereafter, the real test will come with the parties implementing its provisions and making sure industrial relations practice lives up to the expectations of the Labour Ministry and its legal task team.

## LETTERS

(166) BD 3/295

# Cautious welcome for labour law proposals

BUSINESS and labour yesterday welcomed the publication of the draft Labour Relations Bill as a negotiating document, but reserved more detailed comment until they could study its actual provisions.

Both welcomed Labour Minister Tito Mboweni's transparent approach and the wide public participation envisaged in the next stages of negotiating the draft through to finalisation.

Cosatu general secretary Sam Shilowa said the provisions fell into three categories: those considered fundamental which workers would fight to retain, including the right to organise, collective bargaining, and a protected right to strike

New areas of challenge, such as workplace forums and the new conciliation mechanism, held promise and would be closely scrutinised to check they met their stated objectives. Contentious issues, including no compulsion for centralised bargaining and an employer's right to lock workers out "may involve further negotiation"

Business SA president David Brink said members would judge the draft against principles of equitable and harmonious labour relations. "Most importantly, we will measure whether the legislation contributes to economic growth, international competitiveness and job creation"

Industrial relations consultant Gavin Brown said the hasty drafting "the document showed in the numerous grey areas, and in leaving some critical issues to be resolved by the National Economic, Development and Labour Council."

ERICA JANKOWITZ

The Bill left many important principles unclear. This would only be exacerbated by the limited timetable proposed to ensure the Bill was passed by Parliament in the current session.

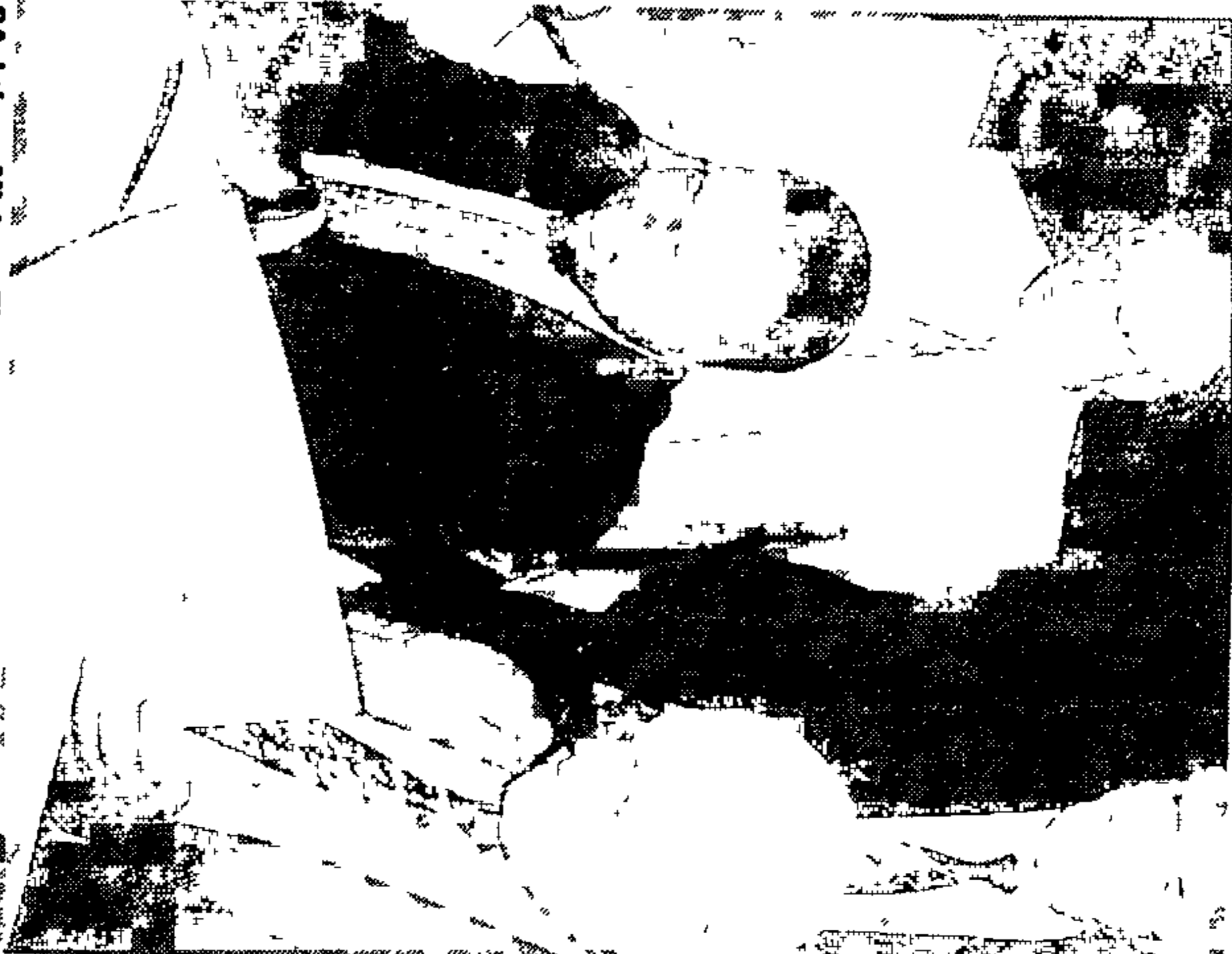
Brown believed investor confidence would not be boosted by the passage of the Bill, unless these areas were rectified. There was an apparent lack of regard for how the Bill would affect job creation and encourage business development.

Another criticism was the pivotal role of the Commission for Conciliation, Mediation and Arbitration which would be the final arbiter of most disputes. The commission was envisaged as overseeing the essential services committee, arbitrating individual dismissal cases and facilitating the establishment of workplace forums. Brown said there was a dearth of competent people to act as arbitrators and mediators.

He thought employers would not welcome certain provisions which might be better suited to a European or North American work environment.

Weber Wentzel Bowers labour lawyer Rod Harper urged employers to prepare representations on unsatisfactory aspects. These included the removal of balloting as a statutory requirement for a protected strike. "It seems that it will encourage conciliation, but will also encourage industrial action and it will significantly change the current balance of power between the parties."

See Page 8



SA Labour Minister Tito Mboweni and German Federal Minister for Labour and Social Affairs Norbert Blum signed a co-operation agreement at the launch of the draft Labour Relations Bill in Johannesburg yesterday. Watching are acting Labour director-general Joggie Kastner, left, and German ambassador Hans-Christian Uberschaefer. Picture ROBERT BOTHA

# Draft labour Bill aims at new ethos

*Sowetan 3/2/95 166*

**By Joe Mdhlela**  
Political Reporter

LABOUR Minister Mr Tito Mboweni yesterday unveiled a draft labour Bill aimed at effecting cooperation between trade unions, business and Government.

Essentially, said Mboweni, the draft Bill was aimed at radically transforming the labour relations regulations in South Africa.

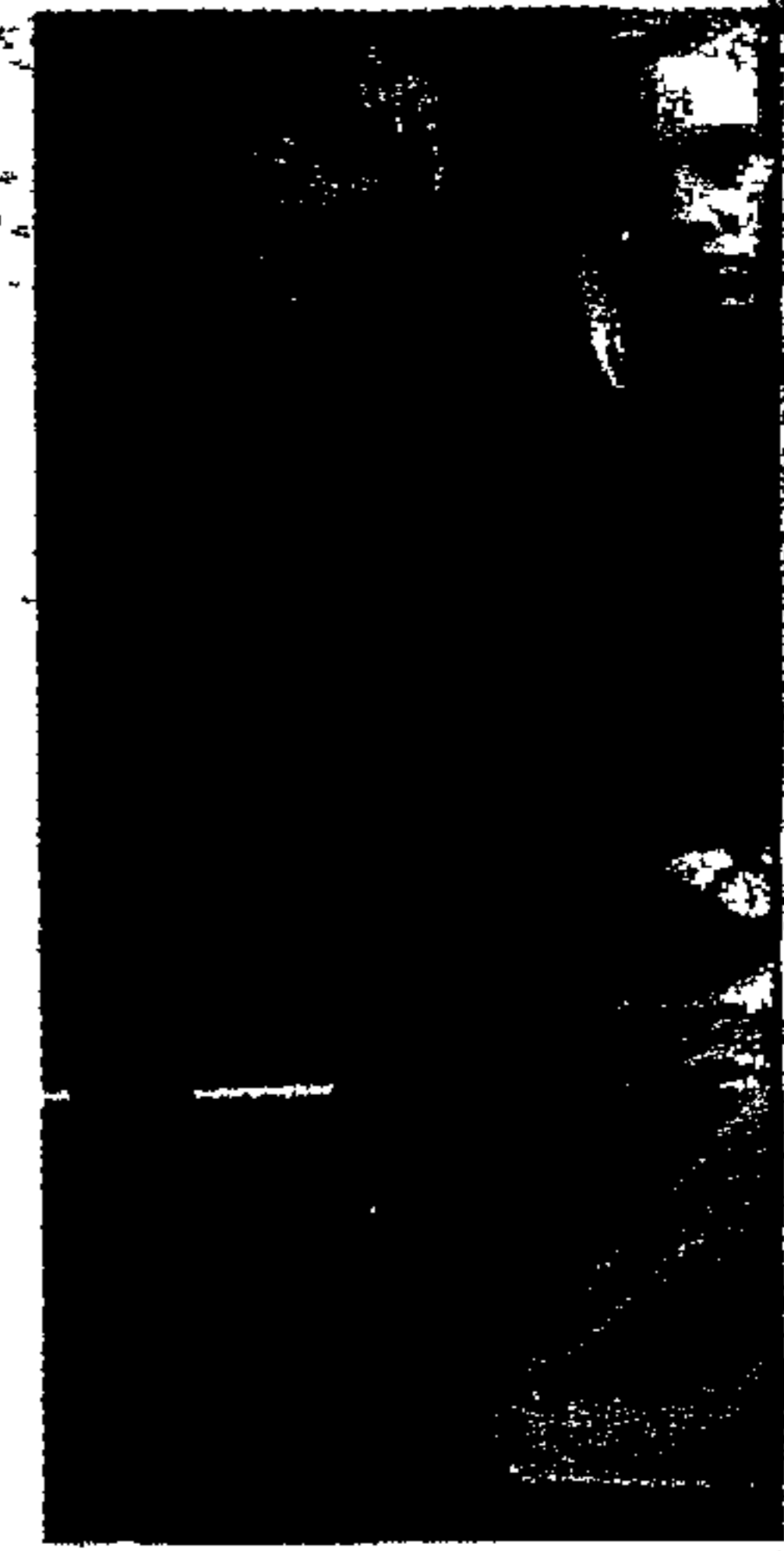
The draft Bill, expected to be submitted in Parliament in May, is likely to be made law towards the year's end, said Mboweni. The Bill provides for a quick dispute-resolution mechanism, giving employee and employer recourse to strike and lock-out actions provided the dispute has been referred to a bargaining council or the Commission for Conciliation, Mediation and Arbitration.

This is a legal body created to regulate relations between employers, trade unions and employees

The Bill provides for the creation of workplace forums to deal with issues in the workplace. This will involve joint problem solving between management and workers. "This process is not aimed at undermining collective bargaining, but at supplementing it," Mboweni said.

The provisions in the Bill also stipulate that workers must not be unfairly dismissed. The Bill provides for the establishment of a labour court, which will be chaired by a judge president, a deputy judge president and judges appointed by the President.

Mboweni said the draft Bill represents an important step in the broad plan of the Government of National Unity to transform society.



## The Big Squeeze

Accounts. Easy to open, a pain  
It's not parting with the money that

# Closed shop arrangements on their way out

ERICA JANKOWITZ

CLOSED shops were on their way out, but agency shops would be provided for if the draft Labour Relations Bill became law. *BD 3/2/95*

Although no legally enforceable duty to bargain was included, the Bill gave unions organisational rights which would "unashamedly promote collective bargaining"

Closed shops were bargaining arrangements compelling all workers in a particular firm or industry to join a designated trade union when employed. Objections were that this flew in the face of freedom of association, but closed shops were common in many sectors.

Agency shops tried to avoid this criticism, but still dealt with the question of "free riders" — workers who benefited from collective agreements which were extended to non-union members although they had made no financial contribution to union coffers.

The agency shop arrangement required non-members to pay a fee into a fund, administered jointly by management and labour, which would be used to contribute to collective bargaining expenses.

A few private agency shop arrangements existed in the mining and motor manufacturing sectors

According to the Bill's drafting team, closed shop bargaining arrangements would probably not be acceptable in terms of the new constitution.

Existing closed shop agreements would not be immediately outlawed in terms of the Bill, but would remain in place until the constitution was finalised and the issue resolved.

In terms of the draft, union security arrangements would be covered by allowing for agency shops which "should pass muster under the interim constitution"

Agency shops could be introduced only if the union represented a specified percentage of the workforce. This figure would be negotiated between the social partners at the National Economic, Development and Labour Council (Nedlac). The drafting team suggested a minimum of 50%.

In addition, forcing reluctant workers to join the union would be outlawed and agency fees would not be more than union subscription fees.

The draft Bill conferred organisational rights on unions including stop-order facilities and the right of access to premises for union-related purposes.

Time off for union activities and the right to hold meetings were covered along with the right to information for collective bargaining purposes and the right to

elect union representatives.

However, none of these rights would be absolute with each being qualified by "what is reasonable in the circumstances". For example, confidential information could not be disclosed to a third party without severe sanctions being incurred

Unions would become entitled to exercise these rights only once they reached certain "thresholds relating to representativeness". Again, the figure would be left to Nedlac to decide. *(166) (167)*

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BD 3/2/95

# Bill heralds major reforms for labour

THE draft Labour Relations Bill, released for comment yesterday, proposes sweeping changes in union-employer relationships.

Labour Ministry legal task team head Halton Cheadle said yesterday the Bill would provide a framework within which employers and unions could design flexible and appropriate labour relations systems, compatible with the need for internationally competitive industry.

A reduction in the number of unnecessary and unprocedural strikes is central to the revised law. Other major changes include increased worker participation in decision making, largely through workplace forums, and a new Labour Court.

Core conventions of the International Labour Organisation would be ratified in the Bill, especially freedom of association, the right to organise, to bargain collectively and to strike without fear of dismissal.

A further departure is the Bill's provision for the establishment of workplace forums — similar to aspects of Germany's system of "co-determination".

It also provides for compulsory arbitration on disputes of right — particularly unfair dismissals — thus ruling out the possibility of procedural strike action over such issues. An unfair dismissal code is included in the draft Bill.

The Bill covers most classes of employee, including public servants, educationalists and agricultural and domestic workers. It does, however, exclude members of the SANDF, SAPS and "agencies or services established in terms of the Intelligence Services Act".

The number of unnecessary and unpro-

ERICA JANKOWITZ

cedural strikes would be reduced by providing for the active conciliation of disputes through industrial councils — to be called bargaining councils in future

If no bargaining council exists, disputes would be forwarded to a proposed state-funded independent commission for conciliation, mediation and arbitration. The commission would be governed by a tripartite board appointed by the National Economic, Development and Labour Council (Nedlac).

The commission would be required to seek to resolve disputes. It would include an essential services committee which would decide which services fall into this category. Strikes in essential services would not be permitted; all disputes would be resolved through arbitration.

If disputes outside essential services were not resolved through the procedures agreed between management and labour, or through the legislated conciliation process, employees would have a "protected" right to strike without fear of dismissal. Such strikes would not leave strikers open to legal action, so employers would not be able to interdict strikers or institute claims for damages.

Controversially, balloting will no longer be a statutory requirement for a protected strike, in terms of the new Bill. Cheadle justified this by pointing to employers' abuses of balloting in the past when minor technical irregularities were used as a means of dismissing striking workers or obtaining interdicts against strikes

□ To Page 2

## Labour Bill

166 BD 3/2/95

□ From Page 1

Employers would also have the right to lock workers out if procedural attempts to resolve the dispute fail.

Key consideration is given to the needs of small business. This, said, Cheadle, would be achieved by means of simplifying the statute and providing for non-legalistic procedures and codes of practice to improve certainty and "make the law more accessible to users".

Further, industry-wide agreements would have to provide for an independent body to consider expeditiously applications for exemption from agreements by non-parties. Exemptions would be granted on the grounds of "undue hardship". Agreements could not be extended to non-parties in the absence of such a mechanism.

Workplace forums — to facilitate industrial restructuring and other forms of consultations between management and employees — would be established only in companies employing more than 100 workers. They would not be union structures but would be used by all employees.

Forums would be established at the unions' behest. Cheadle said this was so because of union fears that employers would use the forums to supplant collective bargaining.

Nedlac would be mandated to decide the division between collective bargaining issues (to be dealt with between unions and management) and consultative ones which would be dealt with in workplace forums.

The draft Bill spells the end of the Industrial Court and its replacement with a Labour Court. The new court would be on a par with the Supreme Court and presided over by judges, but not necessarily Supreme Court judges.

The Bill will be presented to Nedlac later this month for debate by the social partners — organised business and labour — and printed in a Government Gazette for public comment. It is hoped it will be referred to Cabinet by the end of May for passage through Parliament before the end of this year.

● See Pages 4 and 8

RENEE GRAWITZKY

## New procedures will regulate dismissals

THE draft Labour Relations Bill includes a number of far-reaching changes to the "regulation and adjudication" and remedy of unfair dismissals, and attempts to create a system whereby such matters can be resolved through "a speedy, cheap and non-legalistic procedure".

The Bill outlines valid reasons for dismissals, including misconduct, incapacity and operational requirements — that is lay-

offs. It also lists invalid reasons which include discrimination based on race, gender and pregnancy, participation in a protected strike, and age.

In addition, the Bill proposes a definition for dismissal which includes the failure to renew a fixed term contract, the refusal to allow an employee to return to work after absence due to pregnancy and selective non-re-employment

and constructive dismissal. The dismissal would be unfair if it was carried out for an invalid reason.

The proposed amendments would no longer require the courts to decide what is or is not an unfair labour practice. The Bill outlines a code of good practice for dismissal for misconduct or incapacity (poor work performance and ill health) which would regulate unfair dismissals.

It also adopts and clarifies the present Industrial Court jurisdiction on procedural fairness.

In cases of alleged misconduct, the Bill provides for a "fair, but brief, pre-dismissal procedure and quick arbitration on the merits of the case". It would not be acceptable to dismiss an employee for a first offence except where the misconduct involves theft or wilful dam-

age to company property or assault, gross subordination and misconduct which makes the continuation of employment intolerable.

Dismissal disputes would be referred to arbitration by the Commission for Conciliation, Mediation and Arbitration (CCMA). The draft Bill points out that no legal representation would be permitted during arbitrations, except with the consent of the parties.

It is envisaged that cases of dismissals based on operational requirements and invalid reasons would be referred to the CCMA within 30 days from the date of dismissal. If the dispute is not resolved it can then be referred to the Labour Court within 30 days from the date of service of the CCMA's certificate to this effect.

Finally, both the Labour Court and the CCMA will have the power to reinstate or to award compensation up to 24 months' pay.

By **THEMBA KHUMALO** (166)  
Political Correspondent

CP 5/2/95

THE 36-year-old former ANC economics department head, Tito Mboweni, hopes to overhaul labour relations between intractable employers and their hostile workers who have been unionised over the years

Through the draft Labour Relations Bill, Minister of Labour and Manpower Mboweni, who obtained his masters in Economics at the University of East Anglia in England, hopes to make years of labour unrest, most of which was sparked by unfair labour practices by employers, a thing of the past

Having gone into exile at the age of 21, Mboweni caught the eye of this country's business magnates when he returned from exile in 1990.

Realising that he was not pushing avowed socialist economic policies, top businessmen drew him closer and hailed him as a "man to do business with". He was continually invited to address business events to explain his vision of future SA economic policies to those who knew little about either him or the ANC

On Wednesday, when he unveiled the new Bill, the same business-

men were among the first to embrace it as a wise "first step towards closing the gap between the employers and the workers".

Mboweni acknowledges that the Bill is not his effort alone

It is a product of months of wide consultations by a team of labour experts headed by Professor Halton Cheadle. The team travelled all over the country and abroad to formulate the draft document. It is expected to be passed as a law in parliament in May.

The Bill was hailed by trade unionists and business leaders as a "breakthrough" in normalising industrial relations which are crucial for the country's economic growth

### Unenthusiastic

However, the general secretary of the Congress of South African Trade Unions (Cosatu), Sam Shilowa, was unenthusiastic until the Minister "clears up the question of central bargaining and how far the employers can exercise their right to lock out striking employees". Once the issue has been discussed and the Bill is accepted by Cosatu, it is expected to make a smooth sailing through parliament to become law

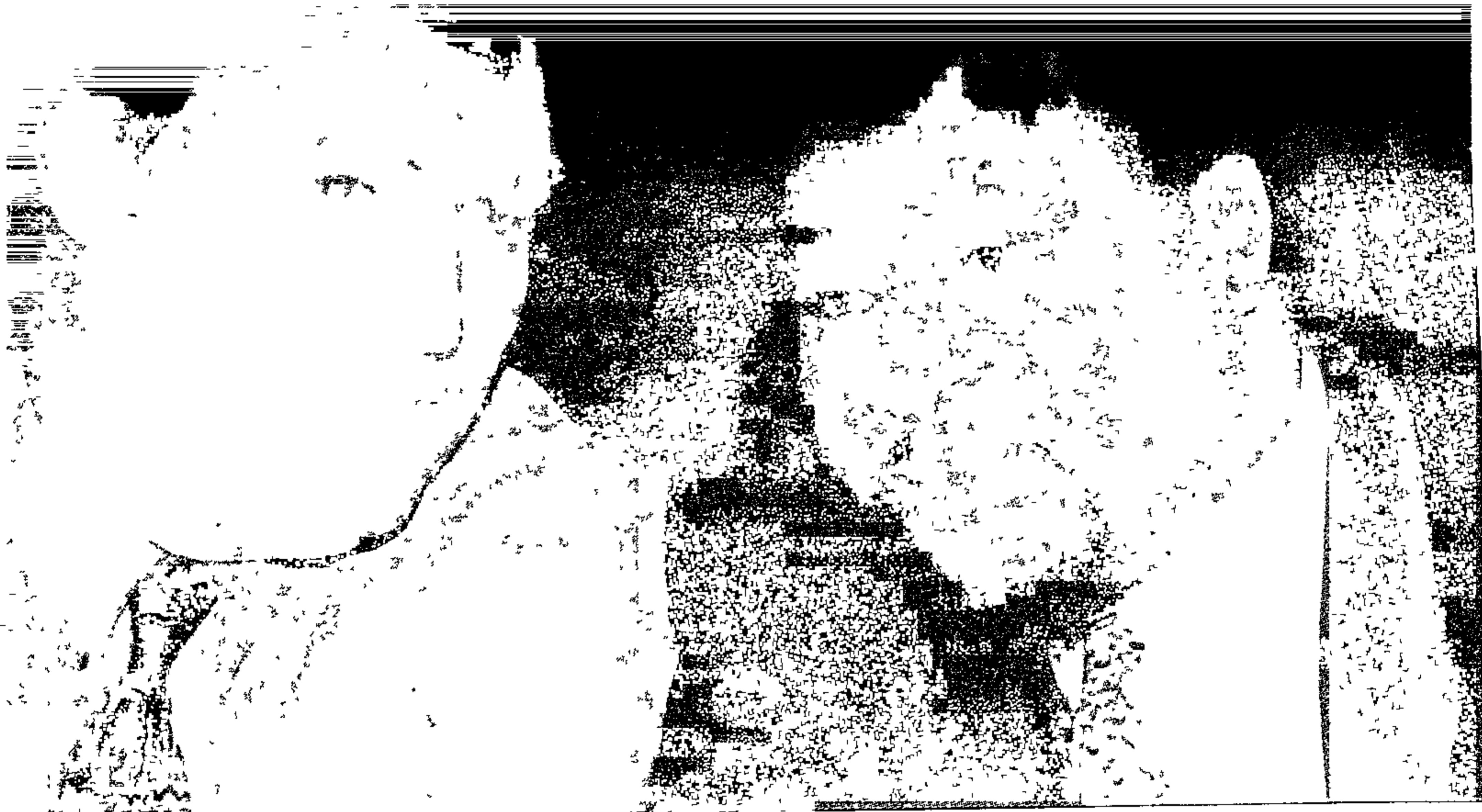
Mboweni described the Bill as

a "departure from the established system of low wages and paternalism and adversarial relations between the trade unions, business and the state". The Bill attempted to use labour law as "an instrument of economic policy" by promoting co-operation between the three sectors while recognising the rights and liberties individuals should enjoy at work, he said.

The Bill comes against a backdrop of alarming labour unrest in the months of June and July last year when thousands of trade union members downed tools demanding a living wage and better working conditions. The strike actions went a long way towards undermining SA's peace and economic stability and a large number of potential foreign investors delayed their investments here to study further developments

Meanwhile, President Nelson Mandela has come down hard on the civil servants who continue to undermine the government by going on wildcat strikes. Speaking in Bisho this week during his three-day visit to the Eastern Cape, Mandela warned that his patience was wearing thin with people who embarked on industrial action with the aim of embarrassing the Government of National Unity





Halton Cheadle and Labour Minister Tito Mboweni See report, Focus page

Picture JON HRUSA

## COMMENT

# Cheadle's Bill works

ST(BT) 5/2/95 (166)

AT about the same time Halton Cheadle began drafting new labour law last year word came from Cosatu House that it had "a long line of credit with the new government" and that centralised bargaining was the first note it wanted, redeemed.

But the Cheadle Bill is no big payday for Cosatu.

It seeks to create a flexible framework where parties can conclude deals which best suit them. Some may opt for centralisation, others for decentralisation.

Self-regulation is preferred to state regulation as are mediation and arbitration rather than litigation and confrontation.

Workplace forums will allow problems to be solved where they arise — at plant level.

Collective bargaining rights are entrenched as is the right to strike and lock-out, subject to certain limitations.

Workers can seek redress through a small claims type court where the parties can appear without costly lawyers.

Small business will get representation on industrial councils (to be called bargaining councils) and an independent body will decide on exemptions.

Councils may use "framework agreements" which allow room for variation.

Thousands of employers — some highlighted in Business Times — were prosecuted last year, in most cases being guilty of no more than trying to keep their businesses alive during the longest recession this century. Now the prosecutions will stop as the Cheadle Bill decriminalises labour law.

This Bill is one huge payday — for the whole country.

**Kevin Davie**

# focus on LABOUR

**S**IX YEARS ago the labour movement was at odds with the revised Labour Relations Amendment Act, describing it as inadequate to resolve workers' grievances in the workplace

The two largest federations in the country — the Congress of South African Trade Unions and National Council of Trade Unions — declared a dispute and decided to embark on a national strike

Unhappy with the provisions of the Act, the federations decided to submit demands to the employer body, the South African Consultative Committee on Labour Affairs

The federations demanded that workers in the agricultural, domestic, forestry and public sectors be accorded protection in the same way as other workers.

To get around the problem unions were encouraged to seek recognition with employers, bypassing and "circumventing the offensive clauses of the Act"

## Labour practice

Central to the dispute was, among other things, the refusal by the Amendment Act to categorise sympathy and repeat strikes as a fair labour practice

Solidarity strike actions also remained an unsettled matter which caused a lot of tension between employers and unions

Protest marches and work stoppages were frequent and workers and the trade unions were no longer prepared to swallow Government's controversial laws without fighting back

This explains why the Cabinet has approved the appointment of a legal team to produce a draft LRA Bill that will meet the needs of this day and age

It is against this background that a "distillation process" to improve the relationship between workers, unions and Government, has taken place

The draft Bill is meant to be a "user-friendly" Labour Relations Act, replacing the antiquated Act

The draft Bill, now being prepared by the Ministry of Labour's legal task team, was unveiled at a Media briefing in Johannesburg last Thursday

Leaders of business, labour, Government and the public were present at the launch of the draft Bill

Explaining the general principles of the draft Bill, prominent South African judge, Mr Justice Johan Kriel said "I have on previous occasions, in relation to a variety of problems arising from the interpretation of various provisions in the Act, expressed dismay at the fact that the legislature in 1979, saw fit to cut, trim, stretch, adapt and generally doctor the old Act in order to

The proposed labour Bill is an effort to redress the doctored Acts of the past and to make dispute resolutions a simpler process, writes Political Reporter **Joe Mdhlela:**

accommodate and give effect to the recommendations of the Wiehahn Commission instead of scrapping the old Act and producing an intelligible piece of legislation which clearly and unequivocally expressed its intention."

The quote by Kriel epitomises the concern expressed by the country's legal brains with regard to what is seen as a failure by the previous Government to adapt to a new emerging labour situation in South Africa

The draft Bill proposes to harmonise legislative framework with orderly labour relations which must apply in the work place

The Bill proposes to scrap "layer after layer of amendments" which did nothing to improve relations between employer, worker and Government

Instead the amendments added more confusion to the interpretation of the statute governing the Labour Relations Act

Also, the Bill aims to curtail extensive discretionary powers enjoyed by Industrial Court officials

For example, the LRA clearly prefers collective bargaining through industrial councils. However over the years the registrar and the Minister exercised the discretion conferred on them in such a way as to undermine collective bargaining at industry level

## Dispute resolution

In effect, the draft Bill will ensure that labour issues get adjudicated on their own merit, and not according to the whims and discretion of industrial court officials

Dispute resolution procedures will also be overhauled, creating a situation where employers, trade unions, and employees will enjoy a free hand to regulate their own affairs in a more constructive fashion

The Bill gives provision for the establishment of a Commission for Conciliation, Mediation and Arbitration, to replace the current structures as provided by the present legislation

The Bill envisages that the Commission will give rise to private procedures to be negotiated between parties engaged in the resolution of disputes

This implies that where the employer and worker are comfortable with one another, they

may, without having to undergo a protracted legal route, resolve their own labour disputes

The effect is that disputes will now be resolved without having to resort to technical and legal jargon

The Bill will introduce the establishment of "workplace forums" to resolve problems at the workplace.

This means that the time scale to have an industrial dispute resolved by a third party, an industrial court or a Commission for Conciliation, Mediation, and Arbitration, will be shortened

## Procedural strikes

The draft Bill also bemoans the high incidence of procedural strikes in the workplace. For this, it places the blame squarely on the absence of procedures for independent regulation of disputes by affected parties

"Many disputes that could be resolved by consultation are instead resolved by industrial action. Strikes are often characterised by violence," Mboweni said

Also, the tone of the new Bill seems to suggest that the existing legislation fails to provide effective resolution mechanisms for employees engaged in essential services

Now that South Africa has joined the international community, the draft Bill proposes to bring South African labour law in line with international labour standards

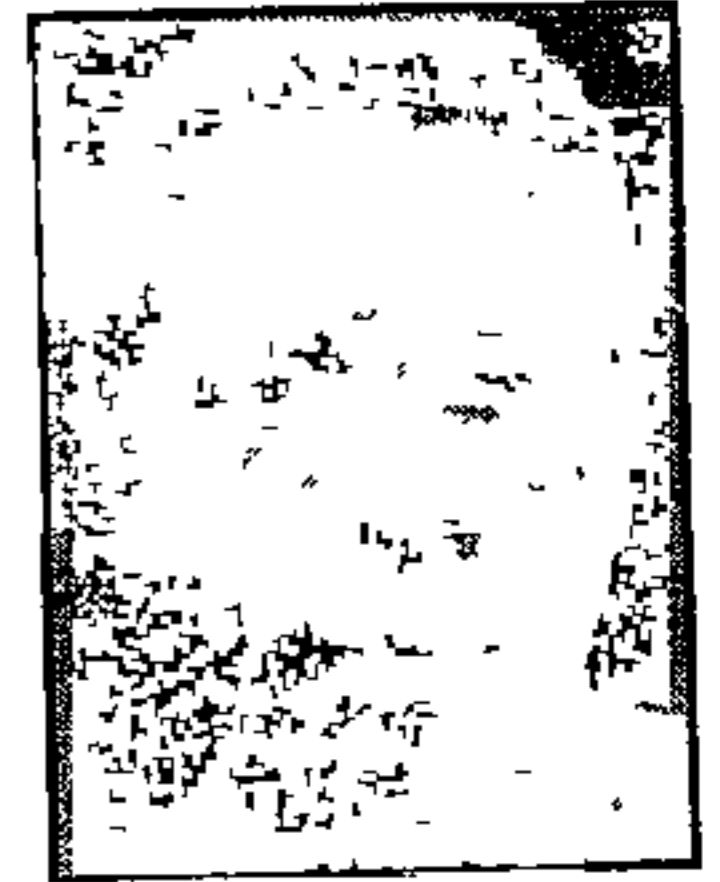
A significant aspect of the Bill is that it seeks to be compatible with the fundamental rights contained in the Constitution. The Bill has been drawn with regard to the needs of small business, providing a code of practice and non-legalistic dispute resolution procedures

Ingrained in the Bill is a stipulation that workplace forums may be established in small businesses employing more than 100 workers

This implies that employees in a small operation will enjoy protection, something they have not enjoyed in the past

In many respects, the draft Bill may have the propensity to answer Krieger's concern that the previous act had been "doctored" to suit the apartheid era

The overhaul of the previous LRA may just bring a smile to Krieger's mouth



(166)  
some say  
6/2/95

# Racially exclusive unions have six months to reform

ERICA JANKOWITZ

UNIONS with racially exclusive clauses in their constitutions would have six months in which to revise this requirement or face being deregistered in terms of the draft Labour Relations Bill, released for comment last week.

SA Iron, Steel and Allied Workers' Union general secretary Len van Niekerk-Venter said the union was concerned as it had a long tradition of restricting membership to white workers.

He urged the Labour Ministry to follow the example of the government of national unity and allow minority groups to have a say in labour matters. "This is the moral ground on which labour relations should be moulded," he said.

He felt minority groups — including the SA Council of Labour Unions (Sacol), which represented about 100 000 white workers — would be left in the lurch if their rights were not enshrined in legislation.

Van Niekerk-Venter said Sacol and its affiliates had circulated a copy of the draft Bill to all regions and would respond once

all members had had their say on the issue. "Some members wouldn't mind the racial restriction removed, but ultimately it is the majority who will decide."

All-white Mine Workers' Union (MWU) general secretary Peet Ungerer said the MWU would not change its racial exclusivity, but would not be affected by having its registration withdrawn.

The MWU's 76 existing recognition agreements would still stand and membership would continue to grow despite this requirement.

"The MWU's future role is to protect the white worker as the target of discriminating practices and future legislation against unfair discrimination," Ungerer said.

Van Niekerk-Venter expressed his concern about Sacol's possible exclusion from the National Economic, Development and Labour Council at which the Bill would be discussed as there were other problems with the legislation.

## Barred pupils readmitted

MDUDUZI KA HARVEY

TWO hundred male pupils expelled from Voice of the Black Nation school in Orange Farm, were reinstated after the Congress of SA Students demanded their readmission.

They were expelled after school director Mzwandile Khumalo ruled they were ill-disciplined. He claimed some pupils carried guns, sold drugs and were guilty of rapes at the school. "Teachers and pupils felt very intimidated and the school was losing a lot of girls because of fear."

But the pupils argued they had not been informed in advance about plans to convert the institution into an all-girl school and that Khumalo had not refunded their fees. They also felt it was unfair to expel all male students when only a few were guilty.

Khumalo agreed to accommodate the pupils at the school while he built another school for boys. This was expected to be completed in two weeks.

## Pupils taught to run own small businesses

MDUDUZI KA HARVEY

PUPILS are being taught to make a living even while they are still at school through a business management course devised by a Midrand education centre.

The course, run by the Sagewood Education Centre, has already produced success stories.

A pupil at Richards Bay Hoerskool runs a tuck shop and has employed his mother to manage the shop. After paying his mother his net profit is in excess of R1 500 monthly.

Evan King from Empanjeni High School set up a chocolate manufacturing venture which has made a R500 profit a month over the past year.

The Sagewood Education Centre has introduced an entrepreneurial course for school children aimed at identifying young entrepreneurs, developing their business skills and helping them set up shop.

This idea is the brainchild of Ian Heatherington of the National Industrial Chamber and Peter Morris-

son of the Business, Advice Centre. **BD 9/2/95**

Entrepreneurship educator Gary Morrison says. "If parents give money to start a business, pupils have to repay their parents with interest."

"Our duty is to teach the children how to draw up a business plan and how to run the business," said Morrison.

The aim is to enable pupils to come up with their own business ideas whether they want to shine shoes, manage a tuck shop or even a lemonade stand, they will be taught how to do it.

Sagewood director John de Jager said. "Not only is it necessary for pupils to acquire skills for the formal market, but they should be in a position to set up their own businesses."

Introduced three years ago in KwaZulu/Natal, the course will soon be introduced at 25 schools in Pietersburg and at 20 schools in Rustenburg.

# Adversarial relations 'kill ability to compete'

(166) ERICA JANKOWITZ BD 5/2/95

INTEREST-based bargaining should replace positional bargaining in response to new imperatives of modern organisations, labour lawyer Chris Albertyn says in the latest Employment Law.

Organisations would need to adapt to these new imperatives and be responsive to co-operation, multi-skilling, consumer demands and quality needs, Albertyn notes. Old-style hierarchical, segmented and job-defined organisations would be unable to compete effectively in the global market.

"The historical process is inevitable which companies and unions make the transition is not." Adapt to these challenges or face the consequences, he says.

Positional bargaining — in which the parties embark on an adversarial style of negotiations without considering the impact of their outcome — is inappropriate to organisations based on participation and co-determination.

In contrast, interest-based bargaining seeks to find common ground between the parties, resulting in a mutually acceptable outcome.

Albertyn gives some examples on areas of agreement. These could include a principle that workers should be no worse off as a result of negotiations and that real wage increases should not be inflationary, but linked to productivity improvements. Parties may also agree that all should benefit equitably from the company's success.

In addition, attributes considered important to the company could be rewarded in terms of the goals set.

Albertyn suggests some solutions including:

- Transferring some supervisors to productive positions,
- Using flexible shifts to reduce overtime,
- Self and team supervision;
- Bonuses linked to quality and waste reduction,
- Multiskilling and job flexibility;
- Opportunities and rewards for training, and
- No lay-offs until managers have taken a set pay cut.

Total # Bytes: 11,398,165

Total # Files: 184

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M0_CASW2.DBF	1,100	10-11-93 10:21:12

# Seminar will discuss labour relations Bill

ARG 14/2/95 (166)

□ *Top legal minds to grapple with intricacies*

**JENNY VIALL**  
Staff Reporter

THE new labour relations Bill, if passed by Parliament, will introduce sweeping changes and bring South African labour law in line with the constitution and international labour standards.

One change will be the workplace forums where employees will be able to take part in making decisions such as closing down a business or making major investments in technology.

The role of these forums is one of the issues to be debated at an intensive morning seminar in Cape Town on February 28 where

top legal minds will help people in the labour field get to grips with the 1995 Labour Relations Bill.

Employers will also need to become familiar with the new procedures regarding dismissal disputes. They will no longer go to the Industrial Court.

"People dealing with labour should understand the issues now if they are to make a meaningful contribution to what will become a spirited and complex debate after the launch of the Bill, and before it is finally submitted to Parliament," said Clive Thompson, director of the Labour Law Unit at the University of Cape Town and a panelist.

Each delegate will get a copy of the Bill and an explanatory memorandum.

Two members of the ministerial team which drafted the Bill will attend the seminar. They are Halton Cheadle of the Centre for Applied Legal Studies at the University of the Witwatersrand and Andre van Niekerk, legal adviser to Anglo American.

Also on the panel will be Pak le Roux, head of Mercantile Law at the University of South Africa.

The panel will introduce key features of the Bill, explain the rationale behind changes and discuss areas of likely controversy.

● Inquiries should be directed to Deborah Florentino at 797-5101 or fax 797-0121.

## Maritime meal with shipping expert

**Environment Reporter**

THE man at the centre of efforts to deal with any shipping disaster in



# Labour Bill 'may cause unrest'

166

BD 20/2/95

ERICA JANKOWITZ

THE draft Labour Relations Bill was already causing ripples in labour relationships and this year's wage round was likely to be as disrupted by industrial action as had been the case last year, industrial relations consultant Gavin Brown predicted.

Speaking at a Deneys Reitz seminar on Friday, Brown said the Bill's intentions were good, but in the short to medium term confusion over its content and its release to coincide with the wage round would generate labour unrest.

He said the social and political climate of uncertainty into which the Bill was launched would do little to help it meet its aim of moving SA labour relations from adversarialism to co-operation.

Employers were concerned about unions' interpretation of the Bill's participative management provisions and forecast strikes over issues previously deemed to be management prerogative.

The old statute would become less effective during the period the parties took to finalise the draft in the National Economic, Development and Labour Council (Nedlac) and employers, using current methods, would find regulating labour relations difficult.

Responding to Brown, ministerial task team member Andre van Niekerk said there were no illusions about the role of law in regulating industrial relations. But, hopefully, it would establish a framework to

change adversarial mindsets

He said the team's contention was that sectors which needed urgently to restructure to meet the challenge of global competition, were better served by a legislative structure allowing flexibility, self-regulation and participation in decision-making. The Bill tried to encapsulate this.

Brown predicted a flurry of activity as parties renegotiated recognition agreements which suddenly became of great importance under the new legislative framework. A recurring theme in the Bill was that collective agreements would override the statute, giving such agreements much greater status.

"Legally these are now critical documents and many will have to be reviewed to bring them in line with the statute."

Not only would this cost management time, but also unions would need to ensure they had the requisite experience to negotiate agreements.

Brown felt the Bill would be passed with few changes, but its first amendments could be expected shortly as its full political and economic consequences became clear.

Van Niekerk said parties to Nedlac would not be bound by the constraints the team's terms of reference imposed on them, with the exception of constitutional considerations. This would include the right to strike and for employers to lock workers out.

## College building workers' skills

RENEE GRAWITZKY

INCREASED worker participation in decision making, as envisaged in the draft Labour Relations Act, required the building of worker capacity so workers could assume leadership positions and deal with complex issues, Workers' College director Yunis Shaik said last week. (166) (163)

The Workers' College was established in Durban in 1991 to provide education for workers, worker leaders and trade unions to develop their academic theory and practice.

This would ultimately produce a more confident, responsible and informed trade union movement, he said.

"We have found that there has been a change in student behaviour on the shop floor after having participated in our training," he said. BD 27/2/95

"Workers obtained a deeper understanding on a whole range of issues such as economics, labour law and organisational skills, which enabled them to participate in a more co-operative manner."

Shaik said it was "sinful that education was not given to the critical players". Employers should recognise the need for education and encourage it by providing paid time off and funding for further education.

With changes in the political order, the college's role had become more important.

No one had anticipated the extent and depth of leadership that would be lost to the union movement. "It took everybody by surprise."

# Mines shift from top-down approach

BP 2/3/95

SA's major mining houses are increasingly using business units, or independent profit centres, to improve productivity and efficiency.

Gengold senior consulting engineer Kobus Olivier said the philosophy behind independent profit centres was to structure the mine from the working face out rather than from the top down. This would result in the whole mine being focused on providing services to the miners on the rockface, with the overriding goal of making the mine more competitive.

The system empowered workers on the face to make their own decisions about what they wanted to achieve there.

Olivier stressed that the aim of the business unit concept was to streamline the business to increase productivity and improve safety, not to reduce employment opportunities.

But the system would not work without improving the knowledge and skills of the workforce to enable them to make decisions correctly, he said.

Adult basic education was being used at Gengold to improve skills, and the company aimed to have an 80% literacy level on the mines by the year 2000. Currently, very few of the employees on the mines were literate.

In addition, miners with Standard 5

MICHAEL UROUHAART

education were identified and sent to the Gengold Training College at Buffelsfontein. In an intensive 11-week course they were upgraded to a Standard 7 equivalent, and in a further 11 weeks were upgraded to Standard 8.

The achievement of a Standard 8 equivalent allowed the miner to enrol for a blasting course.

Mineral and Energy Affairs Minister Pik Botha said on Tuesday that the education level for a blasting certificate would be reduced from Standard 8 to Standard 5, to allow more experienced workers who had proved their competence to qualify. Olivier said Gengold had been aware of this proposal, and the decision would not affect the education programme.

Gengold's aim was to have about 500 panel miners — those at the workface — with blasting certificates. This would mean every panel having at least one worker with a blasting certificate.

Olivier said improved skills and knowledge and the devolution of responsibility to the workface would also bring an improvement in safety standards as miners became responsible for all aspects of safety on their panel, and had the skills to deal with them.

## Slow implementation of Labour Bill recommended

(166)

ERICA JANIKOWITZ

A GRADUALIST approach should be adopted in implementing the draft Labour Relations Bill's provision for worker participation in decision-making, labour law experts say.

Writing in the latest contemporary Labour Law, Andre van Niekerk — a member of the ministerial task team which drafted the Bill — and Unisa's mercantile law department head Peter le Roux, said workplace forums were a welcome development.

Legislating greater workplace democracy had worked in Germany, but need not have equally successful consequences in SA.

"Indeed, the introduction of any system of worker participation that is perceived to be against the interests of labour or management could promote rather than reduce labour unrest or confrontation."

The authors felt collective bargaining in SA was itself a form of worker participation in corporate decision-making.

Although more concerned with employment conditions, agendas had widened to include retrenchments, closures and broader social issues. Labour courts had forced employers to negotiate downscaling and other issues, traditionally perceived as falling within the realm of management prerogative.

Employers should stop believing forums were "another step towards a socialist future".

"Managers also remain sceptical about the willingness of unions and their members to assume responsibility for improving productivity and business efficiency — especially where retrenchments or more onerous working conditions may result."

Unions had often distrusted management co-operation initiatives as being slanted at undermining and co-opting union structures.



# 'Spooks' will miss out on labour relations bill

CLIVE SAWYER  
Political Correspondent

SOUTH Africa is to breach international guideline by excluding its spies from the scope of the new Labour Relations Bill.

The bill will cover the public, agricultural, educational and domestic service sectors.

But defence, police and national intelligence employees will not be affected by its provisions.

Hylton Cheadle, one of the bill's drafters, told a joint meeting of parliamentary committees yesterday that this had been done on the instructions of the cabinet.

Everyone except "soldiers, cops and spooks" had to be covered by the bill

166  
AR6

Professor Cheadle said he was aware there was a debate among police about whether they wanted to be counted as part of the public service.

By excluding national intelligence employees, South Africa had not complied with International Labour Organisation rules.

The right of intelligence employees had been settled in a case involving former British prime minister Lady Margaret Thatcher and staff at GCHQ, Britain's intelligence nerve centre.

Professor Cheadle quipped that there could be a difficulty in organising spies "when you do not know who they are".

Outlining the aims of the bill to the committees, he said there would a

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move away from adversarial relations on the shop floor. He appealed to members to ensure the language in the bill remained "user-friendly" rather than suited only to lawyers and judges.

"Make this an example of how laws can be written so ordinary people can understand them."

The bill will establish a Commission for Conciliation, Mediation and Arbitration.

This would replace the existing Conciliation Board, which is part of the Department of Labour.

The new body would be state-funded and independent. Its functions would include dispute resolution and the establishment of workplace forums.

The success rate of the present conciliation board was 20 percent, compared to the Independent Mediation Services of South Africa's success rate of 70 percent.

This underlined the need for independence and professionalism.

Also provided for in the bill was a Labour Court with the status of the Supreme Court which would replace the present industrial court.

Jurisdiction would include dismissals, protest actions, reviews and appeals.

The court would operate on a national basis, with its judges sitting alone in each city.

A Labour Appeal Court would be set up, with a bench of three judges.

# Bill seeks to break SA's labour conflict

166 BD 15/3/95

CAPE TOWN — A proposed commission on dispute resolution was the hub of a draft labour law seeking to break from SA's history of adversarial labour relations, Labour Department legal adviser Halton Cheadle said yesterday.

It encouraged private dispute-resolution procedures that captured the special requirements of industries and individual factories, he said in a briefing on the draft law to the Labour Committee.

An independent commission for conciliation, mediation and arbitration would replace the old manpower department's conciliation board function.

"This is an essential institution if we want to turn a strike-prone society into one which (fosters) agreement. This commission is absolutely crucial for the functioning of the Bill."

The R16m for conciliation boards was derisory, given the amounts spent on litigation and avoidable strikes.

The proposed labour court should have national Supreme Court status under the auspices of the Justice Department.

It would replace the Industrial Court, which was hamstrung by poor funding, slow procedures and a poor reputation.

Presiding officers would be drawn from the ranks of judges, labour practitioners

and academics with appropriate experience. The labour appeal court would consist of three judges from the labour court.

Cheadle said the tripartite commission would be set up by the National Economic, Development and Labour Council with employers, the state and trade unions each nominating two representatives.

Alternative dispute settlement had a better success rate than either conciliation boards or industrial councils.

The Independent Mediation Services of SA resolved more than 70% of disputes, compared to 20% by conciliation boards and 30% by industrial councils.

In Australia, the statutory Federal Industrial Relations Commission resolved more than 90% of disputes.

Labour Minister Tito Mboweni said the draft Bill represented a first attempt to bring workers and employers into joint decision-making. "The draft Labour Relations Bill can never resolve the contradictions between capital and labour... but it is not our job to solve these in a Bill."

"The Bill can at least (set up) a system which seeks to moderate conflict in a manner which is broadly beneficial to the society we have chosen to build."

The committee should try to retain the core proposals underlying the Bill, unless they were fundamentally flawed. — Sapa.

## Low salaries sink research

CAPE TOWN — SA's fleet of four fisheries research ships was facing its greatest crisis in its almost 100-year history, Sea Fisheries Research Institute deputy director Alan Robertson said. BD 15/3/95

Addressing the fourth National Maritime Conference, Robertson said poor salaries had resulted in the loss of experienced staff, affecting the safety and effectiveness of the vessels and their crews.

The fleet is used to service weather and research stations in the Antarctic, and for environmental research into fishing.

Robertson said the fleet was well maintained, but the manning of the vessels had become "increasingly difficult, especially over the past five years".

"While little difficulty is experienced recruiting crew, drawn mainly from the trawling industry, navigating and engineering officers pose a major problem," he said.

Poor salary packages brought about loss of experienced personnel. — Reuter. *(Fishing)*

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Tough bargaining period ahead

# Dissent likely to delay new labour Bill

BD 31/3/95

(166)

COSATU and Business SA (BSA) are heading for a period of tough bargaining on the draft Labour Relations Bill published last month.

There seems little chance of reaching consensus in time if government insists on sticking to its September deadline for passing the Bill through Parliament.

If the parties are unable to reach consensus by the end of June, government will have to choose between delaying legislation until next year or pushing through a version which has not been agreed to by business and labour.

Cosatu sources said the federation's central executive committee last weekend adopted a hardline approach on issues such as majoritarianism, workplace forums, the right to strike and collective bargaining. BSA, meanwhile, was still formulating its position. Sources indicated business was likely to take contrary positions to Cosatu, especially on the right to strike and workplace forums.

It is understood that many Cosatu positions were taken only after heated discussion, and by narrow majority vote. Cosatu's approach, which favours large unions in many respects, is unlikely to be acceptable to employers and even to its union partners within the National Economic, Development and Labour Council (Nedlac).

One Cosatu source said the approach to majoritarianism was disadvantageous even to weaker Cosatu affiliates in the farming, domestic and service sectors.

Cosatu has proposed that unions be denied collective bargaining or organising rights until they attain majority representation.

ALAN FINE and  
RENEE GRAWITZKY

Federation of SA Labour Unions (Fed-sal) general secretary Dannhauser van der Merwe said his grouping was totally opposed to a majoritarian approach.

Cosatu also wants to entrench an employers' duty to bargain with majority unions — an approach the Bill argues against and which BSA is likely to oppose.

Cosatu would like a union-based workplace forum model rather than an employee-based one — where union structures elect delegates to the forum. The Bill, in line with international practice, provides for all employees, including non-union members, to take part in forums.

BSA supports this approach, but opposes the provision (on which Cosatu insists) that the union will have to give its approval before a forum is established in any workplace. Generally, business would like forums to be based more on voluntarism and less on statute.

BSA is understood to be strongly opposed to workers' right to strike over political issues without fear of dismissal. Some elements among employers are also unhappy about the almost unconditional protection from dismissal for strikers in procedural industrial disputes. One employer argues that the courts should have the right to authorise dismissal where a strike threatens the future viability of a firm or an industrial sector.

Cosatu opposes the provision which permits employers who are non-parties to industrial agreements to seek exemptions from the terms of agreements through an

□ To Page 2

## Labour Bill (166) BD 31/3/95 □ From Page 1

independent adjudicator.

It is to recommend retention of the status quo where employer and union members of the bargaining council consider exemption applications.

Both business and labour support the principle of a commission for conciliation, mediation and arbitration which will deal with all disputes and attempt to minimise industrial action. However, business has expressed fears about the commission's capacity to deal with the likely workload and the cost of establishing a structure sufficiently large to do so.

Cosatu and BSA are also likely to come into conflict over the closed shop, which

compels workers in particular industries to belong to particular unions. Cosatu, contrary to the Bill's provisions, believes the closed shop should continue to be permitted, subject to regular referendums among workers covered by such arrangements.

The Bill supports an agency shop system in which non-union members pay a fee to a "collective bargaining fund" managed jointly by management and labour.

Cosatu proposals will soon be presented to Fed-sal and the National Council of Trade Unions for consideration, and then to the labour chamber at Nedlac. BSA is scheduled to table its position at Nedlac on April 12.

## Commission to focus on arms trade policy

SUSAN RUSSELL



THE Cameron commission of inquiry into Armscor's international trade since 1990 will focus on SA's arms trade policy after it concludes its investigation into last year's aborted AK-47 shipment to the Middle East this month.

Commission chairman Judge Edwin Cameron has indicated that he hopes to have an interim report on the AK-47 transaction ready to hand to government by the end of April. This will be after he has heard final submissions next week from lawyers acting for Armscor and the other parties involved.

No date has been announced for the second leg of the inquiry into SA arms trade policy and decision-making, which will be conducted by way of a public forum, but the commission has said it will do so shortly.

It will invite interested parties to submit written presentations on specified aspects of arms policy.

After reading written submissions, the commission will convene a public forum in Cape Town to hear oral argument.

Commission secretary Donald du Plessis said the commission would be chaired and directed along the lines of a public hearing with presentations followed by questions and discussion rather than as a quasi-judicial process with legal argument and cross-examination.

One of Cameron's two co-commissioners Laurie Nathan will chair the forum and analyse the written material, but the final report will be undertaken by all three members of the commission, including Advocate Vincent Moleka.

The commission is still considering how best to conduct the rest of its brief which is to investigate any transactions since 1990 which are "similar" to last year's AK-47 deal with Lebanese arms dealer Eli Wazan.

# Workers prepare for joining of councils

RENÉE GRAWITZKY

THE amalgamation of local authorities, establishment of a national industrial council and reconstruction of a fully representative employer organisation will be the focus of the SA Municipal Workers' Union's fourth national congress starting on Thursday.

Samwu acting general secretary Roger Ronnie said two thirds of the current 600 local authorities would be eliminated as a result of the amalgamation of authorities by geographical area under the Local Government Transition Act.

Amalgamation would bring together workers covered by differing conditions of employment, which could be a major source of conflict.

Creation of a national committee comprising employer and employee representatives, to resolve disparities in conditions of employment, would be demanded.

Wage policy discussion would consider submitting separate demands to industrial councils covering small local authorities and large urban ones such as Cape Town, Durban and Johannesburg. Minimum wages in large urban authorities ranged between R1 100 and R1 300, while wages in small local authorities were as low as R500, he said.

Industrial councils could face demands for a minimum wage of R1 000 for workers now earning R650 or less, R1 200 as a minimum for those earning between R650 and R850, and an across-the-board increase of

R350 for those earning more than R1 200.

Ronnie said large authorities could face negotiations on a 20% increase on the wage bill and how this could be spread across the various categories — with emphasis on narrowing the wage gap.

Employer organisations party to industrial council agreements were viewed as being linked to apartheid structures and should be collapsed and reconstituted.

The union was of the view that such bodies "should seek a reasonable and democratic balance between proportional representation by size and voice of legitimate interests", he said.

The role of local authorities in the delivery of reconstruction and development programme objectives, the local government elections, new collective bargaining arrangements in the local government sector, and human resource development were some other issues to be discussed at the unions' congress.

Ronnie said that final plans were underway for the formation of one public sector union in August.

This would have a membership of more than 250 000 and make it Cosatu's second largest union after the NUM.

Regional workshops were under way to finalise the merger between Samwu, the National Education, Health and Allied Workers' Union and Post and Telecommunications Workers' Association.

Gauteng emerges the ca

# 'Labour Bill faces tough ride'

JOHN SHERROCKS

KWA ZULU NATAL BUSINESS EDITOR

CT (BR) 6/4/95

(S/66)

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The likelihood of the new Labour Relations Bill being passed in the current sitting of parliament is slight given the level of disagreement within the National Economic Development and Labour Council (Nedlac), according to a Durban-based labour lawyer

Addressing a seminar in Durban yesterday, Willie Coetzee, partner at Shepstone & Wylie, said there was little chance of Nedlac reaching consensus on the Bill in time to meet the end of April deadline

In the event of Nedlac failing to reach agreement on the draft Bill, Coetzee said the government would be forced to step in. "The question then is whether the current government will ride roughshod over some of the concerns of business this is likely to depend on where it is at the time"

Given the government's growing concern at the widespread level of disruptions within society, its outlook on the Bill could be "more conservative" than business would

Whatever the outcome, employers had to accept that employee participation in decision making was inevitable. The only unknown factor was the extent of that participation, but it was in the best interests of employers to initiate participation

"You must decide where you want to pitch the level of participation. Now is the time to do it the thinking is that if you already have something in place you do not have to comply (with the statute)"

Coetzee said there were a number of "innovative methods" which employers could use to accommodate participation

He also urged employers to "privatise" dispute resolution "The industrial court is falling apart it is totally demoralised. The days where legal people were able to represent you at dispute resolutions are past"

Coetzee said that while the draft Bill had its failings, all things considered, it was "a hell of a lot better" than existing laws. He urged organised business to continue lobbying its case

## Call to retain right

### of appeal in labour Bill

(166)

ERICA JANKOWITZ

EMPLOYERS were concerned about the removal of the right of appeal against decisions of the proposed conciliation mediation and arbitration commission in labour disputes as set down in the draft Labour Relations Bill, according to a recent survey.

Management consultants FSA-Contact, in ascertaining employers' attitudes to the Bill, found a large proportion of respondents were opposed to a provision which disallowed appeals on arbitrated dismissal awards heard by appointed commissioners.

FSA-Contact IR division managing executive Pierre Wolmarans said dismissal disputes relating to employee conduct and capacity — common dispute triggers — would be referred to arbitration in terms of the Bill.

Neither party would be entitled to legal representation or to appeal the commissioner's decision. In contrast, appeals were permitted against Labour Court decisions, which seemed at variance with procedures for the proposed commission, Wolmarans said.

Respondents also expressed concern about the competence, fairness and experience of commissioners and the Bill's silence on selection criteria for commission panelists and stipulated minimum experience.

Also, a commissioner who assisted at a dismissal mediation could be appointed to act as arbitrator of the same dispute if no objection was raised.

Wolmarans said participants believed management lacked the necessary experience to conduct arbitration successfully, especially as they would not be backed by legal representatives. Respondents also saw worker participation provisions as challenging management prerogatives unless forums were restricted to discussing only shopfloor issues.

# Govt's 'RDP neglect' a cause for concern



BD13/4/95

GOVERNMENT'S continued neglect of the potential contribution of non-governmental organisations within the reconstruction and development programme was cause for concern, the RDP Monitor said in its latest issue.

The publication said the national RDP office had not yet formulated a fixed policy on relationships with NGOs, and added that Minister without Portfolio Jay Naidoo's position was that "there would be no endorsement of any specific organisation".

Naidoo's refusal to endorse projects, and donors' insistence on it, had resulted in a stalemate with some countries delaying funding programmes, the Monitor said.

It said the uncertainties around the election period resulted in a "holding back" by corporate donors in the first half of 1994. Nervousness about a stringent tax regime held off funding for the second half of last year.

"However, the successful elections and the essentially favourable fiscal policy, along with repeated reassurances by the ANC to business, has not led to businesses redoubting their financial commitment to development and civil society."

A number of companies had displayed "an indecent haste" in taking advantage of the conciliatory new order to enrich themselves, the Monitor said.

Others were "genuinely confused" as to where and how they were to make a contribution, as the government had been slow in coming forward with clear guidelines and incentives.

"The business stand-off casts a shadow on

THEO RAWANA

business's perceived commitment to development, raises questions about its reliability as a development partner, and is damaging to the working relationships that have been established with community groups and NGOs," the Monitor said.

The March Budget had underscored government's determination to fund the RDP through savings rather than expenditure, and this would result in most core RDP areas of focus seeing little increase in funding in real terms, the publication said.

Even in housing, moneys allocated could only be used for leverage of further loan funding, rather than for wholesale provision. "Foreign funding takes up only a small proportion of the slack," the publication said.

It said that constraints meant that reallocations of resources from wealthier to poor provinces were increasing tensions between central and provincial administrations.

"These are likely to increase as the new Constitution is debated this year."

The slowness in delivery and in policy decisions, together with financial constraints, "gives heart to populist politicians" and encouraged the politics of frustration, such as land occupations and the destruction of universities, the Monitor said.

Soon the workshops and committees would have to start showing real progress. It was increasingly clear that dynamic Ministers in charge of departments could make a difference. "We need more of them," the publication said.

A financial administration committee

**NEWS** Faction fighting p

# Mediation to be norm

By Abdul Milazi

Labour Reporter

(166)  
WITH the passing of the new Labour Relations Bill expected at the beginning of next year, mediation agencies are set to play a major role in future labour disputes in South Africa

The Bill, to be tabled before Parliament in June, which places great emphasis on mediation before strike action, comes as a blessing in disguise for the untapped dispute resolution market

So far the International Mediation Services of South Africa has been the only monopoly, but the passing of the Bill could see the mushrooming of smaller companies as mediation becomes a necessity

*Sowetan 18/4/95*  
Mediation has always been an expensive and within the means of only the big corporations, but a small black mediation company, the Mediation and Conciliation Centre, is set to change this with its revolutionary expeditious mediation.

Headed by land commissioner Emma Mashinini, the MCC offers its services to small business, hawkers and community organisations

Co-founder Mahmood Fadal says expeditious mediation means quality mediation at a fraction of what is normally charged by giant agencies

# Affirmative action is on wrong path — researcher

BD 19/4/95



**AFFIRMATIVE** action, as defined by those advocating such a strategy, would target a few educated, middle-class blacks, whereas a policy aimed at uplifting economically disadvantaged people would have a far greater positive effect, Centre for Policy Studies researcher Khehla Shubane says.

In a centre document, *The Wrong Cure Affirmative action and SA's search for racial equality*, Shubane suggests instead a policy of encouraging a culture of learning to ensure recruitment based on merit, while bending the rules for the very poor and disadvantaged to enable their economic participation. This would be based on earning capacity, not race, and would be a short-term strategy to uplift people to a level at which they could help themselves. Shubane attacks affirmative ac-

ERICA JANKOWITZ

tion for its implied judging of different race groups by different standards, when it was "imperative for SA to proceed speedily to a point where there is one standard by which all people are judged".

He criticises affirmative action policy documents by Sacob and the Black Management Forum for targeting groups rather than individuals in righting the past's wrongs. After all, not all black individuals suffered in the same way and to the same degree under apartheid and, by the same token, not all whites benefited from the system.

In an era in which SA was trying to discard its racial bias, the selection of people for jobs on racial lines was anathema, as it would probably achieve the outcomes from which affirmative action strove to distance itself, he said.

"Apart from all else, racially derived standards will once again give power to the wrong people: the bureaucrats who would have to administer the system."

In addition, it would be demeaning for those blacks who succeeded despite apartheid to be lumped together with others who were kept back and judged by the same standards, Shubane argues.

Affirmative action was also limited as it did nothing to address the real issue of blacks not owning or controlling corporations and so not being considered indispensable participants. A measure to increase equity ownership by blacks was an important component of changing structural relations and so ensuring equal opportunity and participation.

Shubane concludes by calling on advocates of affirmative action "to revert their focus on blacks to a focus on the poor".

## Northwest education proposals being studied

MANUEL SALADO BD 19/4/95

THE Northwest education department was finalising its position on provincialisation and had already submitted its recommendations on new legislation to the state legal adviser, a department spokesman said last week.

The province's recommendations on organisational structures in education were being studied by the Public Service Commission, and finance experts and teachers' unions were scrutinising the department's budget, he said.

The department had established facilitation teams to examine, among others things:

- A personnel system to administer recruitment, employment and service conditions of staff;
- Education and information;
- A system for provision, maintenance and renovation of physical facilities;
- Infrastructural systems for providing books and conducting examinations; and
- Computerised systems.

The department would shortly appoint its senior staff, including the deputy director-general and chief directors of education and training and administration, finance and facilities.

The province was aiming for a pupil-teacher ratio of 35:1 in secondary schools and 40:1 in primary schools. Provincial statistics on the influx of pupils into schools this year were being collated, the spokesman said.

# Labour forums 'must still rid SA of workplace apartheid'

RENEE GRAWITZKY

REMNANTS of the "apartheid workplace regime" had to be removed and this could be achieved by the establishment of workplace forums, SA Labour Bulletin representative Karl von Holdt said at a recent workshop at Witwatersrand University.

Speaking on "ungovernability in the workplace, ungovernability in the union", he said initial research indicated that certain aspects characterising the nature of trade union struggles in the 1980s, had continued into the 90s.

In the 80s, trade union struggles had focused on establishing unions which engaged in collective bargaining as well as a political struggle of resistance and un-

verability. The political action could not be contained by institutional arrangements, as could the labour "struggle", Von Holdt said.

In this climate of resistance the unions themselves became ungovernable and divided on numerous issues. Division existed in any active trade union organisation in the world, however. In essence the 1980s style of ungovernability was created by politics of resistance where unions resisted any suggestions proposed by management. That style of politics tended to be coercive, he said.

By the end of the 80s, union organisation was not very stable.

The maintenance of a strong union movement entailed constant efforts to build unity, to ensure structures were in place and operating, and actively organising members.

Von Holdt said that by the start of the 1990s unions had attempted to begin restructuring the workplace in a highly technical manner, which failed to take into account the history of militancy and instability in the workplace.

Unions had found it extremely difficult to build strategic programmes as well as address worker divisions and "keep the

base together", he said.

Management, on the other hand, had refused in most cases to enter into discussions on restructuring. Instead initiatives were unilaterally implemented which actions attempted to further destabilise the union movement, union structures within the workplace and ultimately the industrial relations climate.

Management efforts to improve productivity, quality and morale had failed. Von Holdt said that against this background it was crucial to strengthen union structures and to ensure that worker rights — such as meeting facilities during working hours — were achieved.



NEWS FEATURE *Draft Labour Bill — more of a victory for employers than workers?*

# Labour Bill may repress unions

166 Sowetan 19/4/95

**SHAM** *Workers fooled to think they have stake in economy:*

By Abdul Milazi  
Labour Reporter

**N**OT ONLY DID THE April 27 elections last year usher in a democratic South Africa, it also saw the once militant trade union movement, especially unions affiliated to the Congress of South African Trade Unions, turn into the sweethearts of the ANC-led Government of National Unity.

Before the elections the broader trade union movement saw capitalism as responsible for poverty, unemployment and apartheid.

To combat this system, which empowered whites and impoverished blacks, the unions sought to commit the workers' movement to strive for socialism and an independent working class organisation.

The struggles of the trade union movement forced the then racist regime, business and European governments to realise that the South African minority ruling class could not continue governing in the old way. They had to reform in order to rescue capitalism.

As the country was embracing democracy, the ANC and the South African Communist Party had to work out a compromise with the Nationalist Party government Cosatu, because of its association with the ANC, had to manoeuvre to bring the workers' movement in to line.

Wosa continued to pay lip-service to socialism while taking a totally different route, known as the social contract, which was based on the idea of a reformed capitalism called social democracy.

The social democracy idea simply means that labour, business and the state should come together to promote economic growth by encouraging investment and allow South Africa to compete internationally.

Socialist organisations such as the Workers Organisation for Socialist Action, Workers List Party, Turning Wheel, New Unity Movement and others argued that the interests of employers and those of workers can never be brought together.

Wosa spokesman Brian Ramadiro says the social democracy system is nothing but an attempt to get workers into believing they have a stake in the system while they continue to be exploited.



Some of the workers have demanded that there should be no dismissals during strikes, interdicts or other legal action. They also demand that workers should have a right to strike funds, be able to call for boycotts and hold sympathy strikes.

"In the '60s the South African economy grew dramatically. Next to Japan it grew the fastest in the world but workers and the unemployed did not benefit," says Ramadiro.

To see the draft Labour Bill for what it is, one needs to look back at what workers wanted and at what it offers.

Wosa says it is more of a victory for employers than for workers and a backward move from the present Labour Relations Act.

In June 1988 three million workers stayed away from work for three days in protest against the Labour Relations Act Amendment Bill.

The main grievances were that the amendment bill took away workers' rights by making unions, its officials and members financially responsible for lost production during strikes.

### Banned

It also banned solidarity strikes, prohibited strikes on the same issue in a period of fifteen months and excluded domestic workers, farm workers and public sector workers.

These same proposals of the rejected amendment bill have come back and are contained in the new draft Labour Bill.

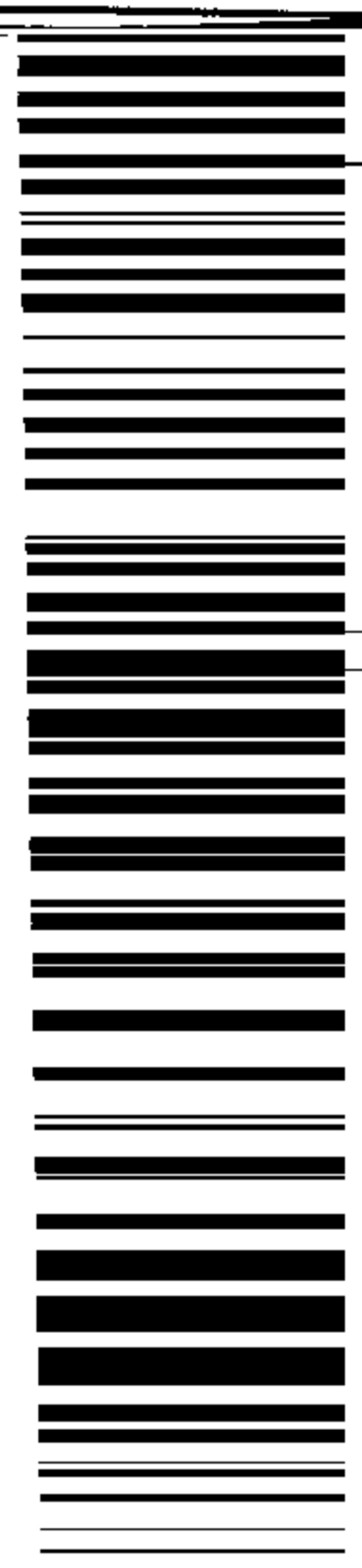
On March 1989 the Workers Summit brought together 700 union representatives from the Congress of South African Trade Unions, the National Council of Trade Union and other unaffiliated unions to map out a common strategy to fight the Labour Relations Act. The government was later forced to withdraw the amendment.

From the summit a Workers Charter, which contained demands that would strengthen the working class, was born. These demands are not included in the current draft Labour Bill.

The preamble of the charter stated that capitalism was responsible for poverty, unemployment and apartheid and committed the workers' movement to striving for socialism and an independent working class organisation. Some of the things workers demanded in the Workers Charter were:

- The right to picket,
  - Scabs to be outlawed,
  - No dismissals during strikes,
  - No interdicts and other legal action;
  - The right to strike funds,
  - The right to call boycotts,
  - The right to hold sympathy strikes; and
  - No state intervention during strikes.
- What workers will get from the draft bill which is expected to become law by the beginning of next year:
- Picketing will be allowed only if the employer consents to it,
  - Solidarity or sympathy strikes will be illegal,
  - Workers will not be able to strike on the same issue within 15 months,
  - Employers will be allowed to stop even legal strikes through the courts,
  - Employers will be able to fire a worker for any reason without a hearing during the first twelve months of service,
  - Employers can lock out workers,
  - Strikes will not be allowed in what is termed essential services, defined as "any service the interruption of which threatens the health, safety or life of the population or part thereof";
  - Employers can fire workers for taking part in unprocedural strikes and can sue unions for losses. Employers can also interdict illegal strikes,
  - The Agricultural Labour Act, which makes it difficult for farm workers to strike, is also endorsed by the draft bill,
  - Employers will not be required to negotiate if they want to retrench — they would merely consult,
  - Strikes over retrenchments will not be allowed,

There is also no obligation on the employer to bargain with unions. This means courts cannot order employers to negotiate with or recognise unions. (People and organisations wishing to make contributions have until April 28 to do so. Contributions can be sent to the Ministry of Labour's Pretoria office.)



# NP warning on labour

(166) ~~(166)~~

By BRUCE CAMERON

CT(BR) 25/4/95 <sup>POLITICAL EDITOR</sup>

Labour issues, including the new draft labour legislation, must be resolved with minimal government interference, the National Party has announced in a policy statement

Leon Wessels, the NP labour spokesman, said in the statement his party welcomed the government's referral of the labour legislation to the newly established National Economic Development and Labour Council (Nedlac).

Wessels said the legislation was a test of a social partnership between employers, employees and the government

If agreement could not be reached on the legislation, the best interests of a social contract would not be well served

Any breakdown in negotiations would result in the parliamentary committee on labour having to look at whatever Nedlac produced

He warned that labour relations were "a delicate matter and should not become a political football" It was important for employer and employee organisations to reach agreement in Nedlac

Wessels also warned that any labour dispensation would only work if there was minimal government interference "The authorities should only create the framework for employers and employees within the substantial variety of undertakings and sectors to decide on their own relationships."

Legislation also had to take account of issues such as investor friendliness, the effect of economic development, the effect on small business development, job creation and productivity.

## Tight timeframe for labour Bill talks

RENEE GRAWITZKY

LABOUR and business agreed that the timeframe for reaching consensus on the redrafted Labour Relations Act at the National Economic Development and Labour Council's (Nedlac) labour chamber was tight and the process should get under way immediately, sources said yesterday.

The parties were initially scheduled to table their positions in April, but had rescheduled their presentations to May 4, giving them just over a month to reach consensus before the end-June deadline is reached.

Jesse Maluleke, appointed by the Labour Ministry to co-ordinate the process, said the tight timeframe was

because Parliament closed in mid-September and the intention was to ensure the Bill's implementation at the beginning of next year.

After being considered by Nedlac, the Labour Relations Act would have to be referred to a Parliamentary select committee and thereafter to the state legal adviser before finally being tabled in Parliament.

Cosatu's Neil Coleman said the process had to be accelerated.

Business SA spokesman Bokkie Botha said the parties would try to meet the deadlines. 60 28/4/95

NEWS FOCUS

# Cracks in flawed Bill are widening

Labour lawyers MARTIN BRASSEY and JOHN BRAND examine the draft Labour Relations Bill published earlier this year

assessors. In entertaining representations, gathering facts (not least about questions of feasibility) and drawing conclusions, the commissioners would do more than just educate themselves; they would stimulate a debate that would educate others and win for their ultimate proposals a broader measure of acceptance.

At the outset the Minister spoke of establishing such a commission. Why he jettisoned the idea is unclear, but he seems to have been stampeded by the unexceptional but highly publicised strikes of last year into believing he must be seen to "do something".

Whatever the reason, the results have been unfortunate. Operating in secret, under pressure of impossible deadlines, the drafting committee has wasted effort on detail that should properly have been expanded on principle. To obtain basic information it has had to rely largely on a network of personal contacts, and in formulating its ideas it has been forced back on intuition and guesswork. So much seems clear from the explanatory memorandum to the Bill, which, eloquent though it is, contains little on the needs of the parties themselves, quite a lot that is unproved and sometimes very tendentious, and scarcely a fact or figure on matters of feasibility.

In short, a process that was ill-conceived in its origins and opaque in its operation has produced a product that, though superficially attractive, is increasingly revealing its flaws.

The National Economic, Development and Labour

Bill will generate. Moreover, in the course of trying to make the system work quicker and better, the drafters have cut corners in ways that have compromised the system.

In particular, the drafters have ruled that in dismissal cases and many others, the claimant shall henceforth have only one bite at the cherry. Although irregularities will be reviewable, there will be no appeal on merits.

In our law there are precedents for this: there is, for instance, no appeal from the decision of the small claims court. But dismissal disputes are not small claims — their outcome can have major consequences for both employers and employees. By sacrificing the right of appeal, the drafters have seriously undermined our current system of industrial justice.

These defects, significant though they are, might yet be tolerable if the system were workable and affordable. But it is not.

At present we simply do not have the people with the expertise to staff it and, even if we did, we do not have the money to pay them. At a conservative guess, we think that the system will cost an extra £200m a year. We may be wrong, but the sums have yet to be done that will prove us so.

This Bill goes far further than any other of which we are aware. The remedies it proposes may work for a while but as they gradually collapse, the results will become increasingly painful.

Employers will discover that they are at the mercy of unions that opportunistically exploit the powers conferred on them for purposes that are no longer achievable. Individual workers will wonder what happened to their job security rights.

Serious industrial conflict will result, with consequences for the economy that are hard to overestimate.

(166) BD 26/4/95

# Corporatism gives workers their biggest say

Industry participation is the key

IN THEORY, there are three ways in which SA's labour law might be reworked, by tinkering with what we have, by deregulating in the manner of New Zealand or by moving towards greater corporatism — the system in which the enterprise is regarded as a composite whole whose elements, potentially in tension, are reconciled by means of consultation and consensus.

In practice, there is no choice but the last. Corporatism gives workers, on whom (of course) the ANC-led government relies significantly for support, the greatest say in their working lives. And it is probably the only means by which a bridge can readily be built between races in the work place.

Corporatism's great virtue is that it encourages integrative problem solving (in which the emphasis is on increasing the size of the cake) rather than the distributive bargaining (which is all about cutting up the existing cake) When it works properly, it creates a consensual relationship between management and labour. At its best it replaces adversarialism with co-operation, unilateralism with joint problem-solving and exploitation and oppression with a co-determinative, mutually respected partnership. Vo-

luntary participation is the key. Corporatism will sometimes fail to deliver consensus and, in a society as divided as ours, the failure will be frequent. When this happens, the parties must be able to fall back on collective bargaining processes.

To compel collective bargaining may be desirable, but it is difficult. Compelling the integrative sort of problem solving that corporatism excels at best and at worst may cause considerable harm to the voluntarist structures that are steadily beginning to emerge in this country.

At the heart of the problem is the drafters' failure to appreciate that integrative problem-solving is separate from (and, we must stress, superior to) collective bargaining. They collapse the two into a single, hybrid, structure, that does the task of neither properly. Look how they go wrong:

□ Entry into the workplace forum system is not purely voluntary. Though the representative union has a choice in the matter, management has none: it must participate in the system.

□ The forum consists of worker representatives only. Management is not in the forum, but is forced to deal with it.

□ Even though the forum is under-inclusive and inflexible, although registered unions have the right to nominate candidates, other unions do not.

□ Topics for resolution within the forum are not set by agreement between the parties, but from above by the state. Management can find its power to act is subject to stay or veto by the union. The union can find its freedom to strike curtailed, and

□ The system is one-sided. Management has the duty to disclose all information — even information of a confidential nature — that may have a bearing on the matters being dealt with in the forum. It also has a duty, in certain circumstances, to consult with the forum with a view to reaching consensus (read "bargain in good faith") and to submit to its veto. No such duties are cast on the union or other delegates in the forum.

By these expedients the drafters no doubt hoped to mollify the trade unions, which cling to adversarialism for fear co-operation may lead to co-option. The hope, it seems, was still-born.

Ironically, the system in effect produces the very consequences that they are demanding: a duty to bargain at

plant level. Though it has some of the trappings of corporatism, the workplace forum will in practice be no more than a sophisticated and more powerful version of the shop stewards committee. As the majority union uses it to fight battles that have been lost elsewhere, it will become yet another bargaining forum whose proceedings are characterized by aggressive bargaining across an adversarial divide.

In the explanatory memorandum, the drafters say they have rejected the concept of a duty to bargain. In fact they have done no such thing. The provisions for the creation of workplace forums create just such a duty. After defining the bargaining constituency as the workplace, they give representative trade unions the statutory power to create a bargaining agent with which the employer must negotiate over specified topics. Going far beyond what the court currently demands, the drafters give this agent a power to veto or retard implementation of certain (unspecified) managerial decisions.

This is compulsory bargaining in full force. If unions recognised it as such, they would welcome it with open arms. Whether centralised bargaining is

good or bad is an important question, but one that is off the agenda. We have had a system of this sort since the mid-1920s and no one in power today would dream of dropping it. On the contrary, they want it extended.

The drafting committee tries to give effect to this aspiration — it could hardly do otherwise. But the system it proposes actually goes into reverse. For example, under the current industrial council system, an agreement can be made binding on non-parties if the parties to it are representatives of the interests it — the agreement — will cover. Under the new system, agreement can be extended only if they have the support of parties who represent the majority in the industry as a whole.

The change significantly restricts the scope of centralised bargaining. If the present proposals become law, opponents of centralised bargaining will retain the power to frustrate centralised bargaining and place its continuance in jeopardy. Some may rejoice at this, but the people in power at the moment are most certainly not among them. Centralised bargaining is one of the pivots of the RDP, so much is expressly stated in the plan itself.



Builders picket for improved working conditions and higher wages.

# Next round for Labour Relations Bill

ESTHER WAUGH

POLITICAL CORRESPONDENT

CAPE TOWN — Labour, business and the Government begin the first round in a series of negotiations on the Labour Relations Bill next week.

National Economic, Development and Labour Council (NEDLAC) executive director Jayendra Naidoo would not anticipate any crunch points in these discussions but conceded

there would be "tough talking". Only after consensus had been reached in NEDLAC would the Bill go to Parliament.

Naidoo said in an interview this week he believed talks on the draft legislation would be an early acid test for NEDLAC. "The way the discussion will go will show what is possible on consensus bodies," he said. More than that was anticipated

had been spent on setting up the structure. "We have reached a point where we have an office, half of the staff has been employed and we are almost ready to roll."

Another focus has been preparing an agenda for NEDLAC with each party canvassing priorities within their own ranks and thereafter reaching agreements on priorities. "We have a workable programme,

with the parties ready to get into serious business," he said.

While NEDLAC is getting down to work, the business community has not yet agreed on who would represent it in the forum. But Naidoo argued that "the terrain has changed, post-elections, for business as well as labour."

Small business was receiving more focus than before and consequently had more power.

And, with government policy seeking to promote small business, and particularly black business, new tensions had emerged in business, he said.

Trade unions, on the other hand, had also undergone a change by including white workers and white-collar workers. "The rules of the game and the players have changed. Substantial readjustments will have to be made."

(166) Shaw

29/4/95



# New labour Bill to go forward - Mboweni

(1bb) STAR 3/5/95

■ BY PATRICK BULGER  
POLITICAL CORRESPONDENT

Cape Town — The Cabinet would send new labour legislation to Parliament for approval this year even if labour and business could not agree on key aspects, Labour Minister Tito Mboweni said yesterday

Speaking at a media briefing at which he unveiled a four-year programme of action for his ministry, he said the Labour Relations Bill published earlier this year would be passed during the current session of Parliament

"If the social partners can't reach a decision, the Cabinet will have to take a decision on some of the key elements of the

draft in order for us to proceed"

The new legislation is intended to replace the Labour Relations Act which the department believes promotes an antagonistic relationship between labour and business

In its place, the department has put forward a model of co-operative labour relations in which labour and business jointly decide on shop-floor issues through workplace forums

Aspects of the Bill have been opposed by trade unions and business negotiating in the National Economic, Development and Labour Council.

Mboweni, however, said the Bill was not "cast in stone"

"It is meant to be changed and

rephrased, and put in a way which would be acceptable to the social partners

"My reading of the situation so far is that we are well on course to be able to finalise a Bill and submit it to Parliament before Parliament completes its session for 1995"

He welcomed a statement by Cosatu general secretary Sam Shilowa that the labour federation supported the concept of workplace forums, saying this was contrary to Cosatu's earlier stance

Other aspects of the programme of action announced by Mboweni include a Comprehensive Labour Market Commission co-chaired by ministerial special

adviser David Lewis and Gencor human resources manager Moss Ngoasheng to formulate proposals to create jobs and end discrimination in the workplace

The commission will attempt to give substance to the employment-creation objectives of the Reconstruction and Development Programme. A discussion paper on proposals for affirmative action will also be released within the next few months

A programme to restructure the National Training Board and the industry training boards will also be put in place

Other aspects include developing a vocational counselling policy and restructuring the Unemployment Insurance Fund

# Labour lawyer slates aspects of draft Bill

#7 (166)  
BD 4/5/95

ERICA JANKOWITZ

**EMPLOYERS** would have to grant striking workers existing benefits — including housing subsidies — in terms of the draft Labour Relations Bill, which placed an unfair strain on businesses experiencing industrial action, Johannesburg-based labour lawyer Zenwill Lacob said.

In a comprehensive critique of the Bill, Lacob described the current draft as being weighted unfairly in favour of striking employees. Firstly, employers' only remedy for a strike which could lead to the economic demise of a company, would be to employ temporary labour.

As employers had to continue with benefit provision for the duration of any strike, they had to bear an unfair burden of industrial action.

"I believe that an employer should be relieved of this obligation entirely or at the very worst after a short period of time," Lacob recommended.

He said the remedy provided in the Bill — that costs could be recovered from striking workers — would in all likelihood lead to further industrial conflict. He felt this was impractical as past experience had shown employers attempting to recover expenditure from workers were unsuccessful.

While supporting the right to strike and the Bill's provisions to protect striking workers from dismissal, Lacob warned that an unfettered right to strike — or for employers to lock workers out — could have disastrous results.

He criticised the Bill's silence on how employers may give effect to their right to dismiss strikers for their conduct during a strike or in terms of operational needs of the business.

Lacob felt this silence called the effectiveness of these provisions into question.

He believed the period of 32 days from threatening a strike to being able to embark on industrial action was too short for parties to have sufficient time to resolve disputes. Lacob suggested an extension of this period.

The Bill's provision for sympathy strikes was unacceptable in Lacob's view as "innocent third parties" should be protected from disruption due to issues completely unrelated to them. Sympathy strikes, if allowed at all, should, he believed, be restricted to a very limited period of time.

Lacob slated the Bill for its application concerning domestic workers. As the draft currently stood, domestic workers would be entitled to hold a union meeting at an employer's premises, be granted time off for union matters, engage in consultation or bargaining with an employer and demand disclosure of the income of an employer.

"Quite apart from the fact that I believe that these obligations are unreasonable, I do not foresee the possibility of their being properly administered by anybody," he said.

# Labour Bill heads for a battlefield

(166)  
ST(BT) 7/5/95

A MIGHTY battle between organised business and labour looms after the parties this week tabled sharply divided positions on the Labour Relations Bill.

The positions were tabled at a tripartite Nedlac forum in response to the Bill drafted by Professor Halton Cheadle and released for comment in February.

Business supports the framework of the Bill but rejects much of its detail in a 13-page document.

Labour stance is more hardline. A business source described labour's position as "a fundamental rewrite of the philosophy of the Bill."

Organised labour, representing Cosatu, Nactu and Fedsal, wants bargaining councils established by law in each industry.

Unions with 30% membership will be entitled to bargaining council representation.

But while labour wants compulsory centralised bargaining, Business South Africa (BSA) argues for "voluntary" collective bargaining.

"The level at which collective bargaining takes place should be left to and reflect organisational circumstances in the sector con-

By KEVIN DAVIE

cerned," says BSA.

There are also sharp differences on workplace forums, an innovation backed by Labour Minister Tito Mboweni to improve shop floor communication.

Labour wants the forums to be an extension of the trade union, with workers being represented by the shop steward's committee. Business wants voluntary forums open to all employees. While the Bill says the forums should be requested by the union, BSA says employers, supported by employees, should be able to form forums.

While the Bill proposes an independent body to decide on exemptions from bargaining council agreements, labour wants the council itself to decide.

"The proposals in the Bill on the extension of agreements to non-parties fall away because all employers will be party to the industrial council," says organised labour.

Business is against closed shops, arguing for the freedom to disassociate, but labour favours a 55% vote ensuring a closed shop, sub-

ject to ballots every five years to ensure representivity.

Labour says the parties at Nedlac should put a joint proposal to the Constituent Assembly to ensure the new Constitution does not prohibit closed shops.

BSA says the terms of reference given to Professor Cheadle were "too narrow to meet the demands of future labour legislation".

It says Nedlac will have to consider whether the Bill permits discretion in the labour market and encourages the flexible utilisation of capital and human resources.

BSA says sympathy strikes should be prohibited because the right to strike is entrenched. It also says there should be no requirement that wages are paid during strikes and employers should be able to employ replacement labour.

Labour says "scab labour should not be permitted during procedural strikes".

The Bill, which is intended to be agreed at Nedlac by mid-year, and be passed into law by year-end, now faces tough negotiations with some participants expressing doubt that the mid-year deadline will be reached.

## Give flexibility a stretch

BUSINESS, faced by the opening up of the economy, wants a flexible labour market.

Labour, surrounded by unemployment and employers under pressure to reduce costs, wants powers such as centralised bargaining and the extension of agreements to non-parties.

It backs its case by pointing to extreme income inequalities.

In another context, the authors

### COMMENT

of proposed new competition policy, say redistributionist goals should not be attempted through competition law. When you allow certain parties guaranteed access to markets, corruption and inefficiency are never far behind.

The government can play a role through service provision and sup-

port for emergent entrepreneurs. But upliftment goals are best achieved through the Budget and not special powers in the market place.

Labour has every right to bargain. Artificial power in the job market might mean some high-priced jobs, but by far the better route will be higher growth from a more flexible labour market.

Kevin Davie



# R1m spent on Labour Bill

CT 26/5/95

LABOUR Minister Mr Tito Mboweni said yesterday the government spent over R1 million to prepare the Labour Relations Bill. His department contracted eight lawyers for six months.

**Labour Bill cost  
over a million**

~~AP~~ ~~Star~~ 26/5/75  
Labour Minister Tito Mbowem said yesterday the Government had spent more than R1-million in preparing the Labour Relations Bill. Eight lawyers contracted to the Department of Labour had charged R966,629 — Sapa.  
(166)

# Parties outline their responses to the draft Labour Relations Act

**GOVERNMENT, labour and business** tabled their responses to the draft Labour Relations Act yesterday and appointed a negotiating team to continue the process of reaching consensus within the labour change of the National Economic, Development and Labour Council (Nedlac).

At a subsequent news briefing the parties highlighted differences on centralised bargaining and the duty to bargain and the operation and structure of workplace forums. Strike law would be an area of concern for all parties.

Labour co-ordinator Ebrahim Patel said

the union movement was opposed to centralised bargaining being determined by a power struggle and wanted the establishment of bargaining councils as had occurred in the public sector.

Business spokesman Adrian du Plessis said the level at which bargaining took place should be determined freely by the parties and the Bill should not encourage or discourage collective bargaining.

Government spokesman Les Kettleidas said the state wished to promote collective bargaining at central or industry level.

Patel said workplace forums should not

be established only at plant level, but "workers should have representation in corporate structures".

Workers should have representation on company boards which would fundamentally transform decision making. "If pension and provident fund boards have 50/50 worker and management representation and they operate effectively, why not at company level," he said.

Du Plessis said business was not opposed in principle to workplace forums but was

concerned about their prescriptive nature, how they would be formed, their structure and agenda items. "Agenda items should be left to the discretion of the parties."

Kettleidas said experience in other countries had shown that restructuring the workplace was successful when labour and management opted for participative structures to reach agreement on such issues.

Gosatu did not comment on other areas of concern. But it is understood that business is concerned about the economic effects of strike action and the Bill's lack of clarity in specifying whether dismissals

## Labour

BD 5/5/95

From Page 1

Kettleidas said government was committed to directing resources to promote the effective conciliation of disputes to lessen the effects of costly strikes.

On compensation for unfair dismissals, it appears that business is not opposed to supporting the introduction of a maximum ceiling of 24 months on the amount claimed.

It is believed that Gosatu has recently revised its position on dismissals while business is considering the introduction of a six-month probationary period during which an employee can be dismissed without protection from the law.

Du Plessis said although the draft Bill was a "competent piece of legislation", the terms of reference of the ministerial task team were too narrow to meet the demands of future labour legislation.

In considering the Bill, business had to consider its implications for the broader economy. The success of the Bill would ultimately be judged on whether it achieved

BD 5/5/95

From Page 1

economic growth, foreign investment and employment creation.

Patel said the Bill's effectiveness had to be checked against whether it empowered workers, helped to rectify the unequal distribution of resources and income, promoted worker rights and protected the rights of retrenched or dismissed workers.

The challenge, he said, was to ascertain whether the Bill "transformed social relations and promoted economic growth".

Kettleidas said the Bill represented a broad mandate to seek consensus on transforming society and to give effect to many aspects of government policy.

He appealed to all parties to negotiate in a constructive manner to reach consensus on legislation which complied with international standards, met the reconstruction and development programme's objectives and the constitution's provisions.

The negotiating team is scheduled to meet next week to continue with its task of reaching consensus.

are an option when a procedural strike threatens the viability of a business.

Protection of workers on strike to promote socioeconomic interests is opposed as well as the removal of union obligations to hold strike ballots.

In line with its view that the Bill should not be too prescriptive, business is opposed to Nedlac deciding on the amount of severance pay for workers in the event of retrenchments, as well as the role played by the Commission for Conciliation, Mediation and Arbitration in resolving disputes.

To Page 2

# Examine it closely (166) FM 24/3/95



**Brian Bleazard, a partner at Werksmans Attorneys, sees pitfalls in the new Labour Relations Bill**

The new Labour Bill deserves careful scrutiny and comment (which is invited), as it will affect the lives of all South Africans once it becomes law

Businesses especially need to look closely at its wide implications. Unions that do not enjoy majority support at a company will be deprived of funding, which will go to the majority union through the new agency shop provisions

I would have expected a major object of the Bill to have been the promotion of productivity and thus the creation of more jobs. But the emphasis is on job retention and the enhancement of worker and union rights at the expense of productivity and new jobs.

The Bill unashamedly takes fundamental rights away from employers and places them in the hands of "commissioners" who are vested with draconian powers to decide the fate of many a company.

A representative union at a company which employs 100 or more workers can demand a workplace forum. Its terms shall be either by agreement or as set out in the Bill, which provides for monthly meetings between the forum and management to discuss the financial and employment situation of the company, its expected performance and any matter which affects employees.

The final agenda is left to the National Economic Development & Labour Council. The Bill, however, recommends that it include "investment decisions, corporate structures, product development plans, personnel planning, guidelines for hiring, transfer, promotion classification, introduc-

tion of new work networks, changes in the organisation of work" — and more.

If deadlock is reached the matter will land up with the commissioner, who will decide whether the employer can introduce changes like a new production technique

Meetings of workplace forums will take place during business hours and worker representatives "shall be entitled to take reasonable time off during working hours with pay to perform (their) functions and to undergo training" The cost of all this will be borne by the employer

The concept of "reasonable" time off for various activities permeates the Bill. What a shop steward considers reasonable seldom coincides with what his or her supervisor or employer believes is reasonable.

In a workplace of 1 000 or more employees there will be a full-time workers' representative for every 100 employees. The effect of all this will be to delay and (if the commissioner so determines) prevent any unpopular management proposal from being implemented The ramifications of such intervention in the running of a business are manifest and highly prejudicial — especially to shareholders, who seem to have been forgotten in this equation.

If, after much debate, you find that a division of your business is unprofitable, you may decide to sell it If, that is, you can get past the workplace forum and the Section 92 provision that the prospective buyer must take over *all* your employees, rights and obligations Accordingly, the attraction of any synergistic benefits to a prospective employer will be lost.

Even on insolvency, the contracts of employees are "automatically" transferred The effect of this is that the incentive to buy a business as a going concern is lost and the opportunity to retain a portion of the workforce also vanishes.

No ballot is required before a strike This is justified on the basis that: "Ballots provide fertile soil to interdict strikes and to fortify the dismissal of strikers in strikes that are technically irregular but otherwise

functional to collective bargaining"

Is it wrong to interdict a strike where it is clear that though the union maintains a majority voted in favour, it is found by an independent mediator not to be the case? The authors wish to avert such "technical" problems To me this supports the view that the Bill lends itself to abuse by union firebrands, is undemocratic and will escalate violence where there is a conflict within a union over striking.

Then there's the question of sympathy strikes, in terms of which employees in other companies can give their employers 48 hours' notice of their intention to join a strike at another company. Such sympathy strikes are legal and protected

An employer cannot approach the new Labour Court to restrain an employee from participating in an *illegal* strike unless 48 hours' notice is given.

Picketing is permitted outside the premises of an employer by members of the union and its "supporters" in any area "to which the public has access." This would seem to conflict with the rights of a landlord.

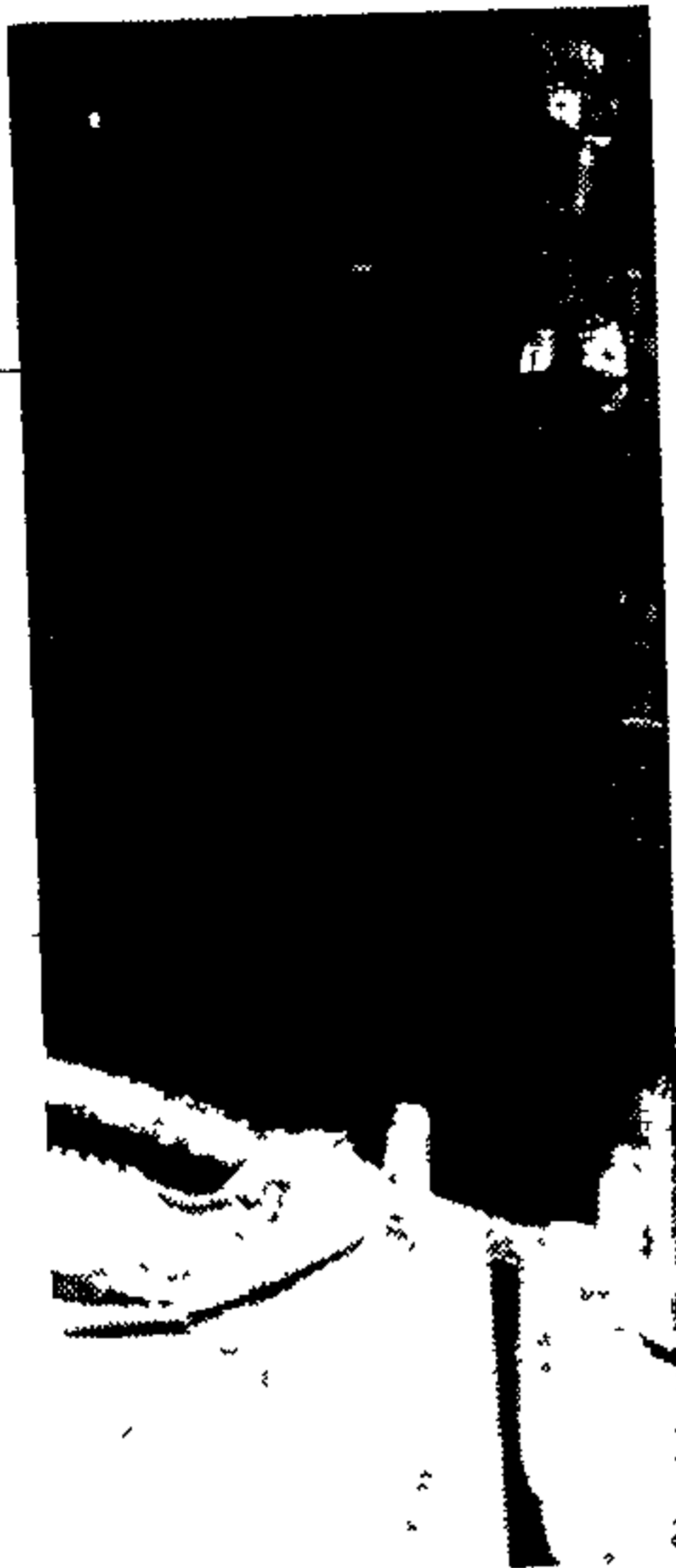
It would appear from Section 49 (2) that where an employee is accommodated by his employer as part of his service conditions, he shall continue to be so accommodated at his request until the end of the strike. In such circumstances, it appears, use of alternative labour is just about impossible.

When it comes to dismissals, employers can throw out the sophisticated disciplinary procedures commonly used and adopt informal procedures If the dismissal is unfair, an arbitrator will decide the issue without a formal record — and there is no appeal The preferred remedy is reinstatement.

There are many other aspects of the Bill which require scrutiny and where vague phrases such as "reasonable" abound.

Management and unions both need to take a hard look at this legislation, which has the potential to retard growth, social justice and labour peace

You have until April 30 to submit recommendations. I suggest you do



University. Workers have begun a  
workers and withdraw disciplinary  
Picture NICKY DE BLOIS

## Cosatu has misgivings over workplace forums

(166) RENE GRAWITZKY and ALAN FINE

WORKPLACE forums envisaged in the draft Labour Relations Bill are running into opposition among significant elements within Cosatu. **BD 7/3/95**

This emerged at a briefing given by drafting team head Halton Cheadle to the National Labour and Economic Development Institute, Cosatu's policy research arm. The forums would give employee representatives the ability to influence business decisions.

Sources at the briefing held late last month said a number of union leaders feared workplace forums could undermine unions because they were not union structures. All employees at a particular plant would be represented. They also feared the committees could be used to "co-opt" worker leaders as was attempted with liaison committees in the 1970s.

Because of such fears, the drafters of the legislation recommended that forums could be established only if union representatives at the firm approved.

NUM assistant general secretary Gwede Mantashe yesterday acknowledged there had been debate on the issue, but said this was in its initial stages. He believed larger unions like the NUM and Numsa, which already had experience with such forums at Eskom and VW, among others, would support the legislation.

Numsa's Chris Lloyd said discussions had not been finalised. However, the union was concerned about the proposal regarding the possible separation of negotiations on wages and productivity as "one cannot separate wealth creation from wealth distribution".

## Union in talks on metal industry productivity

~~1891~~ **BD 7/3/95**

A FRAMEWORK document on productivity in the metal industry is in the process of being finalised between Seifsa and the National Union of Metalworkers of SA (Numsa).

Numsa's Chris Lloyd told a recent conference at Wits University the 1992 metal industry strike coupled with the threat of international competition required a different strategy on the part of the union.

This resulted in the decision to enter into discussions on productivity.

He said although discussions were taking place, debate continued within the union on whether that approach was ideologically sound.

The framework document was intended to promote and facilitate the negotiation and implementation of productivity agreements at plant level. The document was not intended to be prescriptive or binding on parties to the industrial council, he said.

It was intended to encourage employers, trade unions and employees to enter into discussions at plant level. Seifsa believed that talks on productivity could take place by mutual consent between

**RENE GRAWITZKY**

employers and employees, irrespective of whether the union was present. This was contrary to the draft proposals for the establishment of workplace forums in the negotiating document on the Labour Relations Act which states that the forum has to be triggered off by a representative trade union.

Lloyd said one of the fundamental problems facing the metal industry was the unions' and managements' lack of knowledge and understanding of discussions around workplace change and other factors affecting the industry.

Seifsa executive director Brian Angus said real change could take place at plant level only where management and employees could together work out what particular changes to work organisation were necessary.

Parties in the proposed productivity bargaining forums would trade off improved benefits for improvements in productivity, he said.

Productivity improvements would become evident when this occurred, Angus said.

Teachers' computer literacy encouraged

# Size does count

WWM 24/2-2/3195 (166)

The emphasis on the big and the powerful is a worrying trend in the new Labour Relations Bill, report Dawie Bosch and Darcy du Toit

THE draft Labour Relations Bill, published this month, introduces many welcome innovations, including possibilities for co-operative management and clear basic worker rights. However, it also contains many provisions which discriminate against the unorganised, excludes smaller enterprises and ignores the realities of certain sectors such as agriculture.

The question can be asked, is this a step towards a deal between big unions and big business, with connivance of the state, still to be solidified later this year at the National Economic Development and Labour Council (Nedlac)?

A major concern is that collective bargaining may effectively be limited to the minority of enterprises where employers voluntarily agree to negotiate, or are forced to negotiate through industrial action or the threat of industrial action.

In present labour law, employers and unions have a duty to negotiate. This duty will now be removed. The drafters' explanation that this is due to difficulty to define who owes the duty to bargain is not convincing. The removal of the concurrent right to negotiate may be unconstitutional and could reintroduce the stale disputes of the early 1980s around employer refusal to negotiate with a representative union, especially in newly organised sectors.

Another concern is that the only collective

bargaining structures provided for in the Bill are sector bargaining councils (replacing industrial councils). Nedlac will vet the sectors for which bargaining councils may be registered, and will probably force a national sector-wide approach. Where levels of union organisation are generally low, no such council can be established. No alternative mechanism, which could entice reluctant employers in these sectors into a broader (multi-employer) collective bargaining dispensation, is put in place.

The Bill seeks to shift from adversarialism in the workplace to co-operation, shared goals and joint decision-making. This is a crucial step to achieve the reconstruction and development programme (RDP) aim of a balance between higher productivity and improved efficiency on the one side, and equity and social justice on the other.

Unfortunately, the provisions exclude the lion's share of the economy. The proposed workplace forums will be available only

● In workplaces where more than 100 workers are employed. Workplaces refer to each separate establishment of an employer. This threshold excludes more than 74 percent of the work force. The sectors that are excluded are not economically insignificant: they contribute 58 percent of the gross domestic product (figures from SBDC).

● Where a majority union requests its establishment. Seventy-five percent of the economically active population do not belong to unions. The percentage of workers who do not belong to majority trade unions in specific workplaces will be much bigger. Taken together, these requirements mean that probably more than 90 percent of workers are excluded.

What can the reasons be for this limitation? In other countries where similar systems have been highly successful, there is a much lower threshold — for example, five workers in Germany and 35 in the Netherlands. It can be argued that it may be easier to establish a truly co-operative work ethic in certain smaller businesses than in big plants where workers may be alienated by the size or production methods.

Another concern is the timid approach of the drafters in their proposal to the new co-operative model, as reflected in their accompanying memorandum. In the countries mentioned, worker participation is regarded as a public good, and is boldly encouraged by the law. Costs to the employer can be tailored to the smaller enterprises' circumstances, as happens in these countries. It is an invalid reason for excluding them.

Less-than-considered approach to unorganised workers is reflected in a number of provisions. An example is the requirement that a worker who challenges an alleged unfair dismissal can be represented by a trade union official only. What if he happens to be one of the 75 percent of workers who do not belong to unions — for example, because unions do not organise their sector due to the small size of their enterprise?

Representation by para-legals (such as advisers of advice centres) and lawyers are excluded. Were this worker a farm worker, his chances of union representation would be less than one in 20. Significantly, most of the few farm workers who have been able to challenge unfair labour practices in court this past year were assisted by para-legals, not by unions.

A few other examples of the apparent bias against the unorganised or workers in small business

● Picketing is allowed, only with authorisation of a registered trade union. It makes more sense to allow workers to vent grievances than to bottle them up, even where workers are unorganised.

● In workplaces with less than 10 trade union members, workers are not entitled to elect a shop steward (referred to as a "trade union representative"). This means they are excluded from most shop steward rights.

● Organisational rights (such as a right to access to the workplace, to information, and to have membership fees deducted from the workers' wages) are subject to achieving as-yet unspecified thresholds. Nedlac must still determine these thresholds, and its decision will be an indication as to whether new organisation will be facilitated in the new dispensation.

While many of these provisions referred to above can be amended, the trend to exclude workers who do not belong to majority trade unions and who work in smaller businesses is worrying. The Bill that will emerge from Nedlac, after public comment and hard bargaining between the big players, will be

● Probably more than 90 percent of workers are excluded from the workplace forums

tested not only by what it achieves in highly organised core sectors, but also in the broader labour community.

President Nelson Mandela said at the launch of Nedlac that it is not a "cosy deal-making body representing the powerful and well-organised against the weaker of our society". It remains to be seen whether Nedlac — and the new government/labour establishment — can deliver a socio-economic and labour pact that benefits most of South Africa's people.

Dawie Bosch is a senior researcher at the Centre for Rural Legal Studies. Darcy du Toit is director of the Centre for Social Law, University of the Western Cape.

# Inclusion of workplace forums in Bill welcomed

BD 23/2/91 (166)

ERICA JANKOWITZ

WORKPLACE forums as outlined in the draft Labour Relations Bill will dramatically erode management prerogative, but the alternative is continuing ungovernability on the shopfloor, says SA Labour Bulletin consulting editor Karl von Holdt.

Speaking at an SPA Consultants conference last week, Von Holdt welcomed the inclusion of workplace forums — or “co-determination” — in the Bill, but warned there were some shortcomings in the draft.

“In the first place, the Bill fails to specify which areas of a company’s operation are subject to the requirements of information disclosure, which areas are subject to the requirements of consultation and which are subject to the requirements of joint decision-making.”

Von Holdt felt the drafting team had been unable to reach consensus and had therefore left the decision to the National Economic, Development and Labour Council (Nedlac), the statutory tripartite body launched at the weekend.

“I would anticipate a high degree of employer resistance to these inroads into managerial prerogative, and the result may be that Nedlac is unable to reach consensus or can only

reach consensus on a watered down version of co-determination.”

Von Holdt criticised the Bill for not providing for financing development and training for both worker and management representatives to workplace forums. Both sides would be expected to debate a range of complex technical and financial issues and would have to develop the required expertise.

In Germany, this was financed through a payroll tax which covered training expenses and fees charged by experts called in to advise workers on issues under debate.

Von Holdt said unions might feel threatened by workplace forums unless officials were statutorily permitted to attend forum meetings, as was the case in Germany. He called for explicit provision to overcome this concern.

He also criticised uncertainty about the relationship between workplace forums and collective bargaining over substantive and distributive issues. Other countries overcame this problem of demarcation by holding negotiations at national or sectoral level, but in SA few centralised bargaining forums existed.

Having two bargaining forums at a single workplace could cause confusion for all concerned, with the stronger of the two — workplace forums — inevitably squeezing out the other.

Von Holdt stressed the problem of performance-linked pay, which linked co-determination issues — productivity, quality, efficiency — and distributive issues — wage increases and bonuses.

He believed unions would be concerned about losing their independence through participation in these forums and having to take responsibility for decisions. But, on careful consideration, they would realise their value in reshaping decision-making and improving the quality of working life.

Employers, on the other hand, would probably resist inroads into traditional managerial prerogative which had allowed them to govern workplaces alone.

“However unpleasant managers may find the experience to be, at least initially, this is likely to be the only way to overcome the crisis of workplace relations that is the legacy of apartheid, and reach a more stable balance of power in which more long-term planning and restructuring of the workplace will be possible.”

# Ins and outs of new law governing labour

166 ST 5/2/95

**WHO will be covered by the Draft Labour Relations Bill?**

The Bill proposes that all private and public sector workers be covered by the same Act, with the exception of policemen, soldiers and intelligence officers.

**How will the Bill change labour relations?**

The current system has been harshly criticised for the "adversarial" relationship it fosters between unions and management.

The proposed new law aims to change this by making negotiation and arbitration compulsory before strikes are considered.

**Who will mediate and arbitrate?**

The Bill proposes a new commission for conciliation, mediation and arbitration, independent of government, which would attend to dispute resolution.

The commission would cut down on expensive litigation in court. Instead of going to court over dismissals, for example, unions and management will be required to go to arbitration.

**Will this mean fewer strikes?**

The Bill hopes to increase the number of disputes that are resolved through talking from 20 percent to around 70 percent — the norm in many countries. But, if it is passed this year, it will regulate only wage bargaining in the 1996 cycle.

**How will strikes under the new system be any different?**

Striking workers may not be fired, according to the Bill. This protection will only apply if the proper legal channels have been followed before the declaration of the strike. The Bill also proposes to give employers the right to lock out striking workers.

**What about this year's wage talks?**

Although it will not be legally in



## Question TIME

force this year, the Bill will be the subject of intense negotiation by trade unions and business organisations

Labour Minister Tito Mboweni has expressed the hope that the spirit of the new Bill will rub off on wage talks, leading to a better relationship

**What do the unions think of the Bill?**

Cosatu has welcomed the entrenchment of the rights of workers to organise, bargain collectively and strike with protection from dismissal. It has cautiously welcomed proposed workplace forums and the proposed new system of mediation and arbitration

But Cosatu has indicated it is not happy with provisions on centralised bargaining and the right of employees to lock out striking workers

**And business?**

Business South Africa's David Brink welcomed the Bill, but added that business would "measure whether the legislation contributes to economic growth, international competitiveness and job creation"

**What happens now?**

The Bill will be discussed by business, labour, government and civic organisations in the soon-to-be launched economic, development and labour council. A revised version of the Bill is expected to be formally tabled in Parliament during this session.

**RAY HARTLEY**



*Shop-floor power struggle begins*

(16b)

Star 8/5/95

# Business, labour lock horns on Bill

BY JUSTICE MALALA  
LABOUR REPORTER

Labour and business representatives are expected to engage in fierce battles as the first real negotiations on the draft Labour Relations Bill begin this week.

Both stakeholders will battle to try to ensure that the new legislation, drafted by a ministerial task team led by Professor Halton Cheadle, tips the balance of power on the shop floor to their advantage.

The negotiations will be conducted in the labour market chamber of the National Economic Development and Labour Council, which comprises representatives of organised labour and business.

Labour and business leaders said after the first meeting of the chamber last week that no fundamental differences had appeared in their positions.

However, views expressed by the business community and labour leaders at the weekend indicate that fierce struggles lie ahead.

Areas of the Bill which will

**WHO IS going to get the upper hand?**

**Labour and business are poised to start the jockeying, and it could be a lengthy process**

receive serious attention in the negotiations are centralised bargaining, workplace forums, disclosure of information to the forums, employees' right to strike, and lockout provisions.

In documents currently in circulation among members, Business SA expresses serious reservations concerning certain provisions in the Bill.

On collective bargaining, business believes that neither the labour courts nor labour legislation ought to compel collective bargaining and should not prescribe the level at which collective bargaining should take place.

"The level at which collective bargaining takes place should be

left to and reflect organisational circumstances in the sector concerned," the document says.

Labour representative and current chairman at the negotiations, Sam Shilowa, says the law must compel employers to engage in collective bargaining at industry level "to ensure minimum standards, single integrated training programmes, technological upgrading and the closing of the wage gap".

On workplace forums, the union movement has demanded that they be widened in scope so that workers could sit on the boards of companies.

Business believes that the draft is prescriptive on this issue and should instead be flexible, saying it should not be the sole right of a union to apply for the establishment of the forum. Instead, "the right should be open to all employees and to the employer with the support of employees".

Shilowa said last week that meetings over two days would be held this week to speed up the negotiation process so that the mid-year deadline would be met.

# Labour laws that work

ST (81) 5 | 2 | 95

(166)

A MEMORANDUM accompanying the draft Labour Bill published for comment this week details a long list of reasons why the labour market has long ago ceased to function effectively.

The team headed by Professor Halton Cheadle found an unacceptably high incidence of unnecessary and unprocedural strikes. The enforcement of agreements by law is expensive, a claim of just R250 costing on average R3 000 to recover.

The Industrial Court has been swamped by applications, in Gauteng leading to a five-month delay.

Court action can drag on for years, the Labour Appeal Court recently ordering the reinstatement of 70 workers, fired five years ago, with 2.5 years' back pay. Labour Minister Tito

The task group appointed by Labour Minister Tito Mboweni has come up with proposals for legislation that may help where the old rules hindered, writes KEVIN DAVIE.

Mboweni describes the proposed system as "organised flexibility".

All employees — with the exception of soldiers, policemen and essential workers — will be covered by the new labour law.

As required by the constitution, employees will have the right to organise and bargain collectively. The right to strike is guaranteed, subject to certain limitations.

There will be compulsory, professional mediation before a strike (or lock-out) can begin. This is a strong thrust of the proposed reforms, the task team saying that conciliation boards have only settled 20% of cases.

Industrial councils have only solved 30% of disputes. In Britain and Australia mediation services have a 70% success rate.

An independent commission for conciliation, mediation and arbitration is proposed as the "centre-piece" of the new system. Disputes will have to be lodged with the commission before proceedings can be lodged in the Labour Court.

Where conciliation, mediation and arbitration fail, a dispute will be adjudicated in the Labour Court.

Professor Cheadle says conciliation should continue until it brings the strike to an end. He says improved conciliation efforts can make a

major contribution to successful dispute resolution, labour peace and economic growth.

Mr Mboweni says there may be Cabinet opposition to the cost of establishing the commission, but believes this will be money well spent.

The right to strike (or lock-out) is guaranteed subject to limitations such as the expiry of a 30-day period during which the dispute remains unresolved and that 48 hours' notice has been given.

If a strike or lockout does not conform with these requirements it can be interdicted in the Labour Court, which can also order that losses be compensated and

striking employees be dismissed.

Strikers who conform to the stipulated procedures cannot be dismissed.

The task team envisages that national matters affecting labour will be negotiated at Nedlac, the tripartite forum which will soon replace the National Economic Forum.

The draft Bill makes no further stipulations as far as industry- and plant-level bargaining is concerned. These arrangements are likely to vary from industry to industry, subject to collective bargaining between employers and trade unions.

Some sectors may opt for most issues to be negotiated at industry level while others may favour maximum devolution to the plant.

Small business will be represented on industrial councils. Exemptions from bargaining council agreements will be decided by an

independent body on the basis of hardship.

The extension of agreements to non-parties is likely to remain controversial, particularly with the growing small business lobby, which says council agreements favour large, established businesses.

Mr Mboweni says he invites small business to provide alternatives to the proposals. Professor Cheadle says commissioned research shows small business mostly objects to the bureaucracy, "incredible expense", lack of representation and criminal prosecution in the present system. The new Bill addresses these complaints.

Employees who wish to bring actions against employers will no longer be able to get the state to bring criminal charges. They will rather complain to the equivalent of a small claims court for redress.

The employer will be able to appear in person, free from expensive legal fees, to defend the case.

Professor Cheadle says the proposal to reduce the involvement of lawyers has not been popular with all his colleagues, but he strongly believes that affordability should feature in the reform package.

Workplace forums are another key new feature which Mr Mboweni would like to promote.

Enterprises employing more than 100 people can set up such a forum, so long as this is requested by the trade union. Professor Cheadle says such a request has been stipulated because most unions will potentially be hostile to these forums.

He sees them as supplementing rather than competing with trade unions.

This could be the case, but if workers perceive that the forum can better serve their interests — in productivity deals, for instance — they will undoubtedly be a threat to trade unionism.

But, as acknowledged by the team, the labour market has suffered from too many rigidities. Organised flexibility brings the potential for more creativity, for deals to be struck to meet local conditions and changing circumstances, for rules to help, not hinder



TITO MBOWENI

organising flexibility for labour



HALTON CHEADLE

a reduced role for lawyers

# Labour Relations law won't end conflict

(166) WMS-11/5/95

In his May Day message, Cosatu general secretary **Sam Shilowa** outlined the trade union movement's concerns over the new Labour Relations Bill. This is an edited version of his speech

**T**HE often-stated objective of the (new Labour Relations) legislation (LRA) is to give workers rights, minimise conflict on the shop floor and provide for the speedy resolution of disputes with simple procedures. All of these we welcome. However, a number of issues will have to be dealt with to ensure that its basic aim is realised.

**1. Centralised Bargaining:** One of Cosatu's stated objectives is to have bargaining at industry level. This helps ensure minimum standards, single integrated training programmes, technological upgrading, closing of the wage gap and so on.

The Bill purports to be encouraging centralised bargaining. However, to get it we are supposed to use our power — meaning strike action. Why should we first strike to get that which we are supposed to be getting from the Bill? We believe, like comrade President Nelson Mandela, that we should avoid unnecessary strike action. Yet the Bill encourages the use of this weapon in an unnecessary fashion by not compelling employers to centralise bargaining.

Those who talk about voluntarism must speak to workers in Ppwawu, CWIU and Saccawu among others. Employers have flatly refused the formation of Industrial Councils. In a much-publicised plenary meeting of the National Economic Forum (NEF), employers agreed that we should encourage centralised bargaining (voluntarily). Where are we? Nowhere. What has happened to the NEF agreement? Nothing! It has been thrown into the dustbin by employers.

It is obvious that we cannot leave our fate in the hands of employers. If they do not want to do it voluntarily despite their protestations of innocence, the law must compel them.

**2. The right to strike:** The Bill goes a long way towards granting workers the right to strike, by protecting them

against dismissals, allowing pickets and so on. This we welcome. However, we think that the LRA should go further. The law must ban employment of scab labour during strikes. Most of the violence (where it occurs) during strikes is due to the presence of scabs.

Judging by the positions that the South African Chamber of Business and the Steel and Engineering Industries Federation are circulating among their membership, if there is any area of outright disagreement, it is this one. As you all know, they pay only lip service to the right to strike. They do not want it. They are "scared" of this weapon. We must never allow them to limit our right to strike.

As we prepare to face employers on this front, we must also condemn those who misuse this important weapon. Through their "newfound militancy", they misuse a weapon which some of our members died for, years back, at a time when these new militants were afraid to even join stay-aways, let alone fight for their own rights.

We understand the frustration of workers with employers. We support their demands for better conditions, closing of the wage gap, implementation of affirmative action irrespective of where they stood in the past. However, we cannot condone those who use violence and take hostages. All they do is discredit the actions of workers. We support the right to strike and will fight for it to be protected and strengthened in law. However, we need to ensure that it is peaceful and procedural and that we consult with the community to ensure their support.

**3. Lock-out provision:** We cannot give employers a loaded, unlicensed gun. The Bill grants them the full use of the lock-out provision (both offensive and defensive).

We must restrict it to a defensive action, with no scab labour



In the Labour Relations fold: Members of the SA Domestic Workers' Union celebrate Workers' Day at a May Day rally at Rand Stadium

PHOTOGRAPH HENNER FRANKENFELD

If we are locked out, nobody goes inside. The only reason they use it, is because they can employ scabs. Faced with a no scab provision, they will not play with fire for they will know that fire can burn them.

**4. Workplace Forums:** For years, we have fought for workplace democracy, consultation, involvement in

decision-making and sharing of information. With the election of the new government, we have stated publicly that democracy means more than the right to vote every couple of years.

It must include economic democracy. This is only possible through industrial democracy.

You know that employers have

always refused. Instead they prefer toy telephones called "just in time", "quality circles", etc. This we reject. If there is anything new, not in approach, but in the LRA, it is the provision of the workplace forum, to be triggered by the union. While we welcome the move towards compelling employers to democratise the workplace, we do not agree with the philosophy underpinning the draft Bill. In short its philosophy is:

- Unions and shop stewards are engaged in an adversarial relationship with employers, hence the advocacy of a separation between the union and the forum, except to trigger it.

- It is fine for some shop stewards to serve on the forum, but not as a collective, since they will bring in that union conflictual approach.

- While it makes innuendos about the benefit to workers, its target is productivity enhancement and to limit issues around which workers can bargain and strike on.

- It assumes that those who are not in the union are a collective force.

Our approach is simple. We are saying:

- The composition of workplace forums shall be the shop stewards' committees.

- The agenda should exclude any matter covered by a collective agreement.

- There should be provision for multi-plant joint meetings on matters common to workers of the same holding company.

- Workers who are not members of the union can't be in the forum.

While these are not all of the issues, you can see that we are saying we will use our collective leadership to deal with employers on all issues. The employers are not restricted. They remain managers on the forum and during negotiations. We remain shop stewards on the forum and during negotiations.

As labour we are committed to a swift negotiation process. Should employers stall, we know that you will deal with them accordingly. Even if they co-operate, you must continue to apply pressure, lest they relax.



**Most Improved company** Penrose financial director Ronnie Simon with FM's Bruce and Ernst & Young's Wixley

panies are evaluated, and many have December year-ends but under the Companies Act may publish audited accounts up to six months after the year-end (some don't even comply with that requirement), the adjudication continued well into the second half of 1994

Judging is done by the BFA, under the supervision of Prof Leon Brummer and administered by senior lecturer Jean Myburgh of the university's department of accounting Unlike some awards, no voting system is applied Nor is any credit given for the design or appearance of the report or for subjective aspects such as the number of pictures or length of the chairman's review

All industrial companies' annual reports are analysed in detail, no entries are submitted for this award Points are awarded for disclosure of specified information and the full rules and points system are published in the *FM* (Companies February

25 1994)

However, the evaluation is confined to the JSE's industrial sector Mining, financial and property companies are excluded, largely because their accounts are drawn up according to a more specialised format and could not be judged according to the same rules

There may well be a strong case for extending the exercise to these sectors Large banking groups have greatly improved their disclosure but some have a long way to go

A positive message from these results, however, is that many directors do want to improve their companies' reporting standards Some steadily do this in small steps, continuing to get better as the competition rules are tightened Others make quantum leaps which take them into the Most Improved ranking Their efforts make the laggards look even more out of step ■

LABOUR LAW

# Great in theory

The new proposals seem balanced but idealistic

(166) FM 10/2/95

The essential thrust of the draft Labour Relations Bill unveiled by Minister Tito Mboweni last week is to move away from the adversarial, strike-or-litigate approach that has characterised labour relations Mboweni wants a flexible, co-operative, self-regulatory approach, more in line with that of most developed countries and attuned to making local industry competitive on world markets

That's great in principle and encouraging on paper But can it work in practice?

Spurred by Mboweni's vision and led by veteran labour lawyer Halton Cheadle, the drafters of the Bill place a great deal of faith in mediation and arbitration to resolve labour disputes and modernise industrial relations The underlying aim is growth, justice and labour peace An independent Commission for Conciliation, Mediation & Arbitration is proposed It will largely supplant the role of the cumbersome Industrial Court and should slash the huge number of strikes

However, many observers doubt that SA union-management relations are mature or evolved enough to make conciliation mechanisms work or that capital and labour will pull in the same direction The problem is that positions tend to get taken up automatically over any issue of right or procedure Some go further, arguing that mediation works only after the parties in dispute have worn each other down Yet, as labour consultant Duncan Innes observes, the international experience (in developed countries) is that conciliation procedures solve about 70% of labour disputes, compared with 20% in SA But SA is a divided

society with a less educated work force

Though there seems to be room for greater use of conciliation, perhaps made easier by political change, the indirect effects of the past continue to affect union-management relationships What further bedevils the idea is that there are sometimes radically different agendas at work (socialism, union-bashing) And then there's the unfortunate departure of many of the most skilled and seasoned union leaders from Cosatu who have taken up jobs in government

Another criticism, according to Innes, is that, having identified some of the problems with the Labour Relations Act — a hodge-podge that allows too much room for interpretation — the Bill goes on to be too prescriptive in areas such as fair and unfair dismissal and the setting up of workplace councils, which would allow for a measure

of co-determination (along German lines) at firms employing 100 or more workers.

It could be argued that this fails to take into account different cultures at businesses and doesn't allow for organisations to develop structures (which some have already started doing) more appropriate to their needs and vicissitudes

The draft Bill no longer requires unions to conduct strike ballots before striking, which seems needlessly undemocratic and even dangerous This should be rectified and can be — especially since the conciliation commission is empowered, if requested, to oversee a balloting exercise.

These are by no means fatal flaws and the opportunity exists for defects of particular concern to business or the unions to be sorted out before the "draft negotiating document in Bill form" is sent to parliament as a proper Bill to be approved later this year

Take the issue of unfair dismissal, for instance The draft Bill's simplified, even-handed proposals are a distinct improvement on the present highly legalistic, expensive and inefficient system of dispute resolution through the Industrial Court, which is to be scrapped

The draft Bill tries to accommodate a number of diverse



Cheadle, Mboweni defusing agendas

but not necessarily competing interests, as the legal task team explains. Thus dismissals which amount to an infringement of fundamental worker rights are proscribed. Secondly, it recognises the reality of long-term reciprocal commitments between workers and employers and, in particular, encourages employers and employee representatives, in consultation, to seek alternatives to dismissal in cases where retrenchment is proposed. Finally, "the efficiency of the enterprise should not be compromised by unduly onerous work security laws, since these will inhibit job creation and discourage investors."

Disputes over dismissal related to misconduct or incapacity are referred to the conciliation commission. If this fails, it may be determined by arbitration. If found to be unfair, reinstatement or re-employment is the primary remedy, unless the employee does not wish it or if a future employment relationship would be intolerable or not reasonably practicable for the employer. Dismissals due to economic, technological or structural reasons would oblige the employer to consult with a view to reaching agreement, require disclosure of relevant information, set out agreed-on criteria for selecting those to be dismissed, and entitle a worker so dismissed to severance pay of one week per year of service — a matter which, it could be argued, should be left open to negotiation. Where such dismissals are disputed, they may be referred to the commission.

Unresolved disputes concerning dismissals for invalid reasons may be referred to the Labour Court, which may order re-employment or compensation.

Straining with reasonableness, a proposed "code of good practice" on dismissal is presented which, if adhered to by both sides, could bring us closer to the promised land of labour peace.

The Bill's drafters explain that SA's re-entry into international markets and the imperatives of a more open world economy demand that we produce value-added products and improve productivity and profit levels. To achieve this, they argue, a major restructuring process is required, along the lines followed by countries such as Japan, Germany and Sweden. Management and labour must find new ways of dealing with each other.

The proposed — some will say imposed — solution is workplace forums. These are designed to bring about a shift at the workplace, from adversarial collective bargaining to joint problem-solving and participation on certain subjects. This "second channel" of industrial relations is aimed at supplementing, not replacing, collective bargaining.

Workplace forums with rights to information, consultation and joint decision-making, it is claimed, "dovetail neatly with the Bill's promotion of collective bargaining at industry level (Wage) distri-

butional conflict is moved out of the workplace and into industry-level arenas." They are seen as a counter-balance to institutionalised adversarialism, though some employers would question this and oppose inroads to their prerogative to manage.

The Bill provides for such forums to be established by the commission on application by a representative trade union at a firm with at least 100 employees. The forum's functions include enhancing efficiency and providing for worker participation in decision-making. The commission would conduct the first election for a workplace forum, thereafter, it would be by an election officer agreed to by the employer and the forum. Forums will have a minimum of five employees and a maximum of 20 and meet at least once a month. The employer shall meet the forum monthly, present a report on its financial and employment situation and consult on any issue that may affect employees. On certain matters — to be decided by the National Economic Development & Labour Council (Nedlac) — joint decision-making will be required. An agreed-on deadlock-breaking mechanism will resolve disputes over these matters.

Concerning industrial action, the draft Bill gives every employee the right to strike and each employer recourse to lock-out provided:

- The dispute has been referred to the conciliation commission or a bargaining council (which will replace the present industrial councils), and
- The dispute remains unresolved or 30 days have passed, and
- If the dispute concerns a refusal to bargain, an advisory award has been made, and
- 48 hours' written notice of the strike or lock-out has been given to the other party.

These procedures do not

apply where

- The parties are bound by a collective agreement or a bargaining council constitution which requires procedures to be followed before a strike or lock-out,
- The strike is in response to an unprocedural lock-out or the lock-out to an

unprocedural strike.

- The employer fails, despite requests, to maintain or restore existing terms and conditions of employment pending the expiry of the statutory conciliation period.

The right to strike and lock-out is limited:

- If the issue in dispute is regulated by a collective agreement or binding wage determination,
- Where the issue must be referred to arbitration,
- In respect of a dispute of right (over which an arbitration award may be made or an order by the Labour Court may be granted under the draft Bill), and
- In an essential service.

Sympathy strikes are not permitted unless they have complied with the provisions set out and the secondary strikers have given their employer 48 hours' written notice.

Unions may authorise a picket for a peaceful demonstration outside an employer's premises. And alleged infringements can be referred to the commission. The Labour Court may grant relief for flagrant breaches of the rules agreed to by the parties or determined by the commission. Acting against such breaches are one thing but more thought must be given to dealing with subtle forms of intimidation during picketing.

Strikes and lock-outs in conformity with the Bill do not constitute a breach of contract and participants are indemnified from civil proceedings. Though legal strikers cannot be dismissed for striking, an employer is not precluded from dismissing an employee for a fair reason connected with his or her conduct during the strike or for economic, technological or similar reasons in compliance with the draft Bill.

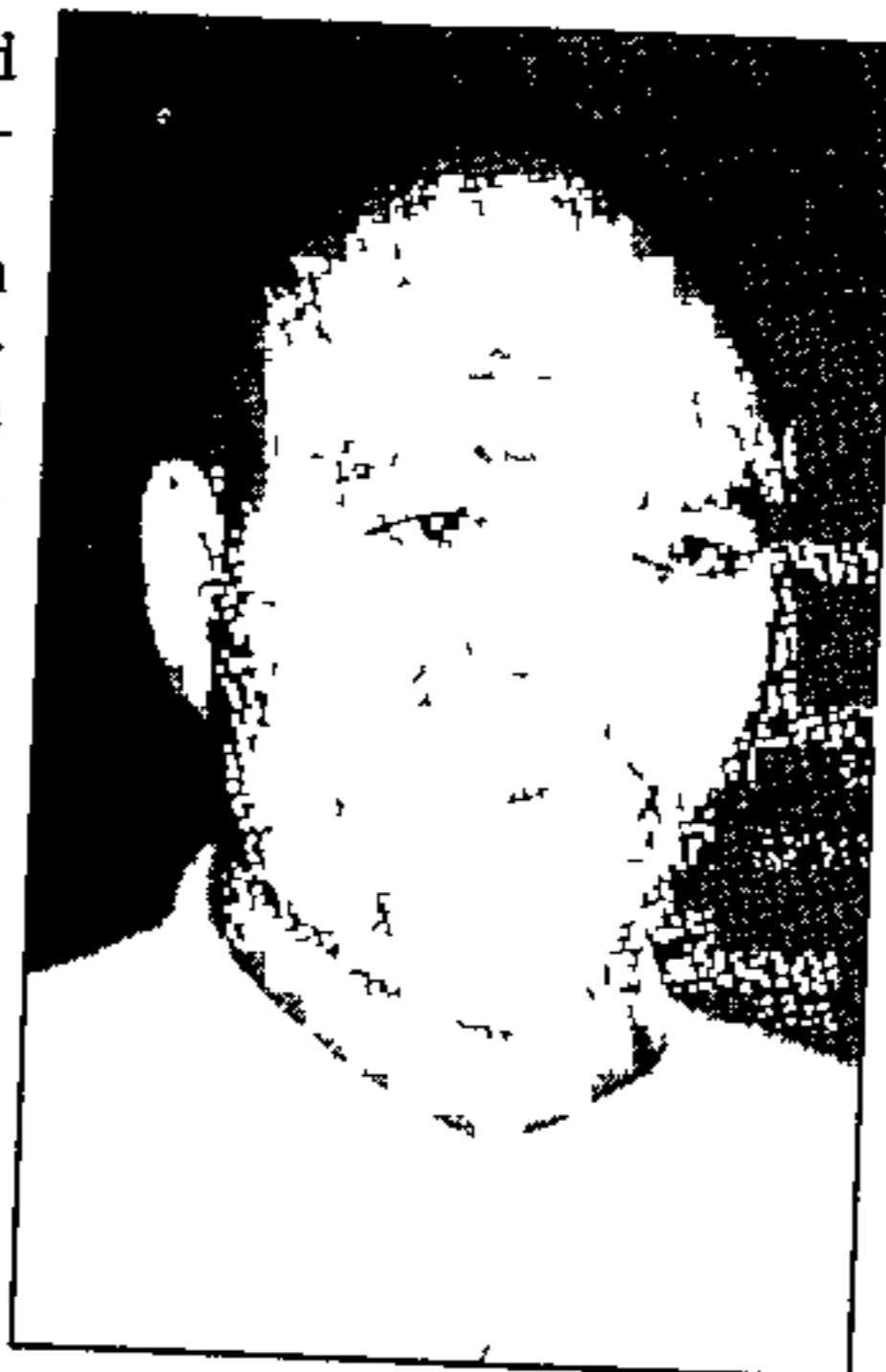
Unprocedural strikes can be interdicted by the Labour Court, which can order compensation for any loss attributable to the strike or lock-out and determine the fairness of dismissal of such strikers.

The draft Bill is a valiant, judicious balancing act which will completely satisfy neither the unions nor business. Cosatu's Sam Shilowa will scowl at the Bill giving lock-outs the same weight as strikes, affording protection to small businesses and, most of all, failing to enforce centralised bargaining in the way unions would like. But Shilowa represents a small, relatively privileged segment of the total labour force, however strategically placed it may be.

Businessmen and women are rightly concerned at the prospect of over-prescriptive legislation and unions having the protected right to strike — and drive up wages. Ultimately, Mbweni must accept this is not on if SA is to cut it in the competitive world economy. The labour market has to be loosened.



Innes



Shilowa

A - 1  
 B - 2  
 C - 3  
 D - 4  
 E - 5  
 F - 6  
 G - 7  
 H - 8  
 I - 9  
 J - 10  
 K - 11  
 L - 12  
 M - 13  
 N - 14  
 O - 15  
 P - 16  
 Q - 17  
 R - 18  
 S - 19  
 T - 20  
 U - 21  
 V - 22  
 W - 23  
 X - 24

# Union demands centralised bargaining in labour Act

(166)  
 20/5/95

RENEE GRAWITZKY

THE demand for the inclusion of the legal duty to bargain as well as compulsory centralised bargaining within the new Labour Relations Act would be the focus of a march today by members of the Chemical Workers' Industrial Union.

In 1989 the union decided to move towards establishing central forums in the petrochemical, glass, plastics, rubber and pharmaceutical sectors with the intention of forming a national bargaining council for the chemical industry.

During the union's recent congress it was acknowledged that employers were refusing to co-operate and were not taking the campaign for centralised bargaining seriously.

The union has suspended plant level negotiations and demanded that wages be negotiated at central level. Tania Rosenthal, a researcher at the sociology for work unit at Wits University, said in a presentation on the union's history last week that if it intended engaging in centralised

bargaining and industrial restructuring, unity between unions in the sector would have to be addressed.

The industry is dominated by the Chemical Workers' Industrial Union and the Nactu-aligned SA Chemical Workers' Union.

Rosenthal said despite attempts at unity talks at a national level between union leaders, antagonism between members on the ground continued.

Rosenthal said since the start of the 1990s the union had had to adapt to changing political and economic circumstances and had resolved to maintain a small and efficient union providing a better service to members.

She said the union had adopted six pillars for an industrial bargaining strategy. These included adult basic education and training, retirement funds, industry/plant restructuring, job security, bargaining on substantive issues and

health, safety and the environment.

Rosenthal identified the strengths and weaknesses which would either assist or act against the union in transition.

Strengths included the existence of an efficient administrative structure, financially sound and despite the loss of leadership a number of strategic thinkers and officials with extensive experience remained to guide the union.

Weaknesses included the loss of leadership which was not as severe as other unions but nevertheless affected the union, lack of capacity to deal with new issues which was being addressed by developing staff and building capacity of the various union structures and levels; weak state of the locals which affected attempts to build democracy in the union, loss of membership and staff and ensuring the grassroots were taken along with union officials on the adoption of important and often complex policy decisions.

Y - 25  
 Z - 26

# Bill advocates company-based negotiations on worker equity

THE Labour Relations Bill — released for comment in February — clearly showed the drafters to be in favour of affirmative action issues being dealt with at plant or company level through workplace forums and not through adversarial collective bargaining methods, industrial relations consultant Larry Palk said

Writing in the latest Employment Equity Digest, Palk welcomed this move, saying it would be inappropriate to discuss details of employment equity at central industry level except in broad terms

Palk did not rule out the possibility that conflict may arise. "The key issues in regard to affirmative action are how much, for whom and for how long"

Where employers and workers were unable to agree on how expectations and employer willingness could overlap, conflict and industrial action could ensue.

The Bill also clarified whether discrimination claims would be dealt with in terms of labour legislation or under the jurisdiction of the Constitutional Court. The residual unfair labour practice definition placed such claims squarely under the jurisdiction of the Labour Court, Palk said

In addition, the Labour Court would be

charged with assessing whether selection and recruitment practices were fair. Affirmative action programmes would be subjected to the same scrutiny.

In terms of the Bill, Palk pointed out that affirmative action would not automatically be seen as fair discrimination. He warned that workers who perceived themselves as victims of the process could challenge affirmative action appointments as being in violation of the "adequate protection and advancement" provision

Both "disadvantaged" and "unfair discrimination" would have to be defined by the court

Palk noted that the Bill specifically prevented employers from dismissing workers by reason of race, gender, sex, ethnic or social origin, colour, sexual orientation, disability, religion, conscience, belief, political opinion, culture, language, marital status, family responsibility or any other arbitrary ground. Pregnancy and age were also precluded as grounds for dismissal, unless employers could justify this decision on the basis of the inherent requirements of the particular position.

ERICA JANKOWITZ

(166)  
BO 15/5/98

# 'Amend inflexible labour Bill'

John Dlodlu (166) B017/5/95

THE Independent Mediation Service of SA (Imssa) yesterday criticised the draft Labour Relations Bill as being "overly prescriptive and inflexible", and called for major changes.

Detailing these criticisms at a Johannesburg news conference, the organisation's acting national director Bruce Robinson said: "The Bill incorporates a relatively sophisticated and complex dispute system, and it is perhaps one thing for such a system to evolve via the negotiating process, but it is perhaps another to have it imposed by legislation as the draft Bill in fact contemplates."

He called on the National Economic, Development and Labour Council (Nedlac) — which is currently discussing the Bill in its labour market chamber — to look at ways of making the Bill less complex

As an example of its prescriptive nature, Robinson said the provisions on work forums, aimed at encouraging participa-

tive problem solving in the workplace, would be impossible to implement if the approach was made compulsory

The fact that work forums could be suggested by majority unions could prejudice the interests of non-unionised workers and of those belonging to minority unions, as well as the ability of management to suggest the establishment of these forums.

According to Imssa, the Commission for Conciliation, Mediation and Arbitration would cost about R75m to establish and at least R100m a year to operate — amounts far in excess of the Industrial Court's current budget.

"Finding suitably qualified commissioners with the required level of experience, even if the commission is able to offer attractive salaries, is not going to be easy," he said.

Potential problems would include servicing an increased number of workers — since the incorporation of the homelands into SA — and dealing with far more disputes, and commissioners would have to be equipped with many skills.



# Union demands central bargaining

Renee Grawitzky

THOUSANDS of Chemical Workers' Industrial Union members marched to the Labour Department's offices in Johannesburg yesterday and presented a memorandum demanding the inclusion of a provision in the new Labour Relations Act for compulsory centralised bargaining.

The union's centralised bargaining campaign coordinator Martin Jansen said besides the march, workers in the Western Cape, KwaZulu/Natal and North and Eastern Transvaal had embarked on work stoppages in a bid to force employers in the chemical industry to participate in central negotiations on wages today.

He said if employers did

not respond positively to this demand, the industry would face industrial action by June

Jansen said the workers had informed him that petroleum industry employers would be attending the meeting today.

According to sources, petroleum industry employers agreed to attend the meeting to hear further motivation on the demand for a centralised bargaining forum

Employers emphasised that they would not attend the meeting if it was to negotiate wages.

Labour Minister Tito Mboweni is also to attend the meeting today where he will provide an overview on centralised bargaining to employers.

# Unions to lobby govt on law

Renee Grawitzky

166  
BD 23/5/95  
A NUMBER of Cosatu affiliates have joined forces in a bid to lobby government to ensure the legislation of centralised bargaining in the new Labour Relations Act

Unions including the Paper, Printing, Wood and Allied Workers' Union, Transport and General Workers' Union, Food and Allied Workers' Union, Construction and Allied Workers' Union, SA Commercial Catering and Allied Workers' Union (Saccawu) and Chemical Workers' Industrial Union (CWIU) held discussions recently to identify obstacles to the establishment of centralised bargaining forums.

Last week the CWIU called for the entrenchment of the right to centralised bargaining during a meeting with chemical employers

Saccawu is marching to the Johannesburg Stock Exchange on Friday to highlight the demand for centralised bargaining in the retail, commercial and catering sectors.

Saccawu said "the present collective bargaining arrangements as existing in different sectors and companies encourage segmentation and inequality both in conditions of employment and wages".

Wage competition in the different industries was unfair as it "encourages employers to compete on the basis of cheap labour".

Major players in the hospitality industry, including Sun International, Southern Sun, Protea Hotel, City Lodge and Karos Hotel, were requested to attend a meeting earlier this month called for by Saccawu to discuss issues facing the industry.

These included the rugby World Cup and tourism, gambling, strengthening the Hospitality Industry Training Board, retirement funds, the draft Labour Relations Act and future bargaining arrangements.

Saccawu official Leonard Gentle said Sun International and Southern Sun did not attend but Gauteng legislature representatives did. A meeting with employers was being scheduled.

**Small-firm fears**

FM 26/5/95

The question of whether the draft Labour Relations Bill can be tidied up enough to be enacted this parliamentary session is looming large (*Current Affairs* May 12) Though there appears to be broad agreement on its principles, this is not so.

In a submission to the Labour Department, the Small Builders' Association (SBA) has condemned the overall socio-economic objectives of the Bill, charging that "the proposed Act, while paying lip service to small and medium-sized enterprises, would be highly prejudicial to their welfare and prosperity. It fails to address or even understand the needs of the small entrepreneur and is premised solely on the circumstances of big business"

The 49-page SBA memorandum argues that the focus on bringing together a tripartite collusion involving government, the main union federations and "big business" will discourage employment and raise costs in the small-medium enterprise sector. The Bill, "whatever its stated objectives will empower only a labour aristocracy while effectively creating a statutory obstacle to the employment of the mass of impoverished citizens."

To validate this argument, the SBA focuses on the central pillars of the Bill — and finds them all prejudicial to its interests and, in some respects, unconstitutional

□ Nonunion workers make up most of the

**CURRENT AFFAIRS**

workforce but the Bill views unions as "the only vehicle for furthering (workers') interests, and when this perception results in the granting of rights to trade unions which are not available to workers as individuals, the result is clearly undemocratic"

One example is the guarantee of the right of all workers to belong to a union. There is no reciprocal right not to belong — and "given the coercive nature of some trade union activities, this basic, democratic right should be explicitly recorded"

Another is the clause empowering a majority union to conclude an agreement with an employer "whereby he may deduct from the wages of nonunion workers an amount equal to trade union subscription, whether they agree to this or not."

□ Dispute resolution procedures depend on centralised bargaining — as opposed to plant level negotiations appropriate to the small-medium sector — and would be time-consuming for the small employer. He would "be required to appear before a (labour) commissioner virtually every time he dismissed or retrenched an employee — an appalling waste of his scarce time."

□ Enforcement of the Act will necessitate a costly expansion of the labour bureaucracy — including mandating what amounts to policing functions,

□ The sting of the new system for the SBA is that, while the "explanatory notes to the

Bill make much of the fact that the constitutions of the bargaining councils must make adequate provision for the representation of small business," practice has been negative. Representatives of the small firms sitting on industrial councils are outvoted by big business and the unions,

□ Though the Bill seeks to define "fairness" in employment, the SBA claims that "some inequity is the price of employment, in particular of full employment. By seeking to eliminate it and to impose ethics on the market to a greater extent than it naturally exists, the cost of labour is driven up and fewer workers are employed,"

□ The proposed workplace forums — in firms employing 100 or more workers — are another example of what the SBA regards as a wilful ignoring of the fact that "small businessmen are invariably engaged in a hard struggle for survival and cannot spare the time and/or resources (including legal representation) to make themselves heard on the national stage"

In short, "the fact that the economic empowerment of the black proletariat can take place in a meaningful way only when a significant number of blacks are self-employed and become really economically productive, the failure of the State to protect the interests of the small businessman is a grave error and omission"

The Bill is criticised for showing "little

real regard for economic growth and (appears) to be more concerned with dividing the small national cake into exactly equal portions than in doubling or trebling the size of the cake to the benefit of everybody"

The SBA is not alone in the small-medium enterprise sector in feeling that the Bill seeks to impose an inappropriate legal structure on SA's complex industrial relations. It could have the effect of creating an entirely new class of "haves" (the State, employers and unionised wage-earners) against the more *laissez faire* arrangements that have arisen as a result of the need to survive in a small company or as an individual worker.

Such an argument raises deeper issues, such as those of minimum wages, the role of union federations in wage restraint agreements to curb inflation and in ideologically based development priorities enshrined, for example, in the RDP.

It seems unfortunate that the credence of these arguments may ultimately be tested not in a genuinely free labour market but one which operates in a massive system of regulation flowing ultimately from the self-interest of the big three powers within the labour arena: government, organised unions and the big employers.

In terms of the Bill, small is certainly not beautiful

## Negotiations crisis could halt passage of labour law

South Africa's three key labour federations say they have reached a crisis in negotiations with major business leaders over a new labour law due to be presented to Parliament this year.

Labour leader Ebrahim Patel said a breakdown in talks could jeopardise the passage of new legislation.

"We are at a crisis in negotiations," Patel, the labour sector's delegate at the National Economic Development and Labour Council (Nedlac), told a news briefing.

"There are principle differences so fundamental, that put us so far apart, that even experienced negotiators could not see a chance of settlement," he said.

Economist George Kershoff of Stellenbosch University said the growing row was likely to lead to an increase in strikes.

### More disputes

"This uncertainty in the labour arena will lead to more disputes and consequently increased labour instability," he said.

*SPW 27/5/95*  
"It can be seen as the cost of the transitional phase in South Africa, but one would have hoped that the new labour laws would have helped, rather than cause more disputes." *(166)*

Patel, who represents the Congress of South African Trade Unions (Cosatu), the National Council of Trade Unions (Nactu) and the Federation of South African Labour Unions (Fedsal) at Nedlac, said the impasse effectively meant the new Labour Act could not be passed in parliament this year.

"We don't have a coherent framework on labour policy that reflects the new democracy in South Africa. And as there is no settlement in sight, we are not going to meet our parliamentary deadline," he said. Nedlac set itself a deadline of June 30 to allow for presentation of the proposed legislation to MPs for debate in July. — Reuter

# Tito's labour reform drive isn't working

ST(BT)28/5/95

(166) ~~(167)~~ ~~(168)~~

By KEVIN DAVIE

**NEGOTIATIONS** to reform South Africa's labour market are close to collapse.

This week organised labour and small business began nationwide campaigns urging Labour Minister Tito Mboweni to redraft the Labour Relations Bill.

Organised labour, led by Cosatu, has threatened mass action and possibly a national strike if its demand for centralised bargaining is not met.

Small business, which says it employs half the workforce, says the draft law rides roughshod over small, micro and medium-sized enterprises (SMMEs).

The Sunnyside Group, representing 300 000 small employers, has started a "postcard protest" asking SMMEs to write to Mr Mboweni that the proposed law favours big business and organised labour.

Cosatu led a march on the JSE on Friday after labour leaders said negotiations with Business South Africa at the National Economic Development and Labour Council were nearing breakdown.

"We are at a crisis in negotiations," said Ebrahim Patel, labour's dele-



**UNDER ATTACK** . Labour Minister Tito Mboweni

gate at Nedlac, reports Reuters.

"There are differences that are so fundamental, that put us so far apart, that even experienced negotiators could not see a chance of settlement."

Mr Patel expressed doubt that the law would be passed this year, the deadline set by Mr Mboweni.

BSA has made known its objections to the Bill and has expressed reservations over key proposals such as the proposed workings of workplace forums.

BSA said in its submission that the new law must

facilitate job creation, particularly by SMMEs.

Chris Darroll, director of the Sunnyside group, says the group intends making representations to Parliament's standing committee on labour.

David Matthews of the Small Builders' Association says the Bill is premised solely on circumstances of big business.

"It remains the statutory empowerment of minorities (big business and organised labour) who are granted monopoly powers (via the industrial/bargaining councils) to the cost of the majority of citi-

zens," says Mr Matthews.

Steve Ntsane, director of the Centre for an Open Economy (Cope), says the proposed law reaffirms apartheid by continuing to sanction a non-representative minority controlling a majority.

Sunnyside says unemployment in South Africa is at a crisis level. It estimates 7.1-million people — 49% of the economically active population — are involved with SMMEs.

"These figures are more startling when compared with the amount of people employed in large businesses, roughly 3.5-million people or 23% of the economically active population."

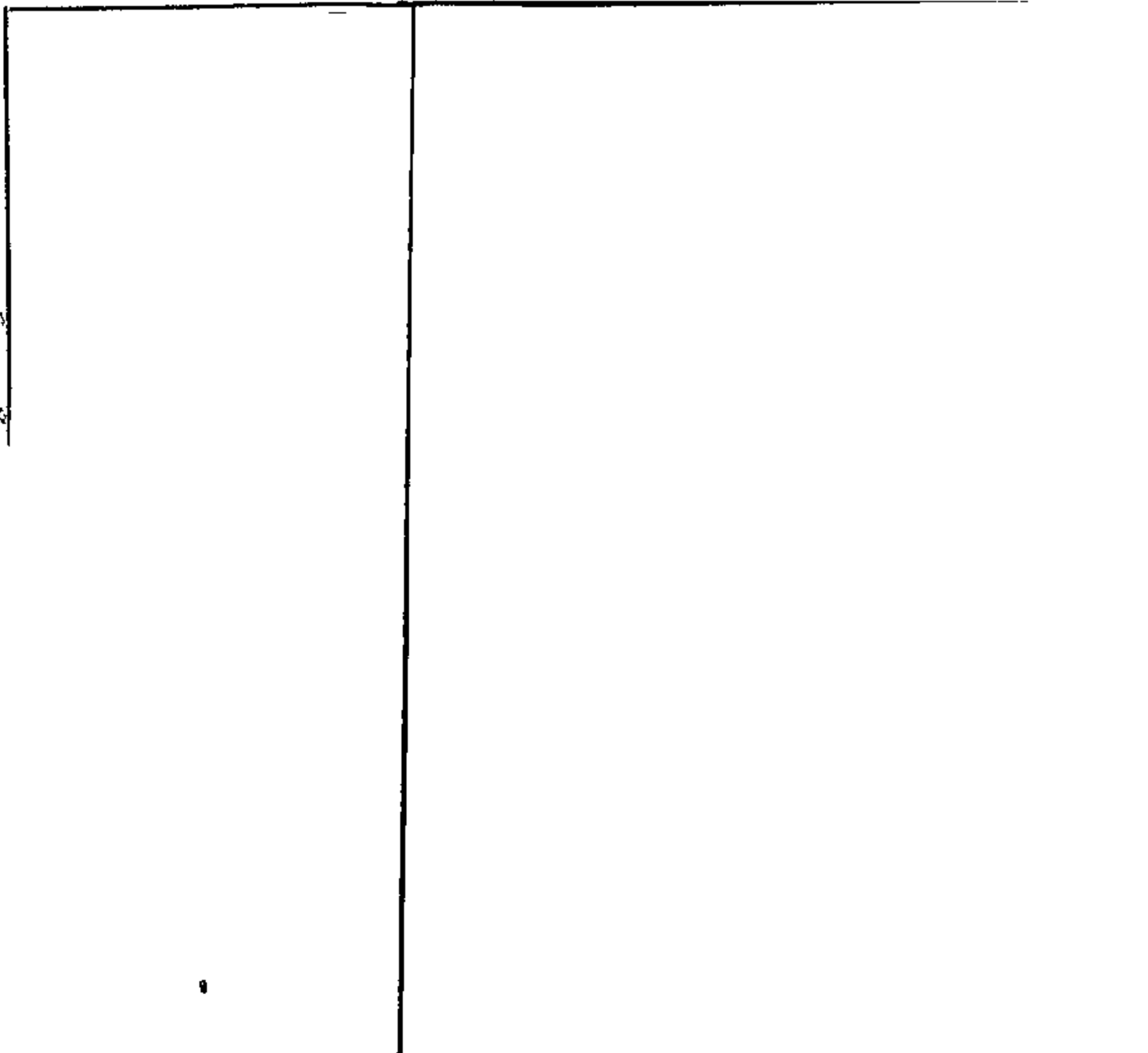
Sunnyside says "at least three times more people are involved in SMMEs than there are members of trade unions."

The Sunnyside Group quotes 1990 figures to show that the vast majority of industrial council agreements were extended to non-parties.

"Extensions are used to prevent the undercutting of the wages of organised labour by unorganised labour. Thought should be given to automatic exemption for SMMEs."

Approached for comment, a spokesman for Mr Mboweni said the Minister would discuss labour issues in detail at a media briefing early in the week.

**PETITIONING THE MINISTER** . David Matthews of the Small Builders' Association



# Cosatu call for strike on June 19

By EDYTH BULBRING  
Political Correspondent

COSATU will embark on a programme of rolling mass action and hold a half-day national work stoppage in an attempt to pressurise business to accept its proposals for new labour legislation.

The federation's national executive decided yesterday to begin mass action on June 5, and to organise marches in city centres during a half-day national work stoppage from midday on June 19.

The decision was sparked by a lack of progress in negotiations between business and labour in the National Economic Development and Labour Council (Nedlac) over the draft Labour Relations Bill.

"The positions advanced by the business community put us so far apart that there is no settlement in sight. The differences are so fundamental that it's not just a matter of re-wording things," Nedlac's labour convener, Ebrahim Patel, said at a press briefing on Friday.

Negotiations on the new legislation began at the beginning of the month and must be finalised by the end of June if the Bill is to be passed by Parliament this year.

The negotiations will continue during the rolling mass action campaign.

The three main areas of conflict are the feder-

ation's demands for compulsory centralised bargaining, the right to strike, and organisational rights, Cosatu spokesman Neil Coleman said yesterday.

The demands have been endorsed by the two other trade union federations in Nedlac — the National Council of Trade Unions (Nactu) and the Federation of SA Labour Unions (Fed-sal). They will meet this week to decide on a strategy in response to the impasse.

Cosatu's vice-president, George Nkadimeng, said yesterday "If employers think Cosatu has no teeth, we have teeth and we can bite."

Business SA's representative in Nedlac, Bokkie Botha, said yesterday Cosatu's decision was "dreadful" and "silly."

"I think it is unfortunate that the union has decided to embark on mass action at a time when negotiations are still taking place."

"We have been in discussion for a fairly short time and it is clear this is an attempt to pressurise business and government," Mr Botha said.

# Mboweni urges labour pact

CT(BR)29/5/95 (166)

STAFF REPORTERS

Labour Minister Tito Mboweni, saying business and labour are "as far apart as Cape Town and Cairo" on their labour law negotiations, yesterday urged both sides to find common ground by June 30 or live with their consciences for failing to get a new law enacted this year.

Mboweni's comments came as Cosatu threatened widespread industrial action to achieve its demands in the talks and employers warned that the survival of small business was threatened.

Mboweni noted that business and labour both were now putting forward their opening — and most ambitious — bargaining positions. He added "There isn't a crisis in the process. Negotiations have not been suspended. I am sure an

accommodation will be found very soon."

He said if the parties did not reach agreement by June 30 in Nedlac's Labour Market Chamber, the Cabinet would be unable to ratify a draft bill in time for action this year, given the heavy queue of pending legislation.

"In my view it is quite urgent to get a new act on the books. I anticipate that the coming 30 days will see a lot of intense negotiations between the parties."

The disputes centre on the right to centralised bargaining and the role of workplace forums.

The unions have made the demand for centralised bargaining a key negotiating point, while employers are worried about the implications of possible mandatory workplace forums.

# Labour law must be agreed by June 30, warns Mboweni

ARG 21/5/95

(166)

(166)

## The Argus Correspondent

JOHANNESBURG — Labour Minister Tito Mboweni has urged business and labour to find common ground by June 30 — or live with their consciences for failing to get a new labour law enacted this year.

His call comes as Cosatu threatened mass action from June 5, and city centre marches during a half-day stayaway on June 19, to achieve its demands over the draft Labour Relations Bill — a move slated by the local business community.

Mr Mboweni noted that business and labour were now both putting forward their opening, and most ambitious, bargaining positions and that he felt an accommodation would be found soon.

But, he said, if the parties in the National Economic Devel-

opment and Labour Council (Nedlac) Labour Market Chamber did not reach agreement by June 30, the cabinet would be unable to ratify a draft bill in time for action this year.

The disputes centre on the right to centralised bargaining and the role of workplace forums.

Cosatu yesterday accused business of union-bashing and of deliberately trying to prevent agreement on the draft Labour Relations Bill.

Business sources replied that loss of productivity could no longer be tolerated and that Cosatu's threats were surprising, given that Nedlac was a forum to move away from militant action.

Bokkie Botha, Business SA's representative on Nedlac, said business was no longer prepared to tolerate "this type of

behaviour as it has done in the past"

"The main problem with the proposed action is that it will only create conflict. Many businesses are not prepared to have workers walk off the shop floor to attend demonstrations," he said.

Spokeswoman Janet Dickman said Sacob was worried — and surprised — by Cosatu's call for mass action, especially as negotiations on the new Labour Relations Bill were still in progress.

Independent economist and consultant Edward Osborn said Cosatu's actions would stifle productivity in an economy already damaged by too many public holidays.

"The work ethos is crumbling, and holidays and leisure seem to be of greater importance to the country's workforce," he said.



# Mass action threat does not scare Mboweni

Renee Grawitzky (166) (12/30)

LABOUR Minister Tito Mboweni said yesterday that he was not alarmed at Cosatu's decision to embark on mass action as it was within each party's democratic right to flex its muscles if necessary.

He said it was natural that in the process of negotiating the first major labour relations system since the 1920s, parties would get "heated up" and it was "bound to ruffle some feathers". But he cautioned parties to ensure the June 30 deadline was adhered to despite any form of mass action.

From government's perspective, the speedy conclusion of negotiations was imperative to possible investment decisions in the country, he said. 10/29/95

At the weekend, Cosatu's executive committee adopted a two-week programme of mass action in an attempt to persuade employers to accept labour's position on the Labour Relations Act currently being negotiated within the labour chamber of the National Economic, Development and Labour Council (Nedlac).

Action would begin on June 5 with countrywide marches and lunchtime demonstrations and would culminate in a national day of protest on June 19.

Cosatu said business's position on lock-outs, dismissal during strikes, disclosure of information, majority unions and closed shops, scab labour and refusing to negotiate at industry level reinforced the view that business was not prepared to move into the democratic era.

Labour's negotiator Ebrahim Patel said agreement on collective bargaining and the right to strike was crucial to successful legislation.

Patel said the draft Bill did not go far enough to compel the establishment of bargaining councils nor maintain democratic closed shops.

Business SA negotiator Adrian du Plessis said parties should be left to decide where, how and on what they would bargain, "if the right balance between economic and social interests is to be reached. To this extent we support the principled approach in the Bill which permits bargaining at whatever level or levels the

Continued on Page 2

# Mboweni

Continued from Page 1

parties may agree." 10/29/95

The Bill states that an employee cannot be dismissed for striking but for a range of reasons including "fear of irreparable economic harm of damage".

Labour would like to see this clause tightened up so employers could not dismiss on grounds of fear of economic harm. Patel questioned why workers should face

dismissal when employers were under pressure during a strike.

Du Plessis said the right to strike was not absolute and could not be pursued to the detriment of other factors.

Nactu and Fedal would be meeting this week to finalise their positions on whether they will participate in Cosatu's programme of action.

● Picture: Page 3  
● Comment: Page 6

# 'Mass action is the only way'

ET 30/5/95

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JOHANNESBURG: The Congress of South African Trade Unions had concluded only mass action would force business to agree to changes in the labour relations bill, general secretary Mr Sam Shilowa said here yesterday.

He said Cosatu had not lost faith in negotiations on the bill in the National Economic Development and Labour Council.

"We simply came to the conclusion that short of pressuring business through mass action no decision will be reached before the current session of Parliament comes to a close."

After reaching a deadlock with business, Cosatu on Saturday said it would call a national half-day strike on June 19, preceded by two weeks of mass action starting on June 5, to force business to agree to including in the bill the right to strike and to centralised bargaining.

"We are committed to see the labour bill go through during the current session of Parliament," Mr Shilowa said yesterday.

Plans were also endorsed to celebrate Cosatu's 10th anniversary. — Sapa

# Small businesses get no concessions, says Nactu

CT(BR) 30/5/95

(166)

By THABO LESHLO

STAFF WRITER

The National Council of Trade Unions (Nactu) has joined the acrimonious squabble over central bargaining within Nedlac, maintaining a no-compromise position on demands by small businesses for special concessions

"It's not going to work. We cannot give concessions. All working conditions must abide by International Labour Organisation standards," said Mahlomola Skhosana, the assistant secretary-general of Nactu

Nactu's position follows threats at the weekend of mass action by Cosatu over business' alleged ploy to block agreement on the draft labour relations bill

Business bodies have expressed concern and surprise at Cosatu's attitude, saying it undermined the tripartite process in Nedlac.

Skhosana said there was no way labour could accommodate demands by small, medium and micro-enterprises to be excluded from minimum wage requirements

and other conditions of employment set by the industrial councils.

According to the Foundation for African Business and Consumer Services (Fabcos), industrial council agreements and other deals governing relations between "big business" and "big labour" were hostile to small businesses

David Moshapalo, secretary-general of Fabcos, said the agreements ignored uneven development in different sectors of South Africa, which made it impossible for small businesses to comply with the minimum conditions

He suggested that a "sunset clause" be put in place to allow small businesses, "who have no record of dealing with organised labour", time to match labour's sophistication in this regard.

"We need time to conduct workshops to teach our members about their obligations towards labour and to win their support," said Moshapalo

Skhosana said there was no way the labour movement would allow "exploitation" of workers to go on for the sake of small business.

## Cosatu cautioned over MPs' support

Renee Grawitzky

(166) ~~(166)~~  
SUPPORT for Cosatu's position on new labour legislation from ex-Cosatu officials in Parliament might not be assured after it is weighed up against national interests.

Parliamentary labour standing committee chairman Godfrey Oliphant said yesterday those MPs' support for Cosatu's position "might be a reasonable assumption" but was "not necessarily a given one, balanced against national interests".

He was reacting yesterday to Cosatu general secretary Sam Shilowa's comment that ex-Cosatu officials on the parliamentary standing committee on labour relations would be lobbied to support its position on the Labour Relations Act.

Oliphant, a former Cosatu vice-president, said Cosatu was not unjustified in saying it had reliable allies in Parliament. But its case would be judged in terms of positions tabled and would be weighed against what was in SA's best interests. He hoped labour and business representatives would sort out their differences in the National Economic, Development and Labour Council (Nedlac) and achieve agreement on the draft negotiating document.

The labour relations standing committee consists of representatives from all the represented political parties, while the ANC delegation includes many ex-trade unionists.

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Continued on Page 2

## Cosatu

Continued from Page 1

Shilowa said: "We will not accept the situation where the draft Bill will go through Parliament because consensus is not reached." Labour Minister Tito Mboweni would not act unilaterally and introduce new labour legislation. Labour would embark on mass action as "it has never failed us in the past" as well as lobby its allies in Parliament as "democracy's foundation was built on lobbying".

Shilowa said that despite the decision to embark on mass action, labour had not lost faith in Nedlac and had not pulled out of the process. Cosatu "was not playing games" and leaders from all affiliates would be involved in mass mobilisation.

Shilowa said negotiations and mass mobilisation were not mutually exclusive.

Halton Cheadle, head of the ministerial legal task team which drafted the negotiating document, said. "The perception being created of a crisis in negotiations is some important aspects of the E.L.I. is no reflection of the process" The objective of the process was to find out what the disagreements were and to resolve them. The current position was a demonstration of a robust and vital process which would ultimately deliver the goods, he said.

Business SA spokesman Bokkie Botha said it was hoped that issues could still be

resolved at Nedlac, by being creative in finding solutions.

Cosatu's executive also adopted decisions on other issues at the weekend, including the violence in KwaZulu/Natal, privatisation, health and safety and the Reserve Bank.

A campaign for health and safety in the workplace would culminate in October being declared a month of national health and safety starting with the commemoration of Kinross Day on October 1. Cosatu also resolved to hold a national policy conference in October and call for the immediate implementation of the Lech commission's findings, the immediate inspection of mines and suspension of activities where the necessary safety arrangements were not in place.

Cosatu called for government to clearly spell out its position on privatisation and warned that it could not bypass labour on decisions to privatise public assets.

Cosatu would campaign for the Reserve Bank's transformation to ensure it was broadly representative and responsive to society, and to ensure its monetary policy was in line with the needs "of our new democracy". The Bank's independent status was challenged by members who said its monetary policy contradicted the reconstruction and development programme's aims.

## Bid to clarify draft labour bill

(166) CT 31/5/95

LABOUR Minister Mr Tito Mboweni said he had requested meetings in the city today with the trade union movement and business to accelerate the negotiation process and reach agreement in the draft Labour Relations Bill.

"It has become clear that differences of opinion exist around some issues in the draft Labour Relations Bill, especially on centralised bargaining, duty to bargain, industrial action, the use of scab labour and some details on workplace forums," Mr Mboweni said last night.

Meanwhile, Business South Africa said yesterday it was committed to negotiations on the draft bill, even though Cosatu had threatened mass action.

# Govt promises 'can't be kept'

~~(166)~~ (166) CT 31/5/95

SOUTH Africa has not budgeted for the unemployment insurance and conciliation rights promised to farm and domestic workers, the Afrikaanse Handelsinstituut (AHI) told members of Parliament yesterday.

AHI delegation leader Mr Theo Pegel told the parliamentary committee on labour that the Commission on Conciliation, Mediation and Arbitration proposed in the Labour Relations Bill would cost five times the budgeted amount if it covered farm and domestic workers.

He said the AHI was also concerned that the Unemployment Insurance Fund (UIF), which is already under extreme pressure, would not be able to carry the proposed extension of its cover to

include farm and domestic workers.

"These rights have to be extended. But if you promise something, the cash has to be there. I think it is irresponsible to take on a commitment that you cannot serve," he said.

Sanlam delegate Mr Gerrie Botha said the AHI had calculated that the inclusion of farm and domestic workers under the provisions of the proposed commission would push the cost from the budgeted amount of R30 million to about R150m a year.

ANC committee members said in response that, while accepting the criticisms of the fund itself, they would like to see a crackdown on businesses that failed to pay their UIF contributions — Reuter

STAR 31/5/95

# Labour, business meet Mboweni

■ BY JUSTICE MALALA  
LABOUR REPORTER

Labour Minister Tito Mboweni will meet business and labour leaders today in a bid to ease rising tensions between the two sectors, following threats of mass action by the Congress of SA Trade Unions to break the impasse in negotiations on new labour legislation.

Mboweni said in a statement last night that "it had become clear that differences of opinion existed around some issues

In the draft Labour Relations Bill" and the meeting would be held to accelerate negotiations in order to reach agreement on all the issues.

The announcement came as business representatives vowed they would not compromise on their position that the new Labour Relations Act should meet the country's "overriding economic objectives", leading to an increase in the Gross Domestic Product.

Commenting on the deadlock in negotiations,

Business South Africa representatives said yesterday that Cosatu's threat of mass action pre-empted current negotiations.

Cosatu's national executive committee last week decided to begin mass action on June 5 and organise marches for a half-day work stoppage on June 19.

Cosatu said last Friday the differences between the two sectors were "so fundamental that it was not just a matter of re-wording things".

# Peacemaker Mboweni summons business and labour to meeting

Renee Grawitzky  
and Alan Fine  
BD 31/5/95

LABOUR Minister Tito Mboweni has summoned representatives of organised labour and business to a Cape Town meeting today to discuss conflict in negotiations over the draft Labour Relations Bill and to try to accelerate the process.

Mboweni said last night it had become clear that differences of opinion existed on some issues in the draft Bill — especially on centralised bargaining, the duty to bargain, industrial action, use of scab labour

## and workplace forums

The purpose of the meeting was to explore "possible mechanisms for reaching an understanding on the areas identified as well as other relevant issues", he said.

Cosatu's Neil Coleman said "as far as Cosatu is concerned no meetings have been scheduled between labour, business and government to deal with the Bill". The next negotiating meeting which would take place in the proper forum was scheduled for tomorrow and Friday.

Coleman said Cosatu's executive committee wanted meetings to continue with

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government Ministers and other organisations to outline the federation's position on the mass action programme of protest.

The labour delegation includes a representative from Fedal, Nactu's general secretary Cunningham Ngeukana and Cosatu's general secretary Sam Shlowa, Kgalema Motlanthe and Enoch Godongwana. The Business SA delegation consists of Dave Brink, Bobby Godsell and Bokkie Botha. The Minister's delegation will include members of his department and the ministerial task team, including Halton Chedle.

Yesterday Business SA spokesman Adrian du Plessis countered labour allegations that business was being intransigent. Despite the programme of mass action "devised unilaterally by one of the parties in labour", negotiations would continue.

Business SA also presented its position on some of the contentious clauses in the draft Bill in an attempt to rectify the "dishonest attempt to misportray" its position, by labour.

Du Plessis said business was not attempting to roll back the past. For example, business supported centralised bargaining but was opposed to the compulsion to bargain at central level, proposed by labour. Business supported the draft Bill provisions which provided for organisational rights and a flexible bargaining arrangement which created a mixed collective bargaining system.

Business's approach was to evaluate the proposals tabled against whether they would help or hinder economic growth. Some flexibility was required, especially considering the interests of many small and medium size businesses.



# Row over Labour Relations Bill hots up

Trade unions are planning a major offensive against the new Labour Relations Bill, reports **Eddie Koch**

ORGANISED labour flexed its muscles this week as talks between trade unions and employers over the new Labour Relations Bill headed for deadlock. The Congress of South African Trade Unions (Cosatu) will hold an emergency executive meeting at the weekend to discuss plans for a mass protest campaign that will bolster its

demands around the Bill.

"We are heading for a crisis and unless this week's round of talks can resolve major issues of conflict we could be in for a period of worker action," said a union source.

A critical meeting to resolve major differences between employers and labour was due to be held in Johannesburg yesterday. But the major union federations have already moved into protest gear as they anticipate an impasse.

Union sources said there was a wide gap between the parties on major issues relating to the new Bill. "It looks like there will be protracted conflict over these issues," said a source.

"Cosatu is planning a mass protest campaign for early June. The exact form this will take will be decided at a special executive meeting on Friday and Saturday this week," another source said.

It appears that shopsteward councils have already met around the country to discuss possible collective action — sit-ins, protest marches and stoppages — with most of the militancy centred on Gauteng.

The hottest dispute centres around the "workplace forums" that the Bill provides for. The unions want the forums to be union-based and mandatory structures. Employers say they are willing to "encourage" the

forums but are insisting that they be voluntary.

The draft Labour Relations Bill suggests the forums be set up to promote "worker participation in decision-making in the workplace" and would give a company's labour force extensive influence over key management and safety issues.

The talks are also likely to deadlock over centralised bargaining. Unions want it made obligatory that managements enter into industry-wide negotiations over conditions of employment as well as measures to restructure the economy.

A third major point of contention is an insistence by employers that

management be allowed to use the lock-out as an offensive weapon to pressure workers into accepting management offers around employment conditions.

Section 47 of the draft Bill gives workers the right to strike and employers the right to lock-out once all collective bargaining procedures outlined in the draft law have been exhausted.

Labour Minister Tlo Mboweni is putting pressure on the parties to reach consensus on his draft Bill so that it can be passed through Parliament before the end of the year. He has said that he will push it through anyway if agreement is not reached

WMM 26/5-1/6/95 (166)

# LABOUR LEGISLATION - 1995

JUNE - JULY.

# The new labour law and you

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19/6/95

**THE draft Labour Relations Bill** proposes several far-reaching changes to the present system of labour law and industrial relations, although many proposals are based on the original framework of laws, structures and procedures which have been developed incrementally over the past 90 years

**New Legislation** It is proposed to repeal all existing labour legislation, including the Labour Relations Act 28 of 1956, the Public Service Labour Relations Act 105 of 1994, the Education Labour Relations Act 146 of 1993 and Chapter I of the Agricultural Labour Act 147 of 1993, and to replace them with a single Act applicable to all employers and employees throughout the country

Employees in the public service and the educational, agricultural and domestic sectors will all be included within the same legislation, the only exceptions being members of the National Defence Force, agencies and services established by the Intelligence Services Act, and the South African Police Services

Certain special bargaining arrangements and agreements which are already in place, such as in the Public Service and the agricultural sector, will continue in force through the operation of transitional provisions in the Bill, and will only be phased out over a period of time

**Freedom of Association** The basic rights of freedom of association for both employees and employers are spelt out in Chapter II of the Bill. They include the right to join and take part in the activities of a trade union or employers' organisation, and not to be victimised for so doing. The victimisation provisions extend to persons seeking employment

**Collective Bargaining** The Bill grants trade unions specific rights of access to the workplace to organise and to conduct union activi-

**JUNE WILSON**, an advocate and author of Giles Files, an employment law information service based in Durban, discusses the changes embodied in the new draft version of the Labour Relations Bill

ties, and obliges employers, in some cases, to provide information to a union or its representative, and to allow representatives time off for union activities

The thresholds of representativeness at which these rights accrue to unions has been left for negotiation by Nedlac

As at present, registered unions and employers or employers' organisations will be able to conclude legally binding collective agreements, but these will be enforceable by arbitration rather than through criminal or civil action. The criminal sanction has been removed for nearly all breaches of the Bill's provisions, including engaging in illegal strike action

Agency shop agreements, which require the deduction of agency fees from employees who are not members of a representative trade union, will be allowed, but the future of fullscale statutory closed shops remains clouded, as they may contravene the new constitution

Meanwhile, existing statutory closed shops will remain in force, but non-statutory closed shops will have to convert to agency shops

The present industrial council system will be converted into a system of bargaining councils which will operate along similar lines, but with simplified procedures for registration, etc

#### Important changes.

- The inclusion of both public and private sector interests within a single council
- Representation of small business interests on councils
- An annual review of their representativeness
- Additional protection before council agreements may be extended to non-parties

Bargaining at national level is facilitated through the new bargaining council system, but is not made compulsory

**Industrial Action** The procedural steps which employees or their union must follow before embarking on a legal strike are greatly simplified and expedited. The need for prior balloting is dispensed with

The definition of a "strike" specifically includes partial stoppages and a refusal to work overtime. Once on a legal strike an employee is protected against civil actions for delict and for breach of contract, and enjoys a very high degree of protection against dismissal

The full extent of this protection is, however, not entirely clear, and dismissal may be permissible for "operational requirements" after compliance with certain procedural requirements

Employees who strike illegally are not protected from dismissal by the Bill, but their dismissal is not automatically fair

An employer's right to embark on a legal lock-out is retained, but lock-out dismissals are prohibited

Secondary strikes and picketing are recognised and protected subject to certain restrictions, and protest action taken to promote or defend employees socio-economic interests is also protected in limited circumstances

The right to strike or to lock-out is limited

- If the matter is regulated by collective agreement or wage determination
- If the collective agreement prohibits strikes or lock-outs
- Where the issue must be referred to arbitration by agreement

- Where the dispute is one of "right"

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- In an "essential service", in which case the dispute must be referred to compulsory arbitration

**Workplace Forums** The Bill proposes to introduce workplace forums as a move away from adversarial bargaining and towards joint problem-solving and joint decision-making in the workplace. The Bill envisages that the forums will supplement but not replace collective bargaining, and proposes a clear separation between the two

Forums will be established formally only on application by a representative union in a workplace with at least 100 employees, and they will represent the interests of all employees in the workplace. Their role and functions are spelt out in detail in the Bill, and once established they can only be disbanded if the number of employees falls below 100

The Bill envisages three forms of participation by the forums

- Information sharing
- The right to be consulted, and
- The right to take joint decisions with management on defined matters

What these matters should be has been left for negotiation by Nedlac. Disputes must be referred to compulsory arbitration

**Dispute Resolution** As proposed the present industrial court system will be abolished and replaced by an independent Commission for Conciliation, Mediation and Arbitration which will be state funded and governed by a tripartite board appointed by Nedlac

The powers and functions of the commission will include providing advice and training on labour rela-

tions matters, overseeing the establishment of workplace forums, and appointing commissioners to resolve disputes referred to it

Commissioners will attempt to conciliate disputes which at present must be referred to a conciliation board and if they cannot resolve them will arbitrate them. Bargaining councils will also be accredited to resolve disputes

The "unfair labour practice" will, with minor exceptions, disappear, and there will be no statutory "duty to bargain". Where a dispute exists over bargaining rights or a refusal to bargain it will presumably have to be resolved by power-play

If unresolved by conciliation certain types of dispute will be referred to a newly established Labour Court, falling under the Department of Justice and presided over by a judge

Appeals will be from the Labour Court to a Labour Appeal Court, but there will be no further appeal

**Unfair Dismissal** Chapter VI provides for a specific category of "unfair dismissals". A dismissal will be unfair unless for a fair reason connected with the employee's capacity or conduct or with the employer's economic, technological, structural or similar requirements, and in compliance with a fair procedure

Most cases will be referred first for conciliation and then for final arbitration, with no appeal to the courts. Dismissals for "invalid reasons" as I for economic reasons will be referred to the Labour Court for adjudication

Where a dismissal is found to be unfair the primary remedy will be re-instatement of the employee, usually from the date of dismissal. If the employee is not re-instated an award of compensation may be made, but may not exceed certain prescribed maxima, which range from 6 to 24 months' wages, depending on the circumstances

# Going about <sup>(166)</sup> consultation in ~~(166)~~ the workplace

CT (BR) 19/6/95

Given that the detailed structure of the workplace forums has not yet been formalised and will only be done following input from Nedlac, and given that there has been so much opposition to the exclusion of negotiation on wages (including from Numsa) from the forums, it is worth noting some of the Numsa-Seifsa guideline's points on how to establish a consultative committee and use it effectively

The section on employment and income security suggests "The key point for both sides to understand is that agreed productivity changes will not mean the loss of jobs or earnings, but could mean a substantial change in what employees and management do"

With regard to structure and membership, the point is made that it is important to ensure that both sides include the real decision makers and not just junior management

The committee should meet at least once every two months, the guidelines say, and any member should be able to place items on the agenda. It is important that both sides are involved in setting the agenda.

According to the guideline, "It is essential that minutes of each meeting are taken and distributed to all members of the committee and posted on notice boards. It may be a good idea to send a copy to the local union organisers so that they are not surprised by issues as they get implemented. Be careful with information that may be industrially or commercially sensitive to the company"

Significantly, given that Nedlac has to decide on what issues forum members should be consulting on, the Numsa/Seifsa document has already drawn up the beginnings of a list

- Skills, training and career paths including the development of company training plans, retraining, multi-skilling and the assessment of earlier learning,
- The introduction of new technology such as computer controlled machines, robots, fibre optics and so on and the effect these will have on employment, skills, safety and job satisfaction in the plant;
- The introduction of new management techniques such as "just in time" and "total quality control" systems and "green areas", or continuous improvement processes, and
- Major changes in market circumstances and/or product lines, which will require changes in production processes, skills or employee numbers. Most particularly, the effect of trade agreements such as Gatt on the plant should be thoroughly discussed

On the issue of resources, as with the forum in terms of the Labour Relations Act, the employer is called upon to help provide training as well as materials and time

The coming months at Nedlac will see heated and prolonged discussion over all of these issues

## Productivity benefits 'must be negotiated'

The one area which openly conflicts with the Labour Relations Act's suggestions for the workplace forums is the document's guidelines on how to distribute the additional wealth that is created through productivity improvements

There are certain primary requirements for a wealth distribution plan in a company and every plan would be evaluated in terms of the following

- The plan must be negotiated,
- It must emphasise productivity improvement by means of throughput growth in preference to cost reduction, thereby sustaining and/or increasing employment,
- The additional wealth available for distribution must be measured unambiguously and transparently,
- It must be clear to all participants what the outcome will be, that is, what achievements will lead to what benefits for which stakeholders,
- Every stakeholder — owners of capital, managers, workers and customers — must benefit from the plan in the long term, but the degree of benefit must be negotiated up-front

# Proposed labour relations Bill will simplify law for unions and bosses

The procedural steps which employees or their union must follow before embarking on a legal strike are greatly simplified and expedited. The need for prior balloting is dispensed with. The definition of a "strike" specifically includes partial stoppages and a refusal to work overtime.

Once on a legal strike an employee is protected against civil actions for delict and for breach of contract, and enjoys a very high degree of protection against dismissal.

The full extent of this protection is, however, not entirely clear, and dismissal may be permissible for "operational requirements" after compliance with certain procedural requirements. Employees who strike illegally are not protected from dismissal by the Bill, but their dismissal is not automatically fair.

An employer's right to embark on a legal lock-out is retained, but lock-out dismissals are prohibited.

Secondary strikes and picketing are recognised and protected subject to certain restrictions, and protest action taken to promote or defend employees' socio-economic interests is also protected in limited circumstances.

The right to strike or to lock-out is limited

■ If the matter is regulated by collective agreement or wage determination

■ If the collective agreement prohibits strikes or lock-outs

■ Where the issue must be referred to arbitration

**JUNE Wilson author of Giles Files, an employment law information service in Durban, continues her assessment of the proposed labour relations Bill** *SPAW 19/6/95*

by agreement

■ Where the dispute is one of "right"

■ In an "essential service, in which case the dispute must be referred to compulsory arbitration

### Workplace Forums

The Bill proposes to introduce workplace forums as a move away from adversarial bargaining and towards joint problem-solving and joint decision-making in the workplace. The Bill envisages that the forums will supplement but not replace collective bargaining, and proposes a clear separation between the two.

Forums will be established formally only on application by a representative union in a workplace with at least 100 employees, and they will represent the interests of all employees in

the workplace. Their role and functions are spelt out in detail in the Bill, and once established they can only be disbanded if the number of employees falls below 100.

The Bill envisages three forms of participation by the forums

■ Information sharing

■ The right to be consulted and

■ The right to take joint decisions with management on defined matters

What these matters should be has been left for negotiation by NEDLAC. Disputes must be referred to compulsory arbitration.

### Dispute Resolution

As proposed the present industrial court system will be abolished and replaced by an independent Commission for Conciliation, Mediation and Arbitration which will be state funded and go-

verned by a board appointed by NEDLAC

The powers and functions of the Commission will include providing advice and training on labour relations matters, overseeing the establishment of workplace forums, and appointing commissioners to resolve disputes referred to it. Commissioners will attempt to conciliate disputes which at present must be referred to a conciliation board and if they cannot resolve them will arbitrate them. Bargaining councils can also resolve disputes.

The "unfair labour practice" will, with minor exceptions, disappear, and there will be no statutory "duty to bargain". Where a dispute exists over bargaining rights or a refusal to bargain it will presumably be resolved by power-play.

If unresolved by conciliation certain types of dispute will be referred to a newly established Labour Court, falling under the Department of Justice and presided over by a judge. Appeals will be from the Labour Court

to a Labour Appeal Court, but there will be no further appeal.

### Unfair Dismissal

Chapter VI provides for a specific category of "unfair dismissals". A dismissal will be unfair unless for a fair reason connected with the employee's capacity or conduct or with the employer's economic, technological, structural or similar requirements, and in compliance with a fair procedure. Most cases will be referred first for conciliation and then for final arbitration, with no appeal to the courts. Dismissals for "invalid reasons" and for economic reasons will be referred to the Labour Court for adjudication.

Where a dismissal is found to be unfair the primary remedy will be reinstatement of the employee, usually from the date of dismissal. If the employee is not reinstated an award of compensation may be made, but may not exceed certain prescribed maxima, which range from six to 24 months' wages, depending on the circumstances.

# Business, labour talks progress

Rene Grawitzky (166)

BUSINESS South Africa and labour have been exploring proposals which will accommodate labour's demand for centralised bargaining.

One proposal under consideration — which permits centralised bargaining at industry level — is the suggestion that social policy issues be negotiated at industry level. Wages would then be negotiated at a level agreeable to the parties outside that forum.

It is understood that labour opposes the removal of wage negotiations from central-level bargaining MD 14/6/95

Business SA has strongly opposed the compulsion to bargain at central level.

Business SA spokesman Bobby Godsell said last night at a briefing that many sectors did have central bargaining structures, without the legal compulsion to enter into such forums.

He said this was achieved largely through attaining organisational rights. The debate was not about centralised bargaining but whether people should be compelled by law to bargain at a certain level.

Labour in its memorandum presented to business during the protest march on June

Continued on Page 2

## Labour (166) MD 14/6/95

Continued from Page 1

6 said each industry should "be covered by a national bargaining council and that employers and labour negotiate at national industrial level. We propose that the content or bargaining be left to the parties to resolve."

The draft Bill promotes but does not

compel bargaining at a central or industry level.

Business SA said last night negotiations should continue and that bilateral meetings had helped the parties clarify their positions on core issues. Godsell said the parties had discussed proposals on promoting the process and in what forum the negotiations should continue.

# Business SA throws down the gauntlet

(166) CT(BR) 14/6/95

By BRUCE CAMERON

POLITICAL EDITOR

Organised business declared yesterday it would "take a six-month strike" rather than be forced by industrial action into accepting changes to proposed labour legislation that could inflict severe damage to the economy.

The stark warning came from David Brink, the chairman of the powerful Business South Africa organisation, during an interview with Business Report.

To back up the warning, Business South Africa launched a nationwide advertising campaign today to take its argument to the public to counter the campaign being waged by the trade unions.

The dispute is over changes to the draft labour relations bill, which is being debated by the National Economic Development and Labour Council (Nedlac).

"The captains of industry have decided that they will take a six-months strike if necessary," Brink declared.

But he said business would keep negotiating and would not pull out of Nedlac.

"It is one thing for labour to behave badly. It is another thing for business to behave badly," he said.

No one had the right to sabotage the economy through industrial action when negotiations were still under way, he said.

The Nedlac talks are aimed at reaching consensus on the draft legislation by June 30.

Brink predicted it would be difficult to close the gap between labour and business and that Tito Mboweni, whom he described as

"the best minister of labour we have had in a very long time," would have "to front up against labour".

Brink said that a crucial principle was involved whether there should be "voluntarism or compulsion" on the issue of centralised bargaining. He warned that compulsory central bargaining across all industries would be a disaster for the country.

"South Africa's single biggest problem is unemployment. There are only two ways to improve employment. The first is from large South African and foreign companies. The other is to create an environment for small business development," said Brink, who is also the chairman of Absa, the country's largest banking group.

Compulsory central bargaining would frighten off big investors and make the growth of small business impossible, he said. Big companies could afford to pay a sweeper R2 500 a month, but if small business were forced to pay the same it "would wipe out any competition to big companies", he said.

He said Cosatu and its associated unions represented only 20 percent of economically active people in the country. On top of this, unemployment was about 50 percent.

"The unemployed are being abused by the unions because they want to raise the entry costs of employment," Brink said.

He rejected as a "monumental lie" claims by labour that business was trying to alter the legislation on central bargaining, saying: "The bill provides for voluntarism."

□ Continues next page

## Business warns it will sit out a Cosatu strike

(166) CT(BR) 14/6/95

□ From previous page

Business was not opposed to centralised bargaining, and many agreements were already in existence. The issue for business was to avoid making it compulsory as it was not suitable to many fields.

An example was in the pulp and paper industry, which did not have a central bargaining agreement and which operated on three levels. At the first level were large and small tree growers, including many small growers in KwaZulu. On the second level were large and small tree cutters and at the third level were capital-intensive pulp and paper mills.

This made it virtually impossible to have one agreement for the whole industry, with small growers most adversely affected, Brink said.

He said another major issue was the use of so-called scab labour. Business could not accept that it should not employ other people in the event of a strike. It could not afford to stop production and lose markets. Firms would be "wiped out" if they could not keep operating. This, in turn, would push up unemployment.

Brink said there had been a positive and negative side to President Nelson Mandela joining union members in a march on the issue in Johannesburg last week.

It had probably kept the march peaceful but would also have been shown on television screens across the world — and perceived by international investors as encouraging labour unrest.

Brink said it was his view that the unions had foolishly got themselves in a tight corner. "It is now a question of finding some realistic compromise."

## MAKING PROGRESS



Jayendra Naidoo, the executive director of Nedlac (left), with the deputy director general of the department of labour, Les Kettleidas (centre) and Business South Africa negotiator Adrian du Plessis after yesterday's meeting to discuss labour legislation.

PHOTO: JOHN WOODROOF

# Labour and business 'still talking'

CT(BA) 14/6/95

(122)(166)(200)

BY THABO LESHILO

STAFF WRITER

"The parties are still talking. That is a good sign," was all Jayendra Naidoo, National Economic Development and Labour Council (Nedlac) executive director said after yesterday's negotiating committee meeting on the disputed labour legislation.

Representatives of organised labour and business briefed the Nedlac committee on the progress made in informal meetings held to try to resolve their differences

Les Kettleidas, deputy director general of the labour department said he had been encouraged by the process.

Kettleidas said both parties appeared committed to reaching an agreement to ensure the new labour relations bill could be passed during the current parliamentary session which ends on September 15.

He denied that the labour ministry had given the parties up to June 30 to find common ground.

"The June 30 thing is just a red herring, and it does not really mat-

ter if the negotiations carry on for a day or two thereafter," said Kettleidas.

Labour negotiator Ebrahim Patel said the meeting had identified the core concerns and points of contention between labour and capital on the labour relations bill.

The parties agreed to meet again next week after consulting their principals. Patel said the unions wanted to reach agreement on workplace forums, lockouts, central bargaining and the organising rights of trade unions before June 30.

Tito Mboweni, Labour Minister said he was in touch with the parties and "my sense is we're making progress". He was speaking in a telephone interview from London after attending the International Labour Organisation conference.

"But, quite clearly, this is a situation of negotiations and people need to understand that," Mboweni said.

Given the demonstrations of strength by both sides in recent days, he said: "I think both parties now are willing to bargain, and to bargain seriously."



# The good news: parties are still talking

SPAN 14/6/95

(166) (166)

■ BY THABO LESHILO

Nedlac executive director Jayendra Naidoo would say no more last night than "the parties are still talking. That is a good sign", following the meeting on the dispute around proposed changes to the Labour Relations Bill.

Les Kettleidas, deputy director general of the Department

of Labour, said both parties appeared committed to reaching agreement in time so that the new Labour Relations Bill could be passed into law during the current parliamentary session which ends on September 15.

He denied that the Labour Ministry had given the parties up to June 30 to find common ground. "The June 30 thing is

just a red herring, and it does not really matter if the negotiations carry on for a day or two thereafter."

Labour negotiator Ebrahim Patel said the meeting had identified the core concerns and areas of difference between labour and capital.

The parties agreed to meet again next week after consulting their principals. Patel said

the labour unions desperately wanted to reach agreement on among others, workplace forums, lockouts, and central bargaining before June 30.

Labour Minister Tito Mboweni said from London before returning to Johannesburg following an International Labour Organisation conference "he was in touch with both parties."

# Business prepared to 'sit out strikes'

BY BRUCE CAMERON

Organised business yesterday declared it would "take a six-month strike" rather than be forced by industrial action into accepting changes to proposed labour legislation that could inflict severe damage on the economy.

The stark warning came from David Brink, chairman of the powerful Business South Africa organisation, in an interview. BSA also today launched a nation-wide advertising campaign to take its argument to the public.

The dispute is over changes to the draft Labour Relations Bill, which is now being debated by the National Economic, Development and Labour Council (Nedlac).

Brink declared. "The captains of industry have decided that they will take a six months strike if necessary." He said the Government would have to choose between the interests of the unemployed and those of organised labour.

Brink said business would keep negotiating and would not pull out of Nedlac, adding "It is one thing for labour to behave badly. It is another thing for business to behave badly."

STAN 14/6/95  
**INDUSTRIAL action won't force business to accept changes to the draft LRA Bill, it has vowed**

"No one had the right to sabotage the economy through industrial action when negotiations were still under way."

The Nedlac talks are aimed at reaching consensus on the draft legislation by June 30.

Brink predicted it would be difficult to close the gap between labour and business and that Tito Mboweni, who is "the best Minister of Labour we have had in a very long time", will have to front up against labour.

Brink said an absolutely crucial principle was involved: "Whether there should be voluntarism or compulsion" on the issue of centralised bargaining. He warned if central bargaining was made compulsory across all industries, it would be a disaster.

Acceptance of compulsory central bargaining would frighten off big investors and make it impossible for the growth of small business.

Brink, who is also chairman

of ABSA, said big companies could pay a sweeper R2 500 a month. If this was enforced on small business, it would wipe out any competition with big companies and strengthen monopolies.

He said the trade union federation Cosatu and its associated unions only represented 20% of economically active people in the country. On top of this there was unemployment of about 50%, South Africa's single biggest problem.

Brink rejected as "a monumental lie" claims by labour that business was attempting to alter the legislation on central bargaining, saying "The bill provides for voluntarism."

Business was not opposed to centralised bargaining. The issue was to avoid making it compulsory as it was not suitable to many fields.

An example was the pulp and paper industry, which did not have a central bargaining agreement and which operated on three levels. At the first level were tree growers, who were both large and small, including many small growers in KwaZulu Natal. On the second were tree cutters, some large and some small, and at the third were the capital-intensive pulp and paper mills.

*Unions press on with plans for mass action and strike*

# Business, labour

# Showdown looms

Star 14/6/95

■ BY JUSTICE MALALA  
LABOUR REPORTER

Business and labour are headed for a major confrontation after formal negotiations on new labour laws failed to reach agreement yesterday.

Union federations are going ahead with further mass action as well as a half-day strike on Monday.

Business South Africa (BSA) leaders said last night they were committed to the continuation of negotiations on the draft Labour Relations Act but reaffirmed their positions on the three main issues that led to the impasse, vowing they would not compromise.

And the Congress of SA Trade Unions, which is leading the mass action campaign and

commands a membership of more than 1,5-million, was meeting last night to assess progress in the talks and to chart a way forward for its ongoing campaign.

Speaking after a meeting of business leaders including Anglo American chief Julian Ogilvie Thompson and JCI head Pat Retief in Sandton last night, BSA representative Bobby Godsell said the business community would intensify negotiations on the Bill and would start a campaign to better inform South Africans about its positions.

Cosatu has said that if business does not accede to its demands for legal compulsion of centralised bargaining, workplace forums and the balance between the right to strike and

**EMPLOYERS VOW NOT TO COMPROMISE ON THREE CRUCIAL ISSUES CAUSING BREAKDOWN IN TALKS**

to lock workers out, it will continue its mass action.

The campaign began last week with marches in several cities and placard demonstrations at workplaces since then.

A source within Cosatu yesterday said the meeting, involving leaders from all over the country, was in his view a "war council aimed at bringing business to its senses".

Meanwhile, Economist economic analyst Tony Tyrine said yesterday the country

stood to lose about R685-million as a result of the National Youth Day holiday on Friday, and Monday's half-day strike, although hard to calculate, would cause the country to lose millions more.

SA Chamber of Business spokesman Gerrie Bezuidenhout said a full day's work would be lost in the march despite Cosatu saying it was a half-day strike.

Cosatu spokesman Neil Coleman said last night the federation would "divert" a full programme of action today following the deadlock.

Talks between the two sectors will continue in a bid to meet the June 30 deadline set for completion of negotiations on the Bill. Business negotiator Adrian du Plessis said new

structures to negotiate in would be discussed between labour and business.

Godsell said the business community supported the new Act but regarded the labour movement's insistence on centralised bargaining being made compulsory as "nonsense". Business wants centralised bargaining to be an issue which should be determined by unions and employers as they wished and says it should not be compelled by law.

Business also feels the new legislation is weighted in favour of striking workers and does not protect a business that might close down because of strike action.

► **Tough talk on strikes -**  
Page 15

BUSINESS ACTING 'RECKLESSLY'

CT 15/6/95

# Cosatu rejects '3rd World' labour laws

**BIG BUSINESS** and trade unions are deadlocked over future labour legislation, and Cosatu is planning a march to Parliament tomorrow to highlight their demands.

**S**OUTH AFRICAN workers will not agree to a Labour Relations Act which will put them on a par with workers in the Pacific Rim countries — because cheap labour is a feature of those economies

This was said yesterday by Cosatu acting general-secretary for the Western Cape Mr Joseph Williams.

Cosatu unions, he said, had drawn up a Labour Relations Act which was in line with other First World countries and which protected the rights of the worker

"We will never agree to the

Third World option being proposed by the Business South Africa alliance because it will undermine the power of the unions "

Big business and trade unions are deadlocked on a number of points in the new Labour Relations Act — including centralised bargaining, industrial action and work-place forums

Business want the right to lock striking workers out — a clause which, they say, balances out the workers' right to strike

This week organised business said it would take "a six-month

~~(162)~~ (166) ~~(166A)~~  
strike" before they were forced into accepting the unions' proposed labour legislation changes

## March

The trade union alliance said it was "amazed" at this "reckless" challenge and accused business of being immature. To highlight their demands trade unions are planning a march through Cape Town to Parliament tomorrow.

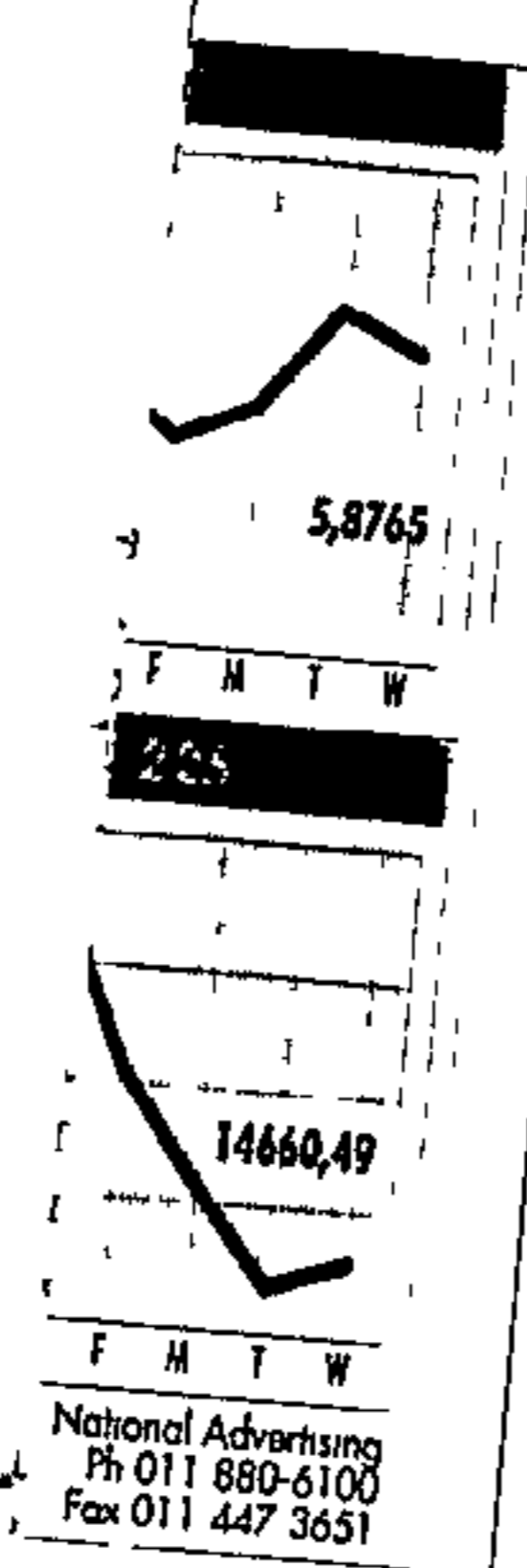
Labour Minister Mr Tito Mboweni said yesterday he was confident agreement would be reached on a new labour law this month, despite a half-day strike planned by trade unions for Monday — Staff Reporter, Reuter

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# CT(BR)15/6/95 No work, no pay urges Sacob

By DEREK TOMMEY

The South African Chamber of Business (Sacob) has called on employers to follow a policy of "no work, no pay" for workers who do not attend work on Monday. It also calls for disciplinary action to be taken at the discretion of the company.

It said in a statement last night that it was disappointed at Cosatu's failure to call off Monday's planned work stoppage.

While it upheld the right to peaceful protest, this particular action was inappropriate while the issues in contention were being negotiated.

### Negative

Sacob says that although a half-day stoppage is the stated plan, the likelihood is that a full day's work would be lost. The negative impact of the work stoppage on Monday would be exacerbated by the fact that Friday, June 16, is a public holiday.

"Companies should draw up contingency plans and discuss the planned events with their workforce in order to minimise disruption."

Sacob warns that the way in which South Africa handles the crucial labour relations bill cannot be seen in isolation. It says it has wider economic and business implications. The negative impact on the business mood and on investor perceptions abroad should not be underestimated.

# A plague on all of them

(166) FM 23/6/95



**Professor Tom Lodge teaches political studies at Wits University**

**The efforts** to create a new order in industrial relations are unlikely to be remembered as a glorious chapter in SA's labour history. The parties concerned are behaving foolishly.

The Bill has flaws but it does seem an honest attempt to try to square the circle, in combining an institutional framework which might possess greater legitimacy for workers with inducements for a more cooperative relationship between labour and management. It was wrong-headed, though, to draft the Bill without wider consultation.

The last time major industrial relations legislation was introduced, it was preceded by a commission of inquiry. It did, despite apartheid, produce a set of prescriptions which were widely acceptable and even worked well for a while.

This time, government has not been successful in explaining the purpose and the rationale behind the Bill, not in terms that are accessible to the public. Prof Halton Cheadle's "Explanatory Memorandum" is profound stuff if you can get hold of a copy, but it reads like a doctoral dissertation.

Anyway, to judge from the press reporting my guess is that most of the concerned journalists have read neither the memorandum nor the draft Bill.

If they had done their reading they wouldn't let Neil Coleman get away with the misrepresentations which were attributed to him. Cosatu's spokesman was quoted as saying that "the RDP calls for collective bargaining, the right to strike, no lockouts and a number of principles which are contained in the draft Labour Relations Act". The RDP is a long document and I may

have missed something, but paging through it I can't find any references to lockouts, prohibitive or otherwise. But the draft Bill sanctions lockouts. It doesn't forbid them as Coleman implies.

What is happening is that both labour and business are trying to make it appear as if the other party is holding things up, by claiming that their own objections to the Bill are inconsequential and that in general terms they are in agreement with its principles. This may be good politics but it is poor logic.

Cosatu's campaign centres around the demand for compulsory centralised bargaining which, it claims, business is resisting through its opposition to the Bill. This is nonsense. The Bill has as one of its essential principles the notion that collective bargaining procedures should be voluntary rather than legally mandatory. In fact, many of its provisions can be given interpretations which are unfavourable to labour, particularly with respect to employees working in small enterprises.

If the Bill was passed by an ANC majority in parliament with its provisions unchanged, which is what Cosatu threatens will happen if Business SA fails to make concessions to its demand at Nedlac, labour might in the end be the real losers.

In the case of business, its objections to the Bill seem equally otiose, at least from the perspective of the major players. Why all the fuss about centralised bargaining? In many important sectors bargaining is already centralised.

Business says the conciliation system will cost more than the old courts. It will, but why do businessmen expect effective institutions to carry no price tag? It is unlikely to cost as much as is lost through current levels of strike action. The Bill extends the right to strike in certain areas but it also restricts it in others — in essential public services for example, a sector which has recently been plagued by unruly labour insurgency.

Businessmen argue that a less restrictive

attitude to strikes will encourage stoppages. A large proportion of current industrial action is technically illegal — but laws which lack legitimate authority are ineffectual in curbing such activity. A more permissive framework may make it easier to regulate and institutionalise protest.

Business doesn't like the workplace forums because in effect they will give legal status to shop-steward attempts to interfere with the prerogatives of management. But shop stewards will claim such rights anyway. The forums are intended to facilitate restructuring and however obstructive they might be, they are probably a better alternative to the insurrections which are likely to accompany unilaterally determined closures and dismissals.

The argument that we should base our industrial relations system around the expectations of foreign investors is fatuous as well. Some of our prospective investors are domiciled in countries whose industrial relations systems are barbaric.

Government does not look good in this dispute either. The draft Bill was inevitably going to be understood as the test case for Nedlac's effectiveness as a vehicle for the kind of corporate decision making which is so indispensable if the RDP is going to achieve its objectives.

Tito Mboweni's June 30 ultimatum underlines government's own cynicism about the likelihood of tripartite consensus. If the same attitude had prevailed during Codesa we would still be waiting for democracy.

And if it takes more than four months to agree on the institutional foundation for a new industrial order it is probably time well spent.

The President's appearance at last week's demonstration was an ill-considered move, hardly calculated to make business more reasonable or investors less skittish. The demonstration was, in effect, a protest against the provisions of a law proposed by members of his own government and his own party. With all due respect, what did Mandela think he was accomplishing?

BUSINESS AND LABOUR

# Principles at stake

(166) (EZE)

One problem is that government seems in sympathy with the unions' romantic socialism

FM 23/6/95



On a recent trip to Geneva to attend a meeting of the International Labour Organisation, Sam Shilowa had the SA delegation (including Labour Minister Tito Mboweni) in stitches with his impersonation of the way buffaloes mark their territory and return to sniff it out with long, low sweeps of the head.

like business does over the labour terrain, said the Cosatu chief, referring to talks over the draft Labour Relations Bill.

Not to be outdone, Business SA's man in the team, Bokkie Botha of AECI, insisted on demonstrating organised labour's approach by imitating a giraffe, its head in the clouds and "unable to see the situation on the ground."

Indeed, SA unions continue to push a brand of romantic socialism way out of kilter with developments internationally. Led by Cosatu, they show little understanding of the need for flexible bargaining and remain captive to centralist instincts, pushing the short-term benefit of a relatively privileged minority. On current trends of rising minimum wages, union strategies are guaranteed to drive up inflation and lock this country into a high wage, low productivity economy in which all sides will be losers.

Small businesses, the lifeblood of growing, successful economies, are petrified at the prospect of certain union demands being accepted and imposed on them.

Demands for the closed shop and open-ended strike rights tend to trample underfoot any notions of democracy and individual rights.

Mboweni takes great heart from the kind of exchange Shilowa and Botha had in Geneva, however, because they help the "chemistry" of business/labour negotiations.

He was speaking ahead of Monday's national stayaway, called by three union federations — Cosatu, Nactu and the formerly mainly white Fedsal — to protest against what they perceive to be the intransigence of business in crafting new labour law. Talks have been under the aegis of the fledgling tripartite policy council, Nedlac, which has failed its first real test in conflict resolution and corporate decision-making.

As for the prospect of union mass action, Mboweni takes the view that this should "not overly concern" people. At the constitutional talks at Kempton Park, he said,

there were also walkouts and *bosberaads*, mass action and fishing trips, all of which helped the chemistry.

Mboweni takes a sanguine view of contentious issues like collective bargaining, workplace forums, the right to strike and the closed shop. "I'm convinced we can find a solution." Parts of the draft labour Bill ("which is a negotiating document") may have to be changed, he says. With the looming June 30 deadline in mind, the Minister has proposed a new mechanism to move things forward — a team of professional legal drafters, which he seems to believe will somehow overcome the essential differences of principle between business and labour.

Dwelling a little on the substance of the Geneva meeting, Mboweni tellingly spoke of how Asian countries want to adopt a completely different route by jettisoning labour "minimum standards" and focusing on job creation. "That would mean economic growth at the expense of social justice — no, no, we said; minimum standards must be part and parcel of growth."

This cuts to the heart of the conflict between business and labour in SA: deregulation of the labour market, which the ANC

relation between growth in GDP and employment. As the economy grew, jobs were created. But the relationship broke down in the mid-Seventies, for several reasons. Among them were technological improvements which reduced the need for labour, and a long period of low or negative real interest rates which encouraged the use of capital. But a major factor was the growth in union power. From that point, growth in GDP was channelled into higher wages instead of more jobs.

Kantor calculates that if the relationship hadn't broken down there would be 700 000 more jobs in the economy now. "Unions have acquired a monopoly of the supply of labour, creating an artificially high entry wage. This has denied new and unskilled entrants the opportunity to acquire the skills they need to compete in and contribute to the formal economy."

If wages were allowed to fall to realistic levels, the immediate beneficiaries would be those people now in the informal sector. But ultimately everyone would benefit, including the existing labour force.

The constraints union leadership is now placing on the economy — and the further constraints it has in mind — will inhibit growth. They will limit the upside of the business cycle and its potential to generate higher real returns, not just to shareholders but to all stakeholders.

The longer the period of productive expansion, the more skills the workforce acquires and the more valuable existing workers become. This will give them a competitive edge in the market over unskilled new entrants to the labour force who are prepared to work for lower wages while they acquire those skills in their turn.

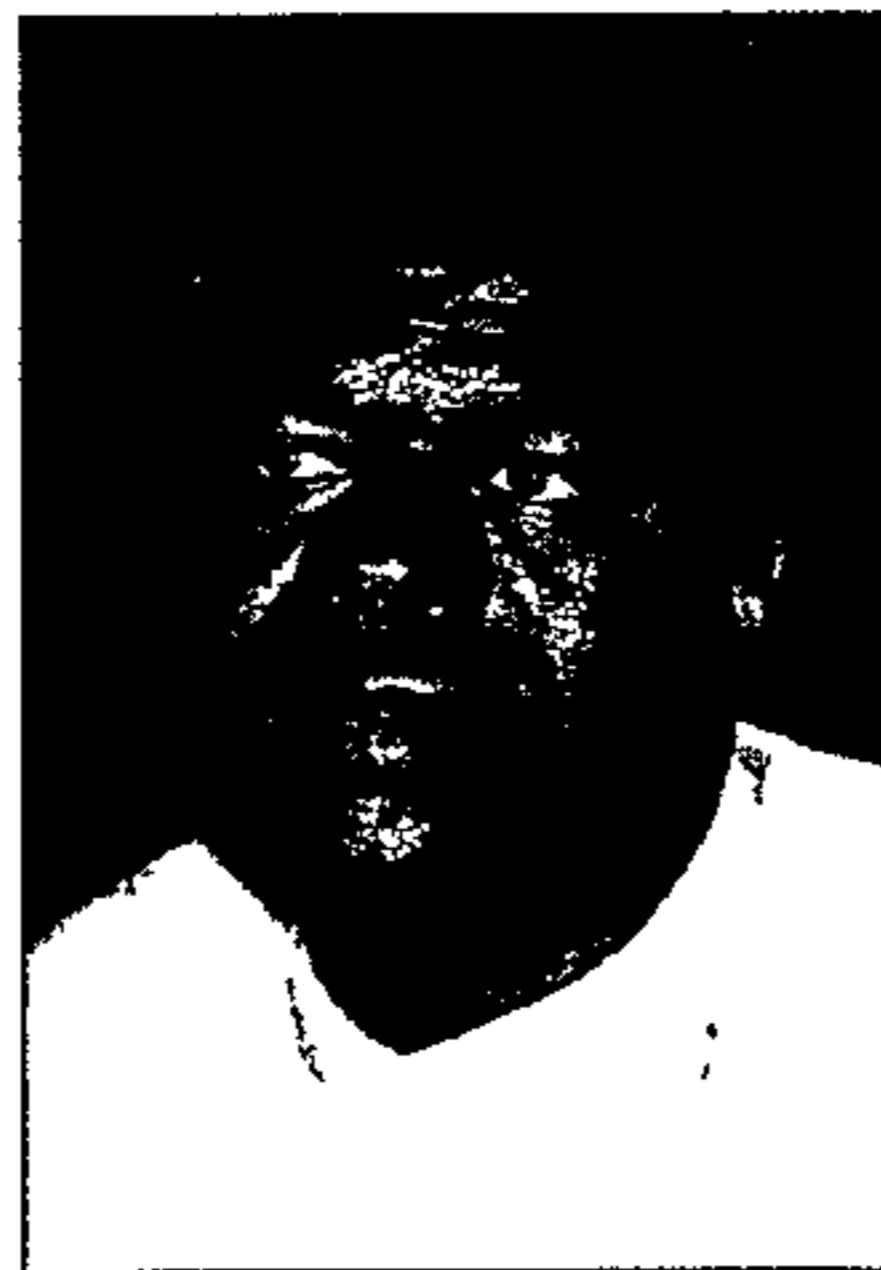
If the remuneration of the worker doesn't reflect his or her economic contribution, inflation will erode the purchasing power of any increase achieved in wage negotiations — and will induce a recession.

This brings us to the other unintended consequence of wage inflexibility.

It increases the number of jobs lost in a recession, as well as the structural nature of those losses. A feature of recent recessions, not only in SA but in most of the Western world, is that jobs lost were not all created again when the economy recovered. So the unionised workforce will be further reduced. When former union members are locked out of the system by the artificially high minimum wage levels now demanded by the unions, there will be a political price



Mboweni



Shilowa

government, given its political roots and fraternal ties to Cosatu, is unlikely to broach at this stage. Some in the organisation recognise, however, that it's a choice that cannot be put off forever.

If the unions achieve what they want there will be unintended consequences. Unless an economy sees exceptionally high rates of growth, there is an unavoidable trade-off between the rate at which wages and other employment costs increase and the rate at which unemployment rises.

Says UCT professor of economics Brian Kantor "Before 1975 there was a close cor-

P.T.O. —————

# Labour fails to win Mboweni's support

ST (NT) 25/6/95

(166)

THREE days after up to 500 000 workers

marched on Monday in support of demands for compulsory centralised bargaining, Labour Minister Tito Mboweni was telling union leaders why the government would not support these demands.

Business and government negotiators said on Friday that Mr Mboweni's intervention effectively broke the deadlock between organised business and labour over the Labour Relations Bill.

While business and labour negotiators say much work still has to be done before an agreement is reached on new labour law, Labour Ministry spokesman Shaheen Singh says the Ministry is optimistic that the June 30 deadline for agreement can be met. Business and labour spokesmen declined comment on Friday, saying further discussions were required before official responses to Mr Mboweni's tabled proposals would be made public.

But it is understood the parties made significant progress on many of the contentious issues contained in the draft Bill during 16-hours of negotiations on Wednesday and Thursday.

The business delegation was led by Anglo's Bobby Godsell while labour was led by Cosatu's Sam Shilowa.

By KEVIN DAVIE

"The Minister showed that government was prepared to face down its alliance partners," says one participant. "The message was, Sorry guys, we can't agree to compulsory centralised bargaining."

Sources at the marathon talks say Mr Mboweni showed that government was prepared, after allowing the parties a number of weeks to reach consensus, to take the lead and show that government is prepared to govern.

Mr Mboweni did not have time to read his full speech to Parliament on Thursday during his Budget speech. A prepared, but undelivered, part of the text dealt with the issue of centralised bargaining.

He said "a primary concern of statutory compulsion is the rigidity which it introduces and the assumption that there is the right answer to appropriate levels of bargaining and bargaining topics."

"The second difficulty is legal. How does the law compel employers, organised and unorganised, to bargain collectively?"

"How are employers to be identified? How is an agreement reached? It is legally difficult, if not impossible, to compel the establishment of bargaining structures and processes at industry level then giving the labour courts a general

discretion to impose a duty to bargain which will have a decentralising effect."

The government still intends promoting centralised bargaining, although not compulsory, bargaining.

Mr Mboweni is proposing that statutory councils be set up on a sectoral or industry basis under the Nediac umbrella. These will not be required to negotiate wage and working condition issues, but will concentrate on non-wage issues such as training, pension, provident and medical aid funds and on improving the social wage — eg education, health, transport, housing.

Employers who employ 30% of workers in an industry and trade unions who have 30% of workers as members will be eligible to be represented on the statutory councils. The parties may agree to establish a centralised bargaining forum, and, as is proposed in the Bill, extend agreements to the rest of the industry.

Ms Singh says the Bill proposes that an independent panel will decide on exemptions.

She says numerous submissions from small business groups have been received. Processing is reaching finalisation and small business concerns that the present Bill favours big business and organised labour will be addressed. The Ministry also envisions a stronger role for a restructured Wage Board.

ages a stronger role for a restructured Wage Board.

"Where there is no agreement on wages and working conditions in an industry, a party to the Council may apply for a Wage Board investigation into wages and working conditions in the industry," Mr Mboweni told Parliament.

Cosatu's Neil Coleman says some ideas have been put forward for the parties to take back to their constituencies. "These will be taken up in the next round of talks."

Business South Africa's Adrian du Plessis says in-teresting proposals were made and there were possible areas of settlement. Mr Mboweni's proposals

have addressed four key points of difference between business and labour, including issues relating to centralised bargaining, workplace forums, the closed shop and organisation rights.

Negotiations are expected to resume today. Parties canvassed on Friday stressed that while they see areas of potential agreement, there are further thorny issues in the 211-page Bill.

One such issue is the question of 'scab labour'. The Bill proposes that employers be prevented from hiring scab labour during disputes.

Employers see this as an essential right to prevent their businesses from bankruptcy.



SORRY GUYS, Minister Tito Mboweni, who declined to endorse unions' demands

## Shilling humbles Del Monte

By SVEN LUNSCHE

THE humble Kenyan shilling continued to haunt Del Monte Royal Foods in the six months to end May as interim earnings plunged by 34% to R60-million from R90-million last year.

Kenya is one of the group's two pineapple growing regions for its exports to the European market (the other is the Philippines), and the 30% appreciation in the Kenyan currency during the six months has cost Del Monte dearly. The decline in interim earnings is likely to reduce full-year profits to 70% of last year's R221-million, the company said in a statement.

At the November 1994 year-end Del Monte had predicted a recovery in earnings in anticipation of weaker shillings and Philippine pesos. Pineapples account for about a quarter of group earnings and operating profits.

Del Monte chief executive, Vivian Inerman, said that "in spite of economic recovery in Europe, the food sector has so far remained muted and the Kenyan shilling has, until recently, remained exceptionally strong."

The group's interim turnover was up by 8.7% to R762.3-million, boosted by the weaker rand, but operating earnings fell by R23.5-million to R87-million.

Mr Inerman said the reduced General Export Incentive Scheme rate from 19% to 12% also had an adverse impact on earnings. Del Monte, jointly controlled by Anglo American and the Inerman family, declared a 25% reduced interim dividend of 6c a share.

Del Monte's chief operating officer, Enrico Sola, was optimistic about the remainder of the year. "Supply and demand of pineapple and deciduous fruit appears to be back in balance. With selling prices now much firmer the group expects to operate at full capacity this year."

Mr Sola said Del Monte had, in the last two months, launched a fruit-based drink in Italy and a freshly squeezed juice in Britain.

Mr Inerman said Del Monte's local subsidiary, Royal Beech Nut, was in negotiations with an international food group to form a strategic partnership and "enhance the company's competitiveness in the confectionery sector".



# Labour seeks centralised bargaining 'six-pack'

**EBRAHIM PATEL**

THE context of our negotiations, indeed the reality which the labour laws will need to address, is of a society with huge wealth gaps and a low growth rate. The top 10% of earners, according to the recent Economist survey on SA, walks away with more than half the income in the society. We are, on the measure of the Gini coefficient, one of the societies with the most unequal distribution of wealth and income. Economic concentration is at a level not seen in other market economies.

What does labour argue for in SA? We have sought to establish a centralised bargaining institution in each industry. Trade unions have put forward a "six-pack" of reasons for this proposal. First, it allows trade unions and employers to establish fair conditions of employment for all workers in an industry. To a movement which is fundamentally concerned with the quality of life of workers, this is a vital and desirable goal. Second, it sets legal minimums, applicable to all workplaces, and seeks to take wages out of competition. The success of a business is then dependent on the quality of its management, the training of its workforce and the entrepreneurial spirit which spots market opportunities and seeks to meet such demand. Success does not depend on the level of a wage or the viciousness of a management.

Third, it makes collective bargaining possible in industries with a large number of workplaces—the engineering industry, with more than 7 000 workplaces will not have effective collective bargaining if

7 000 separate annual negotiations have to be conducted by a single trade union in that sector. Fourth, it allows for the efficient use of union, and managerial manpower. Instead of 500 negotiator hours being used in 100 separate workplaces by a large number of full-time trade union officials to argue for a maternity agreement, this is achieved in five hours at a central forum, with one full-time official. Fifth, certain matters, such as medical and provident funds, benefit from economies of scale which centralised bargaining brings. Other matters, such as training policy frameworks, are best dealt with at industry level. Finally, centralised bargaining

allows business and labour to deal, on a continuing basis with industrial policy, trade policy and the relationship between wages and these other elements of policy. This is at the heart of creating dynamic competitiveness in our industries, for it permits constant restructuring of industries and sectors to meet the needs of changing world markets. And, importantly, it sets this as the joint task of business and labour. With such a compelling case, how has labour fared in achieving its objectives? The results have been mixed. In some sectors, often after long union struggles, such arrangements have been established. In others, there has been little progress. Indeed, in certain sectors, long-standing centralised bargaining institutions were collapsed by

We now seek that the law address the absence of a bargaining framework which requires bargaining at sectoral or industry level. This will reduce industrial conflict, in that parties will not be required to strike over the establishment of central bargaining structures. It will do for the private sector what the Bill already does for the public sector—that is, set up wage and policy bargaining councils in every sector, as the place where the basic wage deal is concluded. Already in discussions at Nedlac, some progress is being made in this area—it remains for each party's principals to consider whether the progress constitutes a basis for settlement.

Patel is labour's convenor at Nedlac.

LETTERS

1665 00 29/6/95

## LABOUR

# Tito's clever compromise

Business and labour are carefully considering government's compromise proposals on centralised bargaining, tabled by Labour Minister Tito Mboweni in parliament last week. Though business sources refuse to be drawn on the substance, they seem relieved that the proposals meet their bottom line — at least by not compelling centralised bargaining nor prescribing the level at which bargaining should take place.

In particular, Mboweni's clever new idea of "statutory councils" looks like it could fly and break the deadlock over the core issue in the draft Labour Relations Bill — centralised bargaining, which the unions want made compulsory. As Mboweni explains them, statutory councils would seem to differ fundamentally from centralised bargaining councils.

Tabling the proposals in parliament, he frankly conceded that "it is government policy to promote collective bargaining at industry level."

He also said, however, that "if collective bargaining is more efficient at decentralised levels, the decentralisation process must be by agreement."

Government's central aim in promoting centralised bargaining is to get business and labour to forge consensus on the bigger issues facing the economy, such as industrial restructuring, training and a social wage. It is not aimed at securing sector-wide agreements on minimum wages and working conditions, which, as far as Mboweni is concerned, may be negotiated at any level the parties jointly decide. This leaves an avenue for labour to pursue its quest — assuming it can convince employers.

In any event, Mboweni is not in favour of bringing in a law to "compel" employers to bargain centrally. "We are not convinced that the statutory duty to bargain at industry level is either wise or legally viable, and it may actually run counter to the constitution. Statutory compulsion would be too rigid, and assumes that there is a right answer to the question of bargaining levels and topics. The second difficulty is legal — how does the law compel employers, organised and unorganised, to bargain collectively at industry level? How are they to be identified? How is an agreement reached?"

Mboweni maintains that government's objectives in promoting centralised bargaining are mostly accepted by business and labour. The only question is how

This is where his latest proposals come in. He proposes amending the draft Bill to permit the parties in dispute over the establishment of a bargaining council to refer the dispute to the Commission for Conciliation. If the commission fails to secure agreement, Mboweni may establish a "statutory council," with jurisdiction limited to matters of social policy, social wage and training functions.

The parties to a statutory council may by agreement — "and I stress, by agreement" — include additional matters, such as wages and working conditions.

Where there is no agreement on wages and conditions in an industry, a party to the statutory council (labour, most likely) may



apply for a Wage Board investigation into wages and conditions in an industry. The board commissioner would then conduct an investigation and consult the statutory council before making recommendations to the Minister, who will make a determination in terms of the present Wage Board.

"While not making bargaining compulsory, the effect will in all probability induce parties to bargain in order to avoid the bargain being made for them by the Minister," says Mboweni.

In this way, it would seem that the Minister could, almost by sleight of hand, go some way towards meeting the union demand by raising "apartheid wages." He will, after all, appoint the Wage Board commissioner and has the power to make a de-

termination

It is clear that, while Mboweni recognises economic "imperatives," he is ambivalent about saying a flat "no" to his party's key ally, Cosatu.

Based on the experience in other countries, Mboweni is convinced that an adversarial labour relations system is not suited to this huge task. And where adversarial systems have not been supplemented by workplace-based institutions for worker representation and labour-management communication, this process has fared badly, he says.

As Mboweni points out, the draft Bill allows the parties to determine their own arrangements. What is different is the nature of the "duty to bargain" (at any level). This is "organisational and institutional in nature, rather than legal" — which business basically accepts.

Mboweni bases his case in favour of centralised bargaining on the following: first, there are already 89 industrial councils in place; second, sectoral bargaining has an important role to play in society.

"As industries are faced with reduction of tariffs, and our re-entry into the global economy, they are going to have to change. That change has to be managed. It is my view that industry-level bargaining arrangements are particularly well suited to assist in the transition and adjustment that will inevitably occur."

## DEFENCE

## To the core

It's taken longer than expected, but the country is at last moving towards a major reassessment of its defence needs. The findings are due to be presented to parliament by April next year and could result in a significant restructuring of the SANDF and the reallocation of some key activities to nonmilitary organisations.

The future of the navy will be a particular focus, after the deferment of a decision to buy four corvettes for R1,7bn in the wake of massive pressure from within the ANC.

A draft White Paper tabled in parliament by Defence Minister Joe Modise last week sets the policy parameters for a wide-ranging review of defence needs. The review will be underpinned by extensive public consultation. The White Paper had been expected at the end of last year.

It is clear from the document's sweeping terms that the SANDF's transformation into an instrument of the new democracy will be painful for some professional soldiers and

# Boost for labour negotiations

Renee Grawitzky

LABOUR and business felt proposals made in meetings yesterday with Labour Minister Tito Mboweni, if implemented, would constitute a step in the right direction and could put negotiations on the draft Labour Bill back on track.

This follows separate meetings held between the minister and labour and thereafter with business to try to find mechanisms to take the process forward.

The meetings were initiated by Mboweni after it became evident that major differences of opinion existed between labour and business on crucial areas of the draft Bill and after labour had resolved to em-

bark on mass action.

During discussions with labour, Mboweni said the deadlock between the parties was not good for the country.

He said that before the meetings the Cabinet had been briefed on the main areas of difference, especially centralised bargaining, industrial action and workplace forums, and had obtained a mandate on government's position. The Cabinet "fully supported centralised bargaining and the proposals by the minister on how to explore mechanisms to achieve this".

Mboweni said after the meetings that sufficient progress had been made in un-

Continued on Page 2

## Labour

Continued from Page 1

locking some of the areas of difficulty. The parties agreed that it was necessary to find mechanisms to "better manage the process in the National Economic, Development and Labour Council (Nedlac) in order to accelerate the negotiations and reach consensus".

Labour and business representatives at the meetings agreed that the following proposals be submitted to the Labour Relations Act negotiating committee today:

- Suggestions by the minister on how to achieve centralised bargaining;
- That Nedlac provide a backup technical team to assist the negotiating committee;
- That Nedlac's secretariat be used in a more facilitative capacity to try to bring the parties closer together; and
- That a permanent chairman, either

from the parties themselves or an independent outsider, be appointed.

Labour said Mboweni would also address its concern that business lacked a proper negotiating mandate.

Business South Africa spokesman Bokkie Botha said business was hopeful that the proposals would take the process forward, but was disappointed that yesterday's meetings were not tripartite in nature as "business was committed to tripartism".

Cosatu's Nell Coleman said labour did not feel it would have been appropriate to hold trilateral meetings which were reserved for negotiations within Nedlac. The meetings were not intended to be negotiating meetings.

Meanwhile, the 200 000-strong Federation of SA Labour Unions decided yesterday to join Cosatu's mass action programme in a bid to break the deadlock around negotiations on the Labour Bill.

## Extend labour bill deadline (166)

CT 11/6/95

LABOUR Minister Mr Tito Mboweni should extend the deadline for the new Labour Relations Bill to next year's parliamentary session, the Democratic Party said yesterday.

Reports earlier said Mr Mboweni had urged labour and business to find common ground by June 30, or "live with the consequences" of failing to get new labour laws enacted this year.

But DP labour spokesman Mr James Selfe said the "unrealistic deadlines" which Mr Mboweni had set on an "extremely complex and important piece of legislation" had precipitated the current crisis.

He was reacting to differences between the labour and business movements over some issues in the bill, including centralised bargaining — Sapa

*Meetings start again on Sunday to break deadlock*

# New life in labour talks

**BY JUSTICE MALALA  
LABOUR REPORTER**

The series of meetings between labour, business and Government representatives which starts on Sunday will focus on Labour Minister Tito Mboweni's proposals to break the deadlock which has plunged talks on new labour laws into crisis.

Revealed in his budget speech in Parliament last week, Mboweni's proposals breathed new life into the stalled negotiations which had led to labour embarking on mass action and business retreating with an expensive media campaign.

Since being presented to the players, consultations on the draft Labour Relations Act have taken place and it is expected that business and labour will table their responses to the Cabinet-approved proposals soon.

Mboweni said yesterday there was consensus on about 90% of the Bill's provisions. The Govern-

ment, however, would prefer to see consensus being reached on all the issues by all the parties.

Should there be no agreement, Cabinet would assess the strengths of the differences and "if absolute consensus has not been reached then we will have to see whether the parts where there is consensus cannot be passed in the current parliamentary session," Mboweni said.

Labour and business have deadlocked on compulsion to bargain centrally, closed shop agreements and replacement of striking workers with scab labourers.

On the issue of centralised bargaining, the Government has proposed that the National Economic, Development and Labour Council demarcate the industries in which "statutory councils" are to be established.

The powers of these councils may include determining industrial policy, establishing pension,

provident and medical aid funds and arranging dispute resolution functions, particularly conciliation of disputes.

Each council may amend its constitution by allowing agreement between the parties to include new powers such as collective bargaining over wages and working conditions.

It may be formed by trade unions representing 30% or more of the employees in the industry or by bosses employing at least 30% of workers in the industry.

The new proposal strips away the enforcement of centralised bargaining, as labour demands, and yet encourages the principle of voluntarism that business requires. It also puts the ball in labour's court by setting thresholds that unions will have to work hard to reach to ensure the formation of the councils. Yet if these thresholds are reached, the unions will have acquired the muscle necessary to call for

the councils.

On closed and agency shops, Mboweni proposed that the draft Bill should include provisions on the ways closed shop agreements could be enforced.

He proposed that the agreements comply with requirements for collective agreements and that the introduction of a closed shop should require a ballot of all the employees covered by the agreement.

The Government said "The proposals made by the trade unions go a long way towards resolving the Government's primary concerns over the constitutionality of union security arrangements."

A trade union that is not party to a closed shop may apply to become a party to the agreement if it is able to demonstrate that it represents a significant interest, or has the support of a sufficient number of employees covered by the closed shop.

*Star 30/6/93**(166)*

# Labour bill

'90% settled'

ET 30/6/95

PRETORIA: Business and labour have reached agreement on nearly all of the provisions of proposed new labour laws, but the issue of scab labour was proving a problem, Labour Minister Mr Tiro Mboweni said yesterday.

"There is consensus on about 90% of the bill," he said.

The controversial issue of scab labour is due to be discussed at a "bosberaad" between delegates representing the government, business and labour.

The proposed Labour Relations Bill programme sets August 2 as the deadline for tabling a final draft bill. The bill is scheduled to be adopted on August 18. — Reuter

# Make-or-break bosberaad on contentious labour relations bill

## Political Staff

PARLIAMENT might pass the Labour Relations Bill with contentious clauses removed if consensus on the Bill is not reached soon, Labour Minister Tito Mboweni has warned

The make-or-break bosberaad between labour, business and the government starts on Sunday, and Mr Mboweni said yesterday there was consensus on about 90 of the Bill's provisions

He said the government would prefer to see consensus being reached on all the issues

But if there was no agreement then cabinet would assess the strengths of the differences and "if absolute consensus has not been reached then we will have

to see whether the parts where there is consensus cannot be passed in the current parliamentary session", he said

Other parts might then go through parliament next year

Labour and business have deadlocked on clauses related to centralised bargaining, closed shop agreements and replacement of striking workers with scab labourers

Mr Mboweni said it was his impression that there was a lot of progress on the centralised bargaining issue. He said the government would also submit proposals on scab labour during strikes to the meeting on Sunday

He refused to reveal details of

his discussions yesterday with President Mandela and Congress of South Africa Trade Union leaders Sam Shilowa and Zwelinzima Vavi

The deadline for negotiations on the Bill was set for today (fri) but Mr Mboweni said yesterday new dates to serve as guidelines and to ensure that the legislation goes through parliament this year had been approved by the Cabinet on Wednesday

After negotiations, a report will be submitted to the National Economic, Development and Labour Council on July 7, then a new draft of the Bill will go to Cabinet on July 26 and it will be submitted to parliament for its first reading on August 3

ARLT 30/6/95 (166)

## Timetable is set for labour Bill

Rene Grawitzky

~~(152)~~ (166)  
LABOUR Minister Tito Mboweni obtained approval from Cabinet this week on a timetable for processing the labour relations Bill aimed at having the legislation passed by Parliament on August 18.

The original deadline for completion of negotiations expires today.

Mboweni indicated that because Parliament was due to sit until mid-September, there was an additional four weeks "injury time" should the new deadlines not be met.

He said all parties within the National Economic, Development and Labour Council (Nedlac) wanted the legislation to be enacted this year.

It was important to try to achieve this objective.

The new timetable begins with a Nedlac meeting in Gauteng on Sunday and Monday where Mboweni is expecting labour and business to respond to his proposals on centralised bargaining and workplace forums tabled on June 21 and 22 in Cape Town. Mboweni is also planning to propose deadlock breaking proposals on the question of the use by employers of "scab labour" during strikes, which labour wants forbidden by law.

He said government was perturbed by the violence that tended to occur when temporary labour was used to replace strikers. However, banning it was uncom-

BD 30/6/95 Continued on Page 2

## Labour

~~(152)~~ (166)

Continued from Page 1

mon — such legislation existed only in two provinces of Canada — and he would be proposing a "balance" between employer and union positions.

Following the meeting, Mboweni's schedule envisages a report being presented to the Nedlac executive council on what has been agreed upon. A final draft of the Bill would be submitted to the Cabinet meeting on July 28. After that consideration, the Cabinet would be asked formally to approve the Bill which would then be presented to Parliament for its first reading on August 2.

The National Assembly and Senate select committees on labour and the reconstruction and development programme

BD 30/6/95  
would meet jointly and hear public representations on the Bill from August 7 to 11.

Conceding that little time was allowed for the parliamentary committees to deal with the Bill should they wish to consider significant amendments, Mboweni said he hoped they would consider that it was a product of lengthy negotiations.

Meanwhile, a breakfast meeting of the tripartite alliance secretariat met President Nelson Mandela yesterday to be briefed by Cosatu on the status of negotiations on the draft Bill.

The breakfast was attended by Cosatu general secretary Sam Shilowa and assistant Zwelenzima Vavi, Cheryl Carols, Jeremy Cronin and Mboweni. Shilowa outlined the developments unfolding within the negotiations.



# Cosatu in top-level labour talks

Star 29/6/85 (166) ~~167~~

■ BY JUSTICE MALALA  
LABOUR REPORTER

Leaders of the Congress of SA Trade Unions met President Nelson Mandela and Labour Minister Tito Mboweni in Johannesburg last night to discuss labour's position on the draft Labour Relations Act.

The meeting follows Mandela's discussions with a business leader in Pretoria on Tuesday in which business concerns on recent mass action and negotiations on the draft Act were raised.

Details of last night's meeting are expected to be released today.

Deadlocked talks between labour, business and the Government on the draft Labour Relations Act were given a new lease of life last week when Mboweni ta-

bled new deadlock-breaking proposals which the parties are now studying.

A new series of meetings between the parties has been scheduled for Sunday and Monday, probably in Johannesburg.

Union federations Cosatu, National Council of Trade Unions and the Federation of SA Labour Unions have embarked on mass action over differences with Business SA on provisions in the draft Act on centralised bargaining, workplace forums and the right to strike. The mass action culminated with nationwide marches last week.

Cosatu said in a statement yesterday that it had canvassed the opinions of its members and allies on the negotiations.

"Contrary to the media

perception that the ANC component of the GNU has abandoned labour, and that the minister has sided with employers, we have found general support for the fundamental principles advanced by labour in negotiations," the union federation said.

It said that following workplace meetings between leaders and union members in the past week, "workers' expectations are high for a breakthrough in the negotiations". However, workers had expressed anger and frustration at what they perceived as a lack of movement from employers in the negotiations.

Fedsal general secretary Dannhauser van der Merwe said the three federations would hold caucus meetings to decide on what tack to follow in the next round of talks.

# Mandela briefed on labour bill

CT(BR)29/6/95

BY BRUCE CAMERON

POLITICAL EDITOR

(166) (142)  
President Nelson Mandela last night called in his labour minister, Tito Mboweni, and Cosatu general secretary, Sam Shilowa, to discuss the disputed labour relations bill

A government spokesman said "The president has called for a briefing on the position"

Meanwhile, a final round of make-or-break negotiations between the government, organised labour and organised business is scheduled to resume next week

If agreement is not reached between labour and business next week, government is expected to make the final decisions on the shape of the legislation in time to put it before parliament in the second half of August.

□ The Confederation of Employers of South Africa yesterday criticised Cosatu for discussing its dissatisfaction with the bill with Mandela

Hein van der Walt, the employers confederation's director, said Cosatu would achieve nothing by complaining to the president

Cosatu has objected to the clause in the bill which entitles employers to make use of scab labour during strike action

During last week's half-day mass action campaign by Cosatu, the confederation made more than 100 000 scab labourers available to its members

He said several criminal cases were pending against the confederation members and industrial councils were prosecuting them on a daily basis

The bill would decriminalise labour actions and do away with industrial councils

He said the confederation's legal team was preparing for a court application to protect its members against the "victimisation of industrial councils"

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# Labour leaders meet Mandela

ET 28/6/95

JOHANNESBURG. Labour leaders from the Congress of South Africa Trade Unions (Cosatu) will meet President Nelson Mandela this week to discuss union efforts to strengthen provisions for workers in new labour relations laws, a spokesman said yesterday.

Earlier, Mr Mandela said in Pretoria he would meet Cosatu general-secretary Mr Sam Shilowa and had already met "one of the most important business leaders" to discuss the deadlock in talks about proposed labour relations legislation at the National Economic, Development and Labour Council.

"I am to discuss with (Mr Shilowa) problems relating to the demonstrations and how they should work together with employers," he said. He also dismissed criticism of his appearance at a Cosatu march in Johannesburg on June 6, saying no one had complained when he attended business events. — Sapa-Reuter

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# Union snags get attention

ARC 28/6/95

(166) (2)

PRETORIA — The government is attending to problems arising from recent mass action by trade unions

President Mandela said he was to meet Congress of South African Trade Unions general-secretary Sam Shilowa "to discuss problems relating to the demonstrations that have taken place and how they should work together with employers".

Earlier yesterday he had breakfast with an important business leader

"So, we are not idle. We are attending to the problems that arise"

Relations between labour and business were receiving attention

Defending his recent appearance at a Cosatu demonstration in Johannesburg, he said his critics had to keep in mind he was "put into power by Cosatu and others".

"The fact that I am now in gov-

ernment does not mean to say I should not sympathise with what they do"

Mr Mandela said he had addressed many employer forums and nobody had complained about that

"Why should I not go to Cosatu, especially if I go there with a message of peace?"

He had underlined the importance of negotiations to Cosatu, emphasising that it should negotiate "instead of running to the street"

On foreign investment, he said many foreigners had complained about the number of agencies they had to consult before being able to invest. In some cases this had taken as long as six years

"The first thing we are doing is to try to simplify that process, that there should be one agency dealing with foreign companies wishing to invest." — Sapa

# Proposed Labour Act reveals big differences

□ *Mboweni wants agreement*

*AKG 28/6/95*

*(166) (182)*

## BACKGROUND TO THE NEWS

ROGER FRIEDMAN, Staff Reporter

Minister of Labour Tito Mboweni has given trade unions and business until Friday to reach agreement on the terms of the new Labour Relations Act. This is a summary of some of the major differences.

**OFFICIALLY**, labour and business cannot agree on three main issues to negotiate at industry or company level, the right to strike, and whether companies should be compelled to establish workplace forums

Unofficially, however, there is much more at stake a move towards the socialist principle of worker control, or a retention of trickle-down capitalism with bosses retaining total control of the good ship Business

Refereeing the dispute is the National Economic Development and Labour Council (Nedlac) which was formed in February with the aim of "building social partnership in South Africa", in the words of Labour Minister Tito Mboweni

On the sidelines — but hardly as mere spectators — is the African National Congress-led government, whose captain, President Nelson Mandela, has already publicly declared his support for labour

Indeed, the ANC and Pan Africanist Congress have already stated that if business and labour cannot settle their differences at Nedlac, they will intervene on the side of labour when the bill is finally presented to parliament — probably in August or September

Centralised bargaining is the main bone of contention between business and labour

Labour wants national bargaining councils set up in each industry, Nedlac to demarcate the scope of jurisdiction of each council — and the Labour Relations Act to make it all compulsory

In addition, labour has proposed that bargaining should take place once the affected trade unions have attained a membership level of more than 50 percent of employees engaged in any industry and that small business enterprise representation on bargaining councils be provided for separately

Business would prefer centralised bargaining to be undertaken volun-

tarily, through the mutual agreement of the parties. It feels compulsory centralised bargaining would frighten off potential investors and make the growth of small business impossible

**Right to strike** Business wants to be able to hire replacement (scab) labour in the event of a strike, and wants to be able to fire strikers on the grounds of irreparable economic harm

Labour says granting business either of those rights would undermine the entire purpose of striking

**Lockout.** The employer right to "lockout" action is another contentious issue

Business wants the definition of lockout to include breaches of contract by workers

Labour proposes business should be restricted to defensive lockouts, and unions should have the legal right to challenge lockouts on grounds of equity (that the lockout was legal but unfair)

**Workplace forums.** Workplace forums were introduced by the draft Labour Relations Bill to promote the development of joint problem solving and worker participation at company level

Business supports this objective but is concerned at what it sees as the "prescriptive" manner in which the draft Bill gives unions the right to establish forums

Labour, on the other hand, objects to the Bill's provision that forums be established only at workplaces employing more than 100 people

Labour wants business to absorb the total costs of setting up the forums, while business wants the costs to be split

● The new Labour Relations Act is proposed to repeal all existing labour legislation including the Labour Relations Act 28 of 1956, the Public Service Labour Relations Act 105 of 1994, the Education Labour Relations Act 146 of 1993 and Chapter One of the Agricultural Labour Act 147 of 1993

# End in sight to Nedlac deadlock

By Abdul Milazi  
Labour Reporter

ORGANISED business and labour are closer to finding the seemingly elusive solution to the current deadlock at the National Economic Development and Labour Council negotiations.

This was disclosed yesterday by Nedlac spokesman Mr Lomn Simon after business, labour and the Government were locked in a marathon two-day meeting in Cape Town last week.

The talks at Nedlac deadlocked two months ago when business rejected organised labour federations' demands for compulsory centralised bargaining, the right to strike and the banning of scab labour.

Other issues under dispute are closed shop and workplace forums.

This led to labour, comprising the Congress of South African Trade Unions, the Federation of South African Labour Unions and the National Council of Trade Unions calling a two-week mass action which saw thousands of workers take to the streets.

Business, led by Business SA, countered by embarking on their own kind of mass action which took the form of mass advertising in the print media.

However, Simon said last week's *bosbeland* moved the parties closer to each other. "Although no formal agreements were signed, considerable progress was made on centralised bargaining and the issue of closed shops."

Simon said the Government proposed to both parties that they should make concessions, adding that further meetings were planned for later this week.

Fedsal assistant general secretary Mr James Abraham said he was positive the two parties would reach a compromise soon.

Cosatu, Nactu and Business SA were not available for comment at the time of going to press.

# FORUM



CANDIDLY CAMERON

By BAIRD CAMERON

The parties will be hard pressed to meet an extended deadline at the end of next month

## Labour law dispute promises to turn into a rough match

CT(OR) 27/6/95



TALKING STRAIGHT Labour Minister Tito Mboweni has told the unions they will not be getting their way on compulsory centralised bargaining nor on closed shop arrangements at factory floor level

crashing of the unions, deception, dummy passes, frontal attacks, crash tactics, rough referee calls, the occasional foul. A description of the Rugby World Cup final? Not at all. That was mild stuff compared with what is going on in the dispute over the government's planned labour relations reforms.

It is a battle that in many ways may only be decided in the Constitutional Court, even if labour, the government and business reach a detailed agreement.

The "social partners" as they like to be called, have now flexed their muscles. Labour and business used some dirty scrummaging tactics with a one-day stayaway and assurances that business will take a six-month strike.

More importantly, the referee, Labour Minister Tito Mboweni, was starting to look more like a linesman, arrived on the field and appeared prepared to apply some rules.

Last Wednesday the guests at a four-star downtown Cape Town hotel, in the city for the previous weekend's rugby semi-final, were unaware of the drama taking place in a small conference room on the second floor. First to arrive was the embattled chief fact-

tator, Jayendra Naidoo, of the National Economic Development and Labour Council (Nedlac). Business negotiators Adrian du Plessis and Bokkie Botha were next to arrive. Then came the heavyweights, who had been called in to rescue negotiations — major industry figures and the presidents and general secretaries of the trade union federations.

They stood around over coffee and biscuits for an hour waiting for the arrival of Mboweni, who was tied up with regular Wednesday Cabinet meeting duties.

Mboweni arrived shortly before 4pm, warmly greeting earnest Cosatu president John Gomoio and his flamboyant general secretary Sam Shulowa. The warmth of those greetings belied what lay ahead.

The leaders of labour and business took their seats ready to face each other down, but for the first seven hours of 17 hours of on-and-off discussions, it was not to be.

The Business South Africa delegation basically sat and watched as Mboweni told the labour federations they would not be getting their way on compulsory centralised bargaining and neither would they be getting any closed

shop arrangement at factory floor level — or at any other level.

The next day, in his budget vote in parliament Mboweni repeated much of what he had told labour behind closed doors, with the likes of Gomoio, Shulowa and labour's chief negotiator, Ebrahim Patel, looking fairly grim.

Their spurs peaked when some of their erstwhile colleagues, who had swapped factory floors for parliamentary benches, waded into the debate supporting all labour's demands.

Mboweni played the diplomat in his speech, criticising past and present attitudes of employers while giving the appearance of supporting labour. What was more interesting was that in wrapping up his debate he hardly referred to the labour-supporting MPs.

But the day is not yet done and the game is not won. Immediately after the debate, Shulowa seemed to signal acceptance, but told Business Report that the final package was what was important. In other words, business should not consider it a victory — and all indications are that it does not.

There are plenty of other issues involved and

labour will no doubt demand greater compromise from business on them.

The mistake that can be easily made from all the bargaining is that there are clear divisions between business and labour on the Labour Relations Bill. There are not. This very complex piece of legislation deals with a multitude of issues, which will see different groupings on an issue-by-issue basis — sometimes business and the government against labour, labour and the government against business, and even labour and business against the government.

Tough bargaining lies ahead over the next few weeks as the parties try to meet an extended deadline of the end of next month, when the do get broad agreement, it will be a significant victory for Nedlac, but another trial lies ahead.

Labour may rely on its allies in parliament to win the day by altering the legislation as it winds its way through the legislative process. But there lies a third avenue where the Bill, or parts of it, could and is likely to be challenged — the Constitutional Court.

For example, the interim constitution gives employers the right to economic activity, opening the way for appeals to the court if a ban is placed on replacement labour (scab labour, as the unions prefer) in the event of a strike.

Other issues enshrined in the constitution, like freedom of association, could also raise problems. In a written copy of his speech to parliament, Mboweni referred to the constitutional difficulties that could arise from some of the demands of labour, but did not refer to the issue in his speech.

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The relationship of Nedlac, parliament and the Constitutional Court raises interesting questions. Already we have seen the National Party and Inkatha Freedom Party objecting to the pro-

hibition by the court on the death sentence.

What is the position then if Nedlac reaches agreement on, say, the Labour Relations Bill and parliament makes substantive amendments or even rejects the legislation, or if parliament approves but the Constitutional Court does not?

The parliamentarians have every right to amend draft legislation and the Constitutional Court has the duty, when asked to do so, to test the legislation against the constitution.

The question is, what are the consequences? How will the social partners react?

This should not be seen as too problematic. The institutions are new and it will take time for them to build up relationships. The debates in sorting out the relationships need not be destructive. They are more likely to create a healthy tension, which will protect, rather than undermine, a fragile democracy.

# Resistance to individual pay

*(166) BD 26/6/95*  
Business Day Reporter

PAY packages with built-in individual performance incentives would be strongly resisted by trade unions until a meaningful minimum wage was in place, research consultant Faith McDonald said this week.

Addressing an AIC seminar on performance pay, McDonald said historically low incomes which hardly sustained workers and their families meant unions were reluctant to negotiate individual performance-related pay systems.

However, the debate on whether sectoral bargaining or a government incomes policy should set minimum wages had yet to be resolved and the contentious issue of centralised bargaining underpinned much of the recent industrial action over draft labour legislation.

McDonald suggested that small enterprises unable to "make any meaningful contribution to long-term wealth creation if they cannot afford to pay a basic minimum wage" did not deserve to be in business.

Historical disparities between management and labourers' incomes needed to be addressed to bring differentials more in line with SA's trad-

ing partners. Again, it was debatable whether the market would rectify these imbalances or government intervention was required.

This could take the form of "a salary or wage freeze on those earning more than a specific annual figure, together with more stringent taxes on company perks"

Although unions were increasingly aware of the need to improve productivity and were open to discussions on incentive schemes, individual packages were treated with great scepticism. Unions were also opposed to subjective criteria being the sole basis on which merit pay was calculated. "Adequate performance assessment requires a holistic approach which takes account of not only management criteria, but also peer groups and subordinates."

In addition, overseas research showed no conclusive evidence that merit pay improved performance standards or acted as a motivator in recruiting or retaining staff.

However, recent evidence showed unions were more open to productivity bargaining and many companies were successfully negotiating agreements which contained performance pay components, McDonald said.

## Bill 'will worsen labour relations'

*BD 26/6/95*  
Business Day Reporter  
*(166) (132)*

INFORMATION disclosure provisions in the Labour Relations Bill — currently under discussion — were likely to fuel the adversarial nature of industrial relations, FSA-Contact managing executive Pierre Wolmarans said last week.

This clause would force parties to try to outwit one another.

In addition, the Bill conflicted with a Labour Appeal Court judgment which found an employer had not committed an unfair labour practice by failing to disclose confidential information to a union.

He said the Bill stipulated that employers should disclose relevant information to a representative trade union to enable effective consultation on collective bargaining issues.

"However, the draft Bill is silent on what should be regarded as relevant information, and management and employee representatives will have to negotiate about the relevance or irrelevance of certain information."

The Bill included a list of issues the drafters felt should be matters for consultation at workplace forums, but many would be seen by employers as sensitive or even confidential.

He suggested the Bill tried to force parties to the negotiating table to define what information should be disclosed rather than allowing the process to develop naturally, and might harden attitudes.



## Labour Bill negotiations 'adversarial'

Renee Grawitzky

(166) (2)  
DRAFT Labour Relations Bill negotiations had been characterised by adversarial and distributive approaches to bargaining, and alternatives would have to be found, National Economic, Development and Labour Council (Nedlac) executive director Jayendra Naidoo said at the weekend.

He said lessons could be learnt from the process within Nedlac

Effort was needed at the early stages of the process to bring about understanding on the general principles and objectives of the Bill, before getting into the detail, and to achieve a "greater sense of participation"

Naidoo said parties would soon agree on a package which would

make labour feel comfortable with the Bill, "and the same for business and government".

Cosatu general secretary Sam Shilowa said no decision had been taken on further mass action. It had been decided, rather, to mobilise around the draft legislation to ensure that membership understood all the issues.

This could be achieved by tightening co-ordination within the ranks to get members on board and educate them on labour's proposals.

National Union of Metalworkers of SA general secretary Enoch Godongwana said their response to negotiations on the labour Bill would depend on how the issue of scab labour was addressed.

BD 26/6/95  
● Comment: Page 10

# Govt bid to end deadlock

Mboweni tables new proposals to resolve dispute over labour Bill

## Sowetan Correspondent

THE Congress of SA Trade Unions would weigh up its mass action campaign in the light of new Government proposals to break the deadlock over centralised bargaining, Cosatu said yesterday

Cosatu general-secretary Mr Sam Shilowa played labour's response to Labour Minister Tito Mboweni's new proposals close to his chest yesterday, saying the trade union federations would examine further "mass mobilisation" in the context of the proposals

"We remain resolute to try to find a solution through negotiations," Shilowa said in Parliament after Mboweni tabled deadlock-breaking proposals on centralised bargaining. He stressed that mass action was a strategy rather than a principle

Mboweni yesterday tabled new Government proposals designed to resolve the labour-business dispute over the Labour Relations Bill

Business and labour are locked in a dispute over centralised bargaining proposals in the Bill, with labour favouring compulsory collective bargaining and business favouring volun-

tary collective bargaining

Mboweni met high-powered labour and business delegations headed by Anglo American Corporation's Mr Bobby Godsell and Shilowa respectively in Cape Town again yesterday after a lengthy meeting on Wednesday evening. A Government source said it was significant that Mboweni had made the proposals and that labour and business were being represented by their principals. "Good progress" had been made

Mboweni told the National Assembly during the labour budget debate that the Cabinet had mandated Government negotiators "to pursue additional or alternative mechanisms, both institutional and legislative to beef up our policy of promoting industrial bargaining".

He said the two parties had reached "broad agreement" on important aspects of collective bargaining

It was Government policy to promote collective bargaining because it assisted national training efforts and South Africa's return to the international market place without protective tariffs to buttress uncompetitive industries, Mboweni said

Sowetan 23/6/95

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**Labour, business and Government must stop their public posturing and resolve the fundamental differences on the new labour laws speedily, writes Labour Reporter Justice Malala**

# Battle to tip the balance of Bill

There has been something both ironic and sad in the public displays of strength by the labour movement and business's uncompromising public outbursts over the Labour Relations Bill in the past few weeks.

Released in February in a bid to end decades of conflict and uncertainty in the country's labour laws, Labour Minister Tito Mboveni's draft Bill was hailed as a panacea that would deliver the country from low productivity, protracted strikes and worker exploitation.

The Bill was followed by another landmark on the labour and economic front when the National Economic, Development and Labour Council (Nedlac) came into being.

This body was formed to bring business, labour, development and Government together to agree on matters of interest to

them before they could be passed on to Parliament or the Cabinet.

The rationale was that with these players having agreed on broad issues, legislation would pass smoothly through Parliament in a form acceptable and beneficial to all.

Despite the lofty intentions of the body and the three parties involved, it took only two meetings on the proposed laws for the historic differences between labour and capital to come to the fore.

At the heart of the battle is control of the new Act. The particular points over which the parties disagree will in the final analysis, determine whether the carefully balanced draft document is dipped towards the side of labour or not.

Labour wants centralised bargaining to be compulsory in law, while business says this should

be left to the parties to decide.

Another sticking point is the right to strike, which business believes should be balanced with a right by the employer to replace striking workers if the business is in danger of collapse. Labour sees this as undermining the use of the strike weapon.

The third major point of disagreement is the new instrument of "workplace democracy", the workplace forum. Business says the legislation gives the majority union in the business too much power in the forum, and believes that certain rights should be extended to all employees instead of being granted to the majority union only.

The irony in the public battle lies in the fact that both the legislation and Nedlac, probably the most important initiatives on the economic and labour front since the April election, are in danger of losing credibility due to the

arbitrary between business and labour.

Emotions over the points of differences have become so heated that the resultant compromise — and these must come — may lead to such disillusionment on the part of those who may feel hurt — namely that the new Act will have lost a great deal of its legitimacy.

The fact that both business and labour had until last week held more than 32 hours of talks outside Nedlac casts a great deal of doubt on the body's ability to bring the three parties together.

These negotiations are reminiscent of the protracted negotiations for a new political dispensation in the Convention for a Democratic SA (Codesa).

In this case, also, a body which had held out hope for speedy consensus on issues was often compromised and much of the settlement we have today was the result of backroom brokering and bilateral talks.

The public confrontation has been a ploy for it means that despite the formation of such legitimate structures as Nedlac to negotiate and resolve disputes, South Africans are still in the old mode of taking negotiations into the streets and to the media in order to be heard.

Just as the breakdown of Codesa saw the introduction into our vocabulary of the phrase "unprecedented rolling mass action", so, too, these negotiations have led to mass action and heated nerves on both sides, a situation that does not augur well for the future of tripartite bodies like Nedlac.

At the end of the day something must give in these negotiations. But by then, if the current trend continues, there will be blood on the floor.

GRW 23/6/95 (b.b.)

Centralised bargaining structures currently in place have long taken differences in the size of companies and geographical areas into consideration, and perhaps this is the way to go in the new legislation. In order to ally labour's concerns, a commission to bargain centrally could be put in place with a strong discretion clause to ensure that small business and geographical implications are taken into consideration when bargaining takes place.

Although there is a lot of discussion in the parties' positions on the other issues, a pragmatic solution is not impossible.

Undoubtedly, for a new labour dispensation to be born, and the old to die, mass mobilisation and mandatory statements had to be made.

But South Africans are tired of these kinds of tactics, and many would have liked Mboveni to have taken action earlier in attempting to resolve the impasse between the trade union movement and big business.

Mboveni walked until after October had held his day of protest on Monday before calling the two sides together for talks in Cape Town this week.

Precise details of Mboveni's compromise strategy have not been revealed, but the Minister told Parliament that the Cabinet had mandated government negotiators to pursue additional or alternative mechanisms, both in industrial and legislative, to beef up our policy by promoting industrial bargaining.

As the June 30 deadline for submission of talks draws closer, many are pelted to see the government finally taking a more active role in trying to settle the dispute.

# Cosatu to review mass-action plan

ARG 23/6/95 (166) (162)

□ Proposal to break bargaining deadlock tabled

## Political Staff

COSATU is to weigh up its mass-action campaign in the light of government proposals to break the deadlock over centralised bargaining.

Cosatu general secretary Sam Shilowa played labour's response to Labour Minister Tito Mboweni's new proposals close to his chest yesterday, saying the trade union federations would examine further "mass mobilisation" in the context of the proposals.

"We remain resolute to try to find a solution through negotiations," said Mr Shilowa.

Mass action was a strategy rather than a principle.

Mr Mboweni tabled proposals yesterday to end the labour-business dispute over the Labour Relations Bill.

The dispute is over centra-

lised bargaining proposals, with labour favouring compulsory collective bargaining and business favouring voluntary collective bargaining.

Mr Mboweni met labour and business delegations headed by Anglo American's Bobby Godsell and Mr Shilowa again yesterday after a meeting on Wednesday

"Good progress" had been made, a source said.

Mr Mboweni told the national assembly during the labour budget debate that the cabinet had given a mandate to government negotiators "to pursue additional or alternative mechanisms, both institutional and legislative, to beef up our policy of promoting industrial bargaining".

"In broad outline, we have proposed that amendments be

made to the draft bill to permit parties, who meet certain thresholds of representativeness in disputes over the establishment of a bargaining council, to refer the dispute to the commission for conciliation in full.

"In the event that the commission fails to secure agreement to establish a bargaining council, the minister may establish a statutory council with limited jurisdiction in respect of social policy, social wage and training functions.

"Parties to such a council may include, by agreement, additional matters such as wages and working conditions."

While not making bargaining compulsory, the effect in all probability would induce parties to negotiate to avoid the bargain being made for them by the minister.

# Labour rethinks mass action

(166) (22) Star 23/6/95

■ BY PATRICK BULGER  
POLITICAL CORRESPONDENT

Cape Town — Cosatu would weigh up its mass action campaign in the light of government proposals to break the deadlock over centralised bargaining, the trade union federation said yesterday

Cosatu general secretary Sam Shilowa played their response to Labour Minister Tito Mboweni's new proposals close to his chest, saying the trade union federations would examine further mass mobilisation in the context of the proposals

"We remain resolute to try to find a solution through negotiations," Shilowa said in

Parliament after Mboweni tabled deadlock-breaking proposals on centralised bargaining.

He stressed that mass action was a strategy rather than a principle. Mboweni yesterday tabled new government proposals designed to resolve the labour-business dispute over the Labour Relations Bill.

Business and labour are locked in a wrangle over centralised bargaining proposals in the Bill, with labour favouring compulsory collective bargaining and business preferring voluntary collective bargaining

Mboweni met high-powered labour and business delegations headed by Anglo Ameri-

can's Bobby Godsell and Shilowa respectively in Cape Town again yesterday after a lengthy meeting on Wednesday evening. A government source said it was significant that Mboweni had made the proposals.

Mboweni told the National Assembly during the labour budget debate that the Cabinet had mandated the government negotiators "to pursue additional or alternative mechanisms"

Mboweni said the two parties had reached broad agreement on important aspects of collective bargaining

► Tipping the balance  
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# Rethink on union action

CT 23/6/95

(166) (132)

## POLITICAL STAFF

COSATU would reconsider its mass action campaign in the light of new government proposals to break the deadlock over centralised bargaining, the trade union federation said yesterday

"We remain resolute to find a solution through negotiations," Cosatu general secretary Mr Sam Shilowa said in Parliament after Labour Minister Mr Tito Mboweni tabled deadlock-breaking proposals on centralised bargaining

He said mass action was a strategy rather than a principle

Mr Mboweni tabled the proposals yesterday to resolve the dispute between labour and business over the Labour Rela-

tions Bill. Labour favours compulsory collective bargaining and business favours voluntary collective bargaining

Mr Mboweni met high-powered labour and business delegations headed by Mr Shilowa and Anglo America's Mr Bobby Godsell respectively in the city again yesterday after a meeting on Wednesday

A government source said "good progress" had been made

Mr Mboweni told Parliament during the labour budget debate it was government policy to promote collective bargaining as it helped national training efforts and SA's return to the international market without protective tariffs to buttress uncompetitive industries

● See Page 17

# What next for Nedlac?

~~(166)~~ (166) Sowetan 22/6/95

**I**N JULY 1994 THE Cabinet approved the appointment of a ministerial legal task team to overhaul the law regulating labour relations and prepare a negotiating document in draft form to initiate public discussion

A draft bill was then presented by Labour Minister Mr Tito Mboweni for public debate and negotiation by organised labour and business in February

Four months later, and only nine days to go before the June 30 deadline set for the National Economic Development and Labour Council (Nedlac) negotiations, organised business and labour are still deadlocked

Organised labour — the National Council of Trade Unions, Federation of South African Labour Unions and Congress of South African Trade Unions — embarked on a rolling mass action campaign this month in a bid to break the deadlock

Business criticised the action taken by labour and in turn, embarked on their own form of mass action it placed advertisements to explain the employers' position to the public

The main issues under contention are labour's demands for compulsory centralised bargaining and the full right to strike, which labour wants enshrined in the new Labour Relations Act

Labour also wants a limitation on lockouts and the democratisation of workplace decision-making

Employers, for their part, want centralised bargaining to be voluntary They also want the right to defensive lockouts, to use scab labour and to retain the right to determine the composition of workplace forums

Since the beginning of the Cosatu-led rolling mass action on June 5, President Nelson Mandela, Mboweni and Gauteng premier Mr Tokyo Sexwale have publicly supported the workers' demands

On June 6 Mandela told thousands of marchers in Johannesburg the right to strike was every worker's right and was practised in democracies throughout the world

Despite the seemingly unbreakable impasse at Nedlac, Black Lawyers Association labour expert and Industrial Court presiding officer Mr Russel Moletsane says business will eventually give in to workers' demands

Moletsane argues that centralised bargaining is the only option for healthy labour relations He says various sectors hold annual wage negotiations conducted centrally

However, many employers are able to pull out of any agreement reached in such negotiations because there is no law binding them to agreements reached at central level

If business holds out much longer, says Moletsane, the Government will have to inter-

With only nine days before the June 30 deadline expires for Nedlac talks, business and labour are deadlocked.

Labour reporter **Abdul Milazi** gives the background:



**FLASHBACK.** Organised labour on the march in a bid to break the deadlock in talks with business over the new Labour Relations Bill.

PIC MBUZENI ZULU

vene for the sake of economic stability

The BLA says although the bill is progressive, and in many respects in line with standards set by the International Labour Organisation, it has shortcomings

Moletsane says the bill does not make provision for the financing and training of either worker or management representatives in workplace forums

Another problem is the way the Bill defines a representative union in Section 81 (1), which defines a registered union as one with the most members in a company This places members of unregistered unions at a disadvantage

The BLA is opposed also to Section 208 of the bill, which allows employers to dismiss a worker without a formal investigation at any time during the probationary period

Whether the bill is passed this year or next year, depends on whether the impasse at Nedlac is broken before the June 30 deadline Mboweni has already dismissed any possibility of the

government passing unilaterally a new law

Mboweni says that since the Government chose the Nedlac route, it will stick with it He says if the deadlock is not broken by June 30, the issue will be referred to the Cabinet for discussion

When the ministerial legal task team was appointed, its brief was to draft a Labour Relations Bill which would give effect to Government policy as reflected in the Reconstruction and Development Programme

Yesterday, the two parties went into another round of formal negotiations after a series of informal talks failed last week to bear fruit

The three labour federations also met yesterday to review their mass action and make further decisions

But, whatever the outcome of talks between business and labour, one thing is certain there is no future for the current Labour Relations Act

It is a living heritage of apartheid, a system which profited too long from lowly paid, unskilled workers

(166) (167)

# Govt tables new labour proposals

MP 23/6/95

Renee Grawitzky

LABOUR Minister Tito Mboweni tabled new proposals yesterday to a high-level labour and business delegation in a bid to break the impasse between the parties

These proposals, tabled at a special National Economic, Development and Labour Council (Nedlac) meeting in Cape Town, relate to centralised bargaining, the closed shop and organisational rights. It also endorsed its earlier proposals on workplace forums

The proposals attempt to address the parties' concerns about the draft Labour Relations Act

Nedlac executive director Jayendra Naidoo said the parties tried to move closer on some issues and opened the possibility for resolving those discussed

Labour and business were cautious in their response and said the proposals would be referred back to their respective constituencies. They would respond at a meeting to be arranged soon.

The proposals tabled by the ministry did not address all the concerns raised by the parties — strikes and lock-outs, use of scab labour and the duty to bargain

Mboweni said government's proposal relating to centralised bargaining was an attempt to promote collective bargaining at industry level and to address conflicting positions from labour and business on compulsion versus voluntarism

He proposed the establishment of statutory councils where such councils do not exist, which would be initiated by the parties who have sufficient representatives. It

is understood that the threshold required would be 30% of employees in an industry.

If the parties were unable to agree, the minister would establish such a council. These councils would consider public policy issues such as industrial restructuring, medical aids, training

By mutual agreement the parties could amend the council's constitution to provide for negotiation on wages and employment conditions. The alternate option is for a party to the council to apply to a restricted Wage Board to investigate wages in that particular sector

Mboweni said, "While not making bargaining compulsory, the effect of this will in all probability induce parties to bargain in order to avoid bargaining being done for them by the minister."

Proposals relating to organisational rights were not fully explored but the parties were advised that the new legislation was intended to ensure strong and stable unions and that legislation would not lead to the fragmentation of trade unions.

Government supported the enforceability of closed shop and agency shop arrangements which partly took into account labour's proposals for the democratisation of such arrangements. Government said: "A closed shop agreement shall comply with the requirements for the enforceability of collective agreements." Such arrangements would be introduced by conducting a ballot among employees covered by a collective agreement

Government endorsed its earlier proposals

Continued on Page 2

## Labour

Continued from Page 1

at that workplace forums should be inclusive of the workplace as a whole and proposed that the number of union-elected representatives to such a forum would depend on the union's level of representativity. Government also proposed that accredited trade union officials could attend meetings of the workplace forum.

Business SA's Adrian du Plessis said the meetings had advanced the debate. He hoped progress could be made around the proposals. "There are areas where disagreement still exists and the immediate challenge is to try and build on areas where there is potential agreement and try to diminish the areas of disagreement."

Cosatu general secretary Sam Shilowa said the presence of the high level delegates from all parties reflected the ser-

iousness and commitment of the parties to finding a solution. The parties would consider government's four proposals and see how they could be accommodated within a particular package, he said.

Naidoo said the June 30 deadline was not a stumbling block and a report would be presented to Nedlac's executive council even if all the issues had not been resolved.

During the labour budget debate in Parliament yesterday the minister presented an overview of the labour market and then concentrated on developments in labour legislation negotiations

During the debate, the ANC MPs who spoke (most are ex-Cosatu officials) supported labour's position. Several were critical of the use of scab labour, saying this contributed to high violence levels during strikes.

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(166) (167) MP 23/6/95



ACTION 'WILL HURT RDP'

Marching to Parliament

# Thousands take to streets over labour bill

25/2/95



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**AS THOUSANDS** of workers took to the streets in support of a new deal for labour, the NP and DP warned their action would compromise the country and the RDP.

**T**HOUSANDS of employees around the country yesterday responded to a call by the Congress of South African Trade Unions for a half-day strike in support of their demands on draft labour legislation

"I'm certain this will have the desired effect," Cosatu general-secretary Mr Sam Shilowa told demonstrators in Pretoria

"Mass mobilisation has never failed. The display of force is better than the use of force."

He warned the government not to stand in the way of organised labour

Accusing Business South Africa president Mr David Bink of being irresponsible in challenging trade unions to go on a six-month strike, Mr Shilowa said: "Don't play brinkmanship with the rights of workers"

Cosatu members along with

members of the National Council of Trade Unions and the Federation of South African Labour Unions took part in the strike in 27 urban centres around the country.

Cosatu estimated that about 500 000 workers took part in marches countrywide.

"We want to repeat our warning that Cosatu will target any employers who victimise workers for participating in the march

## Negotiations

"We now expect employers to take our demands seriously and table tangible proposals which can form the basis for meaningful negotiations (on the labour bill)."

The SA Chamber of Business said the strike was "extensive" but it was impossible to say how many employees took part

Sacob said the strike appeared

to be relatively peaceful with few reports of intimidation

In Cape Town thousands of employees led by Cosatu president Mr John Gomo marched to the parliamentary buildings

In Pretoria, where about 20 000 people gathered on the lawns below the Union Buildings, trade union leaders warned the government to side with employees if it wanted to stay in power

In Johannesburg Gauteng premier Mr Tokyo Sexwale told the crowd he supported their demands for centralised bargaining and the right to strike.

The last thing South Africa needed was a series of strikes to back legislation that would tip the scales in favour of trade unions, Deputy President F W de Klerk said. Many prospective investors were waiting to see what the labour law would look like before they decided to invest.

DP leader Mr Tony Leon said actions like Cosatu's would ensure the failure of the RDP. — Sapa



**WORKERS ON MOVE:** Thousands of union members marched through Cape Town to Parliament yesterday as part of a one-day national strike organised by Cosatu. There were marches in more than 20 cities around South Africa to put pressure on employers to grant increased power to the unions in negotiations over the draft Labour Relations Bill now being prepared.

PICTURE

# FORUM

## Freedom is at stake in labour's showdown with business

CANDIDA CAMERON



By BRUCE CAMERON

The government should be more active in forming a proper platform for negotiation

The fundamental issue of freedom is at stake in the showdown between organised business and organised labour. It is not simply an argument about detail in a piece of long and complicated legislation.

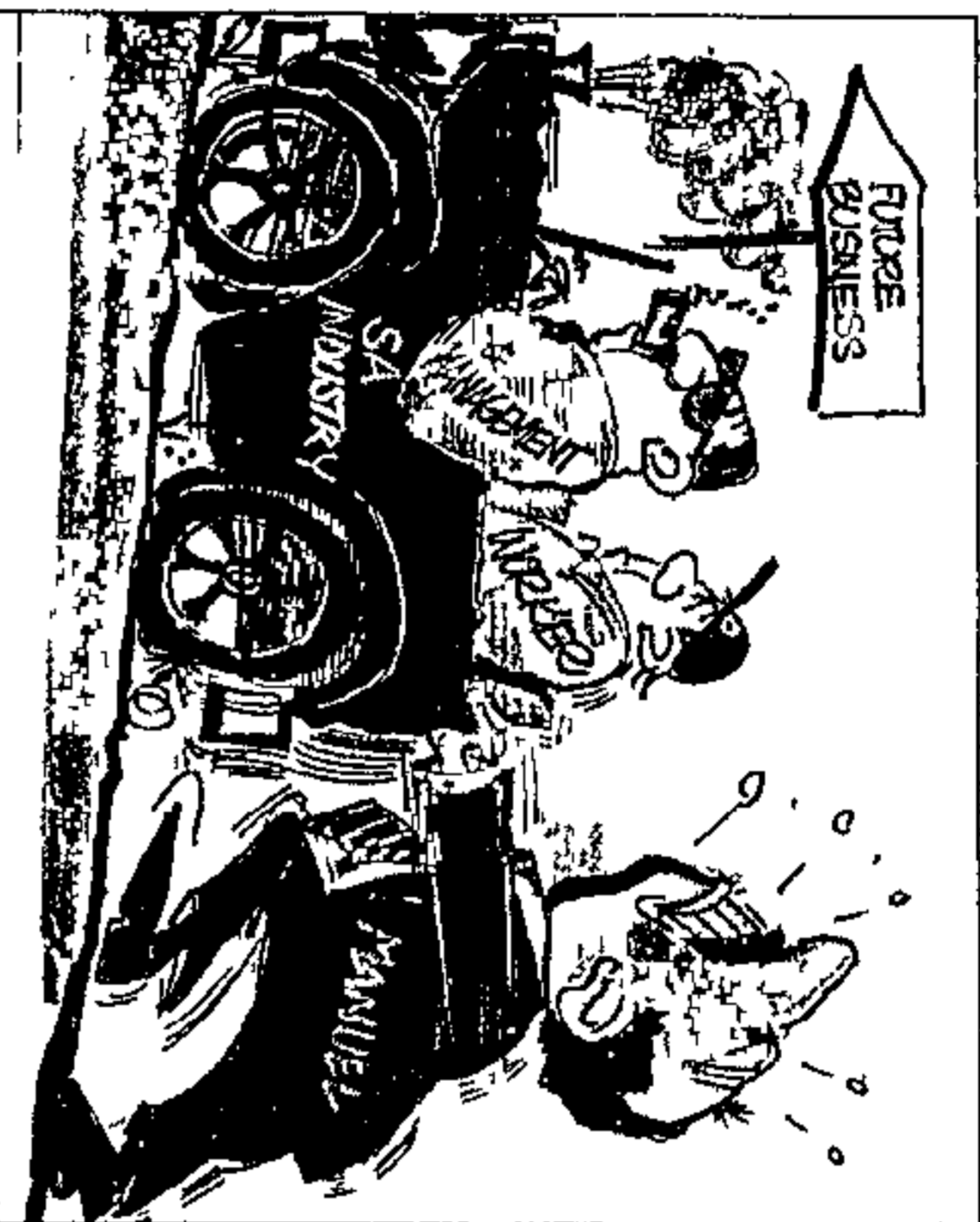
The drafters of the legislation clearly recognised three very important elements in its construction of the labour relationship namely the principles of fairness, of minimal government interference and of freedom.

Freedom has many sub sections, including the freedom of labour to movement and association, the freedom of labour to sell or withhold its services and the freedom to negotiate a better deal. The freedom to negotiate and to

reach agreements is not one restricted to labour. Employers have an equal right to that freedom.

Organised business prefers to call it "voluntarism". It rejects the demands of organised labour for government to change the legislation to enforce centralised bargaining on all industries. There are a number of centralised bargaining structures already in place, which proves that their creation is not impossible.

Organised labour must accept that the responsibility to negotiate other central bargaining structures lies with itself and not with the government, which cannot change the underlying principles in the draft bill to give labour an unfair



The government itself is governing the impression that it is weakening on the issue or does not have sufficient will to deal with the problem in an effective manner. There appears to be a lack of will to fall organised labour that there is a new

ball game and the government which interfered in labour practices for political reasons is no longer in place. The new policy, as detailed in the bill, is for the government to create the legal space for proper negotiations between labour and business. Instead of sticking

to its guns there has been, as a negotiator said last week, a "ghost-like" presence from the government.

Some senior ANC members are being neatly mounded about the whole affair. Off the record remarks of the past week are worth recording. "It's nonsense. We have been on the verge of civil war. This is nothing", said a senior MP.

Another's view was that business is "arrogant" and "needs to be taught a lesson". Neither the government nor labour should underestimate the anger that is building up in business.

There is a growing impatience with what is seen as labour's apparent willingness to sabotage the future of individual businesses and ultimately the economy in pure self interest.

The early signs of the impatience should have been detected from the support given by business to Pick n' Pay, a comparatively liberal employer, in last year's strike.

There is growing impatience with the government to deal effectively with the soaring crime rate, particularly with the violence on the streets. The government is not only in place to correct the massive abuses of the past.

Over the next few years it has the enormous responsibility to lay the foundation for the future. The issue of freedom of business and labour to negotiate without the big stick of government is part of this foundation.

The government, and particularly the labour minister, Thbo Mboweni, should start playing a more active role in establishing the proper platform.

As a first step Mboweni should call together the leaders of Cosatu and Business South Africa, and thrash out the basic principles of the bill before the current climate turns nasty.

### Competition

Today's Business Report carries extensive reports about another investigation into the competitiveness of local industry — and again the report card is unfavourable.

Business would be well advised to listen to some advice given by the comparative new owner of this and other Argus group newspapers, Tony O'Reilly. The advice or the statement is "Je m'accuse" — I accuse myself.

It is worth quoting O'Reilly, not because he is the boss but because the

challenge is apt in the wake of the latest competitiveness report by the Industrial Strategy Project based at the University of Cape Town.

The problems were listed in the publication. Business was accused of not spending money on training, not improving management skills, not investing in modern technology, not spending money on research and development, hiding behind protective tariff barriers and using import parity pricing on intermediate products.

It is worth putting his head on the political block with his strong support of supply side measures to get industry off its hands-protected butt and into the real world of competitiveness.

Unless industry responds in kind by improving managerial skills and putting money into training an effective and productive workforce, its current standoff with labour will be minor as more populist theories, including the renaissance of nationalisation of industry, become popular.

Business must not think that proponents of nationalisation have disappeared — they have only gone to ground.

# The state can help protect workers' basic rights

SHOP FLOOR



By Karl von Holdt

*There is conclusive evidence that industrial relations should be strongly regulated*

My views, put forward in this column earlier in the year that voluntary workplace forums are not working effectively, has recently come under attack. For example, Duncan Innes, publisher of Innes Labour Brief, questions in recent columns whether there is any evidence for this assertion. He also takes issue with my argument that strong state intervention to regulate industrial relations is necessary.

I believe the evidence is pretty conclusive. For example in January this year the National Manpower Commission (NMC) published a report called "Union-management co-operation with a view to advancing productivity, as a national goal". The document is based on interviews with managers and shop stewards in 20 major companies, including three of those cited by Innes as models of success.

Most of these companies had joint management trade union committees or forums in place whose functions ranged from consultation and information sharing to participation in decision-making. However, according to the report union representatives believe that these structures did not allow for real decision-making powers for the workforce.

The report reveals the limits of participation quite clearly. "The majority of companies indicated that they did not negotiate on work organisation, investment, production schedules, marketing, industrial engineering or world class manufacturing. A few companies indicated, however, that they shared information and, in a limited number of cases, consulted on some of the above aspects." Two companies had negotiated and reached agreement on levels of education and training. Union representa-

tives at one company argued that they engaged in soft bargaining on issues of workplace design and world class manufacturing. Very few companies consulted or exchanged information on market penetration or strategy.

"Union representatives informed the Task Group that no consultation or adequate information sharing took place on most of the work organisation issues."

It seems quite clear why unionists feel this kind of participation is not genuine co-operation. The NMC team reports, not unsurprisingly, that all unionists interviewed "indicated that democratisation of the workplace should be embodied in legislation." The majority of managers opposed this view.

This evidence is supported by the submission to Neldiac by the Sociology of Work Unit (Swop) at Wits University. Swop's views are based on research and consultancy on a number of company restructuring projects, including two of the companies referred to by Innes.

Swop concludes shopstewards are unable to become centrally involved in restructuring for several reasons, including the following: "Management invariably takes the initiative and acts unilaterally, forcing workers to be reactive. Workers are quite often able to reject management's plans but they are not able to initiate their own. The result is a stalemate where everyone loses."

In addition, neither shopstewards nor unions have the technical knowledge to intervene in restructuring issues. Finally and most importantly, the role of the Shop Steward Committees is not based on legal rights, but on the sheer power of the union at the workplace."

Swop concludes by endorsing exactly the views I have put forward, namely that legislated and union initiated workplace forums with substantial powers are the only way to shift power relations and



*TOOTH AND NAIL After years of exploitation under apartheid, South African trade unions will vigorously resist any new oppression under a 'free' labour market*

resource unions so that they can co-operate effectively.

It must also be said that managers and workers have different goals in co-operating. It may be that some managers are pleased with the results of their forums. Most workers clearly aren't.

Innes likens my argument for decisive state regulation of the workplace to the "compulsion and jackboots of apartheid" and to car hijacking.

These metaphors do not clarify the issues. Being compelled to hand over your car to hijackers is more analogous to nationalisation than to co-determination. Certainly state intervention took the form of apartheid in our past, but inter-

vention can prevent child labour, ensure basic occupational health and safety, protect trade union and workers' rights, and prevent industrial pollution.

Indeed the recent Leon Commission on the mining industry cited the appalling record of death, injury and disease on the mines as reason to reject self-regulation as "unacceptable" and called for tough state intervention. A similar argument can be made for regulation to transform South Africa's industrial relations.

This is an important issue. The South African press is filled with denunciations by employers and free market ideologists of labour's demands for compulsory

centralised bargaining on the grounds that this kind of regulation will make our industry 'uncompetitive' and discourage foreign investment. Centralised bargaining so the argument goes, would force rigid wage levels on companies and block the development of small business.

Two points need to be made in response.

Firstly various kinds of flexibility to accommodate the circumstances of different firms and sectors can be built into centralised bargaining forums. So for example, the draft LRA builds in mechanisms to ensure small business representation in bargaining councils, as well as

to allow for easier exemption.

Employers in the clothing industry have noted that "centralised bargaining need not be inflexible, unimaginative and bureaucratic."

They point to the three-tier national, regional and plant level collective bargaining in their sector as an example of how parties can "model the structure to serve their interests."

The second point is that South African employers should not be allowed to compete internationally on the basis of cheap labour and low labour standards. That is the old apartheid mentality. Our country has just emerged from the oppressive labour regime of apart-

head. The trade unions will fight tooth-and-nail against a new one and oppression by a "free" labour market — and they will be supported in this by the Department of Labour.

Social regulation and civilized standards may increase payroll costs. This will not be the end of South African industry.

Employers will simply have to display their ability to seek competitive advantage in other areas such as design, marketing and quality. That is the challenge of the new South Africa.

□ Karl von Holdt is consulting editor at the SA Labour Bulletin

CT (BR) 20/6/95

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High hopes as marches and stayaways take place across country

# Labour gets back to the table

**DEADLOCK** — but the Government has plans which might break the impasse between the unions and employers

■ BY JUSTICE MALALA  
LABOUR REPORTER

Buoyed by the support of thousands of workers who turned up for marches and rallies across the country yesterday, labour leaders return to talks with business today with high hopes of breaking the deadlock that led to the mass action.

And in a move that holds out more hope for negotiations, the Government is expected to present new proposals to break the impasse in the National Economic, Development and Labour Council meeting.

Congress of South African Trade Unions spokesman Neil Coleman said at least 500 000 workers had taken part in yesterday's mass action, but independent monitors and police put the figure at closer to 100 000 — less than 10% of Cosatu's 1,7-million membership.

Coleman admitted Cosatu was disappointed at the lower-than-expected turnout but blamed this on employers' threats of disciplinary action.

"Today's national day of action was the largest mass demonstration seen in the country since August 1992. This massive turnout of workers should make employers realise that the majority of workers will not be intimidated."

The South African Chamber of Business said the industrial action would have an extremely negative effect on the country's efforts to attract foreign investment.

"The picture has been mixed



Union power . . . workers converge on the Johannesburg Library Gardens yesterday to hear speeches by their leaders as part of the labour movement's national mass action campaign. Some firms reported stayaways of up to 50% and others closed for the day

PICTURE THEMBA HADEBE

stayaway which was substantial in some areas, but far less in others," Sacoob spokesman Janet Dickman told Reuters.

The national mass action campaign was planned to pressure business to accept labour demands on the new Labour Relations Act.

Cosatu secretary-general Sam Shilowa told more than 7 000 marchers in Pretoria yesterday he was confident that the cam-

the National Council of Trade Unions and the Federation of SA Labour Unions, would "have the desired effect", reports Norman Chandler.

In Johannesburg, about 10 000 workers gathered at the Library Gardens, where Gauteng Premier Tokyo Sexwale said he supported the workers' demands for centralised bargaining and the right to strike without facing dismissal.

Sapa reports that in Cape

by Cosatu president John Gomo no marched peacefully on Parliament.

Trade and Industry Minister Trevor Manuel told the gathering it was the Government's intention that the draft Labour Relations Bill become law by September 15.

In Durban, several thousand workers marched to the city hall where they presented a memorandum.

hers said although the action was costly, it was too early to say exactly how much was lost.

It is however irresponsible for labour to deal with the negotiations in this manner. Labour has shown itself not to be a reliable negotiating partner."

Sacoob said that in the main, workers had reported for work in the morning and taken the afternoon off. But at some companies, workers had not reported for work at all and some

# Mass action a success

Sowetan 20/6/95  
(166) (168)

**By Abdul Milazi and  
Mzimasi Ngudle**

THOUSANDS of workers observed the national day of action called by the Congress of South African Trade Unions yesterday.

The call for a half-day mass action, which included rallies and marches countrywide, was also backed by the National Council of Trade Unions and the Federation of South African Labour Unions. Cosatu's national executive committee was due to meet last night to decide whether there was any need for further action. Meanwhile, the National Economic Development and Labour Council, comprising labour, business and government, is to hold its scheduled meeting tomorrow.

Yesterday's action was called after organised labour and business deadlocked over the draft Labour Relations Bill at Nedlac. The unions demand compulsory centralised bargaining, the right to strike, a ban on lockouts, workplace forums and closed shop agreements while business insists on voluntary centralised bargaining. Some businesses reported a high worker turnout, while others reported low attendance figures.

Anglo American spokesman Ms Charmane Russell said there was a "very good turnout in our gold and coal mines which seem to be operating normally"

The South African Chamber of Business said the effect of the action was "substantial". Sacob spokesman Ms Janice Dickman said it was impossible to quantify how many people joined the strike as the protest had not followed the usual pattern of stayaways.

Thousands of workers marched in towns and cities countrywide in support of the labour movement's demand for centralised bargaining.

In Johannesburg more than 10 000 workers converged on the Library Gardens to listen to their leaders. Market, President and Simmons streets near the library were closed to traffic as emotionally charged workers chanted and toy-toyed.

## Deadline for labour law talks may be extended

The Argus Correspondent

JOHANNESBURG. — Labour, business and the government may consider extending the June 30 deadline for negotiations on new labour laws to ensure that agreement is reached, says National Economic, Development and Labour Council (Nedlac) executive director Jayendra Naidoo.

An extension of the deadline was one of the issues that should be discussed by the three organisations today, he said yesterday

Meanwhile, Labour Minister Tito Mboweni will unveil government plans to break the impasse in negotiations on new labour laws when he presents his budget speech in parliament tomorrow

Mr Mboweni's spokesman, Shareen Singh, said the far-reaching proposals would be part of the minister's budget speech and would, it was hoped, contribute to breaking the current impasse

She said the government would present its position on centralised bargaining, the right to strike, organisational rights, workplace forums and other points which had led to

(166) (162)  
the public battle between labour and business in the past six weeks.

Mr Naidoo said he was confident that a resolution to the deadlock could be found.

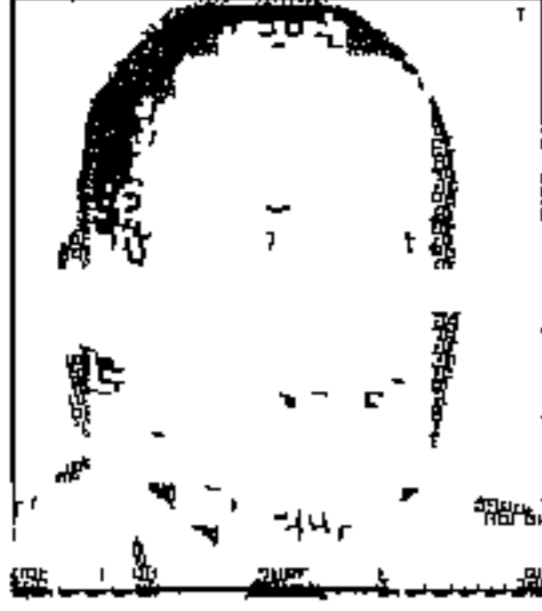
The meeting takes place after the labour movement, led by the Congress of South African Trade Unions, embarked on marches and rallies to put pressure on business to accede to its demands on the draft law

ARLT 21/6/95  
Meanwhile, condemnation of Monday's mass action continued yesterday.

The general secretary of the KwaZulu-Natal-based Democratic Labour Trade Union of SA, Vusi Sibiyi, said the protest was an attempt to mobilise support for the African National Congress in the November local government elections.

The Conservative Party called on business leaders not to cave in to labour's "irresponsible" demands CP labour spokesman Frank le Roux said South Africa would not get foreign investment as long as trade unions kept on undermining the economy.

Power games  
are stalling the  
labour talks,  
says Michael  
Beaumont



## Chance to co-operate may be lost

(166) (PBR) 21/6/95  
**T**here are no directors of traffic. Maybe they are engaged in industrial action? The intersection is jammed with confusion and the parties travelling along this route find it difficult to pass. The solution lies in co-operating with others at this intersection.

But, to achieve this, the parties need to know where they are going.

The debate over the direction of labour legislation, in my view, is mostly divided into criticism and arguments over power. This divide misses the opportunity of working on or towards common goals.

There is much in the Labour Relations Bill which is deserving of support. However, because the debate concentrates on differences, there is a risk that criticism will strip the tree of caterpillars as well as blossoms. And this bill is about blossoms, and not fruit. It is about the future and the potential harvest.

The debate is about power: employers are either challenged about delaying the progress of legislation, or about the contents of the bill for the power it supposedly gives them.

Unions perhaps perceive the moment as an important opportunity to entrench worker rights or to call for political support. These approaches disguise the fact that power is never stable when it is boundless.

The bill of rights in our interim constitution acknowledges the limitation of rights within prescribed parameters. If power is to have boundaries, then the solution lies in negotiation and compromise.

However, this debate is about a third-party model proposed by a select and insulated task group. It centres around opposition to the bill, while proposals are being interpreted by one party as a deliberate attempt to undermine or weaken the other.

The manner in which the bill was drafted was appropriate, given the differences between labour and capital and the need to find fresh options for the future. An isolated economy in the past avoided many of the effects of competition, the political system encouraged protest activity and wide expectation.

The third-party option breaks with the past. It is not being debated for its value or on its merits, but rather where the respective parties seek to move the standards.

The missing factor is the search for common goals and objective standards.

The goal is competitiveness and contribution to GDP. A common goal is not about an even score, but agreement over direction. Direction is not only about rights, but also about the opportunity to co-operate.

Co-operation cannot be legislated for, it is the product of the co-operative spirit and it is for this reason that collective bargaining and workplace forums should be facilitated in the new legislation, but not be compulsory.

Standards ought not to be about power. The debate is better centred on objective criteria such as the interim constitution or the conventions of the International Labour Organisation.

Finally, a new labour dispensation rests not only on design but also implementability. Practicalities are not about the hurried passage of legislation, but a deliberate process as mentioned above and the assurance that underlying structures such as Nedlac and the proposed commission for mediation and arbitration are able to perform effectively.

□ *The author is a director of Beaumont Wise labour relations consultants.*

# Mboweni attempts to end deadlock over labour bill

BY BRUCE CAMERON

POLITICAL EDITOR

Minister of labour Tito Mboweni presented labour and business with a set of proposals yesterday in an attempt to break the deadlock over the Labour Relations Bill

The heavyweights of business and labour were locked in negotiations in a Cape Town hotel until late last night

In an interview with Business Report, Mboweni said his package of proposals was not restricted to the issue of central bargaining but included other breakdown points, including the use of "scab" labour, agency shops and workplace forums.

Asked whether he would extend the deadline to get the legislation through parliament this year, Mboweni said: "The negotiations can't go on forever Government must govern."

"So many people are waiting



Labour negotiator Ebrahim Patel (left) with Business South Africa's Bobby Godsell and Nedlac chief executive Jayendra Naidoo

PHOTO ANDREW BROWN

for us to move ahead Jobs and the economy depend on this "

Mboweni said he would be reporting back to parliament later today as part of his Budget speech

Before the meeting, business and labour representatives said they hoped a breakthrough was possible

Both labour and business brought in their big guns, with most of the trustees of Business

South Africa, led by president Dave Brink and deputy president Bobby Godsell, lining up against a strong labour delegation led by Cosatu president John Gomomo and general secretary Sam Shilowa

The meeting was due to convene again this morning.

Jayendra Naidoo, chief executive of Nedlac, said the June 30 deadline was an internal deadline and "can obviously be discussed"



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# Business, labour talk

■ BY BRUCE CAMERON

The heavyweights of South African labour and business were locked in critical negotiations yesterday to break the deadlock over the contested Labour Relations Bill

Tito Mboweni, the Minister of Labour, who entered the negotiations for the first time, presented the parties with a set of proposals which he hoped would lead to a breakthrough

In interviews before the delayed start of the meeting at 4 pm yesterday, representatives of business and labour said they hoped a breakthrough was possible.

Both labour and business brought in their big guns with most of the trustees of Business South Africa, led by president Dave Brink and deputy president Bobby Godsell, lining up against a strong labour delegation led by Cosatu president John Gomomo and general secretary Sam Shilowa

The meeting, which was being held behind locked doors at a downtown Cape Town hotel and expected to continue

until the early hours of today, was due to convene again this morning

Mboweni said he would report back to Parliament later today as part of his budget speech.

In an interview with Business Report he said the meeting was "critical".

"So many people are waiting for us to move ahead. Jobs and the economy depend on this"

## Extension

Mboweni said his package of proposals was not restricted to the issue of central bargaining but included other breakdown points, including the use of scab labour, agency shops and work place forums. Asked whether he would extend the deadline to get the legislation through Parliament this year, Mboweni said. "The negotiations can't go on forever. Government must govern."

Jayendra Naidoo, chief executive of the National Economic and Labour Council (Nedlac), said the June 30 deadline was a Nedlac internal deadline and it "can obviously be discussed"

Naidoo said the meet

ing was very important but it was not the actual negotiating forum

The principles of the three sides had come together to discuss the status of the process.

Godsell said BSA would be delighted if some resolution could be reached. "This is the first meeting at this level. We have come in a positive spirit and we are looking forward to active participation. Progress will be good for the whole of South Africa"

Godsell said there had already been more than 32 hours of negotiations and business did not believe the process was deadlocked.

"We adjourned to have a high-level meeting like this. Which shows our willingness to make progress. The last thing we want is confrontation"

Shilowa said labour was committed to finding a solution. "Compromise is possible. If there is the will by all sides to find a solution, it will be found. The question is whether the will is there yet"

He said the fact that labour had not pulled out of negotiations showed its commitment to finding negotiated solutions

# New proposals on labour are tabled

Renee Grawitzky

BO 2/6/95

PROPOSALS by Labour Minister Tito Mboweni, stemming from separate discussions with labour and business, were tabled yesterday before the Labour Relations Act negotiating committee.

The negotiating committee within the labour chamber of the National Economic Development and Labour Council (Nedlac) continued negotiations, with the parties agreeing to continue discussion today.

Meanwhile, Cosatu reiterated labour's call for the continuation of the programme of mass action to lobby for the finalisation of the Bill

It will start on Monday with lunch-time demonstrations

The campaign itself will begin on Tuesday with a march to Chamber of Mines offices, where a memorandum will be presented to a representative of Business SA demanding centralised bargaining, union based workplace forums and an end to scab labour. Marchers plan to move on to the Gauteng legislature to protest against privatisation.

Cosatu assistant general secretary Zwelinzima Vavi said the fight "is on and the gloves are now off between ourselves and business

"We want to show business that they cannot cling to the current labour legislation until 1996"

Joint Cosatu, Nactu and Fedal shop steward council meetings have been planned in all the regions at the weekend to discuss "how to take the campaign forward"

Sapa-Reuter reports Cosatu said earlier it planned two weeks of mass

action ending in a strike on June 19.

Meanwhile, the SA Agricultural Union criticised trade unions for their "blackmailing" approach to talks on the Bill

"They are trying our patience to the extreme," SAAU president Boet Fourie said in Pretoria. The SAAU remained in favour of a negotiated solution, but business "could never capitulate" to trade unions just for the sake of an agreement on the matter. Great circumspection by all parties was required to prevent new labour legislation from becoming "a monster capable of totally disrupting the economy"

The SAAU found the proposal on compulsory centralised bargaining unacceptable. Small business would particularly suffer if this was enacted. It would also not be practical in the agricultural sector.

In Durban, the United People's Union of SA came out strongly against Cosatu's centralised bargaining proposals

"It infringes our right to operate and exist," union deputy general secretary S B Hlongwa said. Centralised or collective bargaining alienated workers from their unions

"Cosatu can bear witness to this. Cosatu is losing membership daily. Apparently this is a desperate attempt to stem the tide"

Hlongwa said it appeared that Cosatu had undermined the most crucial factors surrounding the matter

Most successful First World countries, he said, were practising decentralised bargaining. Britain had been doing so since 1979. — Sapa-Reuter

● Comment: Page 14

# Unions plan massive marches

■ BY HELEN GRANGE

Labour federations are preparing for huge marches country-wide on Tuesday, day two of a mass action programme aimed at forcing concessions from business in the deadlocked labour legislation negotiations

The Congress of South African Trade Unions (Cosatu) released details of the programme yesterday, an hour before labour and business representatives met to consider Labour Minister Tito Mboweni's proposals on breaking the impasse

Mboweni said last night the negotiations on new labour legislation were "on track" despite the mass action threat

"We do not believe that this is

a crisis at all. I am positive all parties will have reached agreement on the contentious issues by the June 30 deadline," he said

The mass action programme, which was spearheaded by Cosatu and joined this week by the Federation of SA Labour Unions and the National Council of Trade Unions, begins on Monday with meetings by shop stewards to finalise activities

On Tuesday, workers will meet at 9am on the corner of Wanderers and Plein streets in Johannesburg to march to the Chamber of Mines in Sauer Street and then to the Gauteng Legislature in Simmonds Street

The campaign is to reach a peak on June 19, when marches

will be held in all major cities, followed by a half-day strike

Cosatu spokesman Neil Coleman said yesterday the campaign was an attempt to accelerate the negotiations

Other issues tabled were

■ Mboweni's suggestions on how to achieve centralised bargaining

■ The proposal that Nedlac provide a backup technical team to assist the Labour Relations Act negotiating committee

■ The proposal that Nedlac's secretariat be used in a more facilitative capacity

The SA Agricultural Union criticised the trade unions yesterday for their "blackmailing" approach. The SAAU said it favoured a negotiated solution

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# Cosatu pushing for new Act this year

By Abdul Milazi  
Labour Reporter

THE Congress of South African Trade Unions is pushing determinedly for the new Labour Relations Act to be finalised this year *Sowetan*

Addressing a conference to announce the programme of mass action for June 6, Cosatu assistant secretary-general Zwelinzima Vavi said negotiations for the new act would have to be finalised before the June 30 deadline. Claims by business that they were not ready were unacceptable, Vavi said, adding that all parties in the National Economic Devel-

opment and Labour Council had ample time to review the proposals and assess their positions

He said since the draft bill was presented in February, business had not put forward any proposal, but had merely rejected the contents of the bill. Vavi said Cosatu would fight until the demands of workers were achieved. He rejected the Democratic Party's suggestion on Wednesday that the deadline for the finalisation of the new Act be postponed to next year *2/6/98*

Vavi said the DP was playing into the hands of business, who wanted the old act to remain because it favoured them

Political comment in this issue by Aggrey Klaaste. Newsbills, sub-editing and headlines by Sy Makaringe and Paul Drosdzol. All of 61 Commando Road, Industria, Johannesburg. Printed by The Newspaper Printing Company for the proprietors and publishers, New Africa Publications Ltd of 61 Commando Road, Industria, Johannesburg. The reproduction or broadcast without permission of articles published in this newspaper on any current economic, political or religious topic, is forbidden and expressly reserved to New Africa Publications under Section 12 (7) of the Copyright Act 1978. Sowetan abides by the Code of Conduct of the Press Council of South Africa and accepts its jurisdiction.

# Cosatu: 'Gloves are off'

## 1,5 million workers to strike over Labour Bill

KURT SWART (152)  
Weekend Argus Correspondent

JOHANNESBURG — Massive tension on the factory floor caused by business reluctance to enter the new South Africa was the driving force behind the Congress of South African Trade Union's (Cosatu's) mass action programme, the labour federation said

Cosatu was committed to its decision to undertake mass action to break the deadlock in negotiations on the draft Labour Relations Bill "The gloves are off and the fight with business is on," it said yesterday of its attempt to pressure business to agree to include in the bill centralised bargaining and the right to strike

The move has been sharply criticised by the SA Chamber of Business, the Democratic Party and Business South Africa

Cosatu spokesman Neil Coleman said negotiations were in a serious time crisis. He accused business of deliberately stalling to postpone legislation until next year "or even further"

"Negotiations must be finalised by the end of June to enable legislation to be passed this year. Their attempt at delay has been confirmed by the Democratic Party, which has blatantly come out in support of employers postponing matters until 1996. That is a completely uninformed and dangerous position to take," said Mr Coleman

He said millions of workers were governed by fragmented labour legislation in the public, farming, domestic and police sectors

"We have seen the problems this has created — turmoil in the police force and on the factory floor. The apartheid labour legislation is still in place. Employers' attempts to delay change is creating massive tension

"They have to come into the new South Africa. Negotiations are not about amending the old labour dispensation. The whole country wants a completely new dispensation

"Employers are so far removed from labour and government it would take Henry Kissinger five years to negotiate a solution. Mass action is there to focus their minds and to get them to understand the seriousness of the situation"

Mr Coleman said Cosatu welcomed the decision by the 200 000-strong Federation of South African Labour Unions "to come on board" the mass action programme

"This is an historic first time for a largely white-collar union with a large percentage of white workers. This should send a clear message to employers that they are not only facing Cosatu, but a broad range of unions representing workers from the unskilled to the professional"

Mr Coleman said mass action would start with a march in Gauteng on Tuesday and would "roll" until June 19 when workers would stage "massive national action" in the form of a half-day strike

Even without the National Council of Trade Union's (Nactu's) participation — the organisation has not yet decided whether to participate or not — this could mean more than 1,5 million workers going on strike, although Mr Coleman would not be drawn on an estimate of worker participation

Business South Africa this week criticised unions for embarking on mass action while talks were still in progress

BSA negotiators said business had not created deadlocks and were prepared to return to their constituents to review the issues under dispute

Negotiator Adrian du Plessis said BSA was not opposed to collective bargaining, but was opposed to "compulsion" collective bargaining. BSA accepted the right to strike, but did not accept that it could be pursued to the detriment of economic activity

He said business was not seeking to reverse labour law regulations, but he said a balance had to be found between the right to strike and the right to economic activity

The DP called on Labour Minister Tito Mboweni to extend the deadline for the bill to next year's parliamentary session and said unrealistic deadlines by the minister had precipitated the crisis

Cosatu's proposed mass action was inappropriate and constituted an act of bad faith, and, while it would have been preferable to have a new bill this year, this was not a matter of life or death, DP labour spokesman James Selfe said

Mr Mboweni has rejected the DP's call to extend the deadline

ARG 3/6/95

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# Cosatu, business square up over

The country needs a new dispensation for workers, and employers' attempts to delay change are creating massive tension, says Cosatu, which launches its mass action campaign on Tuesday. KURT SWART speaks to the parties at the centre of the dispute

Rising tension on factory floors, caused by the alleged reluctance of business to "enter the new South Africa", was cited by labour federation Cosatu yesterday as the driving force behind its proposed mass action programme.

Cosatu said it was committed to mass action to break the deadlock in negotiations on the draft Labour Relations Bill. "The gloves are off and the fight with business is on," Cosatu said this week of its attempt

to pressure business to agree to include in the Bill centralised bargaining and the right to strike. The decision to launch mass action has been sharply criticised by the South African Chamber of Business, the Democratic Party and Business South Africa (BSA).

Yesterday, BSA negotiator Adrian du Plessis said: "The resort to mass disruption is not reconcilable with the search for negotiated solutions; the new labour relations system has to emerge out of reasoned debate and not economic attrition." Du Plessis said BSA was not opposed to collective bargaining but was opposed to the "compulsion" to bargain at central level. BSA accepted the right to strike, but did not accept that it could be pursued to the detriment of economic activity.

Cosatu spokesman Nell Coleman accused business of deliberately stalling to postpone legislation until next year "or even further". "Negotiations must be finalised by the end of June to enable legislation to be passed this year. Their attempt at delay has been confirmed by the Democratic Party, which has blatantly come out in support of employers postponing until 1986. That is a completely uninformed and dangerous position to take," said Coleman. He said millions of workers were governed by fragmented

## Labour Bill

(166) ~~(166)~~

SWAN 3/6/95

country wants a completely new dispensation. "Mass action is to focus (employers') minds and to get them to understand the seriousness of the situation." Coleman said Cosatu welcomed the decision by the 200 000-strong Federation of South African Labour Unions "to come on board" the mass action programme. "This is a historic first time for a largely white-collar union with a large percentage of white workers.

"This should send a clear message to employers that they are not only facing Cosatu, but a broad range of unions representing workers from unskilled to professional." Coleman said mass action would start with a march in Gauteng on Tuesday and would "roll" until June 19 when workers would stage a national half-day strike. "This could mean more than 1.5-million workers on strike

# Business threatens to pull out of talks on Labour Bill

(2022/166)  
By EDYTH BULBRING  
Political Correspondent

**BUSINESS** South Africa has threatened to withdraw from negotiations on new labour legislation following a decision by trade unions to go ahead with mass action from tomorrow.

A Business South Africa negotiator, Adrian du Plessis, said business had appealed to labour to reconsider its programme of mass action after progress was made in talks this week.

However, the union federations — consisting of the Congress of South African Trade Unions (Cosatu), the Federation of South African Labour Unions and the National Council of Trade Unions (Nactu) — stated their intention to proceed with mass action from tomorrow.

Part of their campaign will include a half-day work stoppage on June 19.

The mass action is an attempt by labour to pressurise business into accepting its proposals for changes to the new Labour Relations Bill.

The Bill is under consideration by business, labour and government in the National Economic Development and Labour Council (Nedlac).

Mr du Plessis said yesterday that Business South Africa condemned the union federations' decision to proceed with mass action next week despite the progress in the process of reaching consensus on the Labour Relations Bill at the Nedlac meeting on Friday.

"You cannot talk and fight at the same time.

"Business South Africa will clearly need to review its role in these negotiations in the light of events over the next couple of days," he said.

The next scheduled meetings for negotiations in Nedlac are on June 12 and 13.

Asked whether Business South Africa would attend this meeting, Mr du Plessis said the organisation would consider its position in the next couple of days.

"We can't continue talking if we are going to fight this out in the street," Mr du Plessis said.

# US strikes some goods off preferential list

John Diudiu

THE Clinton administration has reversed a decision granting 35 developing nations — including SA — \$1.6bn worth of trade preferences under the general system of preferences (GSP)

The mechanism, which was extended to SA last May, allows beneficiary nations to export to the benefactor's markets duty-free or at substantially reduced import duties

Of the 140 products covered by the decision, only three items from SA will lose their preferential status — animal leather, building stones and vanadium oxides. The decision is to come into effect next month

Following the decision, the affected products will now be granted most favoured nation status — the most basic form of trade preferences which drops duties symbolically.

It was unclear at the weekend what effect the decision would have on SA's trade with the US or the performance of SA exports in US markets.

A statement released from Washington quo-

ted one official as saying that the change from GSP to most favoured nation status "should not be particularly burdensome" for most countries since most favoured nation rates on affected items were already very low

The basic idea behind GSP — often seen by trade diplomats as the cheapest form of aid to developing countries — is to stimulate economic development in the beneficiary country through the expansion of its exports in the markets of the benefactor nation.

Under US laws — and generally those of other countries — the list of qualifying products may be changed if it is found that the exports already enjoy a competitive edge in the markets of the benefactor country, or when it is found that the beneficiary country's per capita GNP exceeds a specified level.

Countries affected by the announcement include Argentina, Malaysia, Russia, Chile, India, Brazil, Thailand and Turkey, while the products affected include fruits, plywood, firearms, articles of yarn, handbags, non-aromatic drugs, typewriters, machinery parts and juices

# US lobby 'broadly supports' labour Bill

Renee Grawitzky

MAJOR US investors in SA represented by the American Chamber of Commerce (Amcham) broadly supported the draft Labour Relations Bill and hoped it would contribute towards creating a new atmosphere in labour relations

However, Amcham working committee head Roger Crawford said, "We have highlighted certain aspects which the chamber cannot see its way clear to giving any form of support."

Amcham would call on the labour minister to give serious thought to delaying the promulga-

tion of the Act until a conciliation commission was up and running

"We are deeply concerned about some of the wide powers that the Bill suggests the commission should have. Powers must be limited and refer only to issues under dispute."

Organisational rights provisions were problematic in that they could "unduly disrupt the operational activities of an employer"

Disclosure of information was supported but the automatic right rejected. Amcham supported the right to strike, but was concerned about the removal of ballot provisions from the Bill.





# Draft labour bill is 'unaffordable'

CT(BR) 5/6/95 (166)

By CLAIRE GEBHARDT

ECONOMICS EDITOR

South African business has hit out at the proposed new labour relations bill, labelling it "unaffordable" in a country where 50 percent of the workforce is unemployed

The warning comes ahead of rolling mass action by Cosatu — scheduled to start tomorrow and to culminate in a massive nationwide half-day stayaway on June 19 — to break the deadlock in negotiations over the draft bill

At issue between capital and labour are sympathy strikes, socio-economic strikes and "compulsory" centralised bargaining

The latter would force rigid wage levels on companies with unproductive workers at a time when the lowering of tariff barriers and cheaper imports pushed South Africa into global competition, representatives of business said

Steve Ntsane, executive director of the Centre for an Open Economy, said the proposed Labour Relations Act's draconian bargaining councils and workplace forums would

render South Africa a "no-go" area for foreign investors

"We can kiss goodbye to the reconstruction and development programme as there simply won't be sufficient funding," he said

The act would have a disastrous effect on small to medium-sized businesses which employed most of the workers and created most new job opportunities, he said

Webber Wentzel Bowens employment law partner Rod Harper said the "cynical" aspect of the exercise was that the draft bill had been prepared in favour of the trade unions and would negatively affect the economy

He said that if employers were not brought to the party voluntarily they would not actively participate in the system

Econometrix said business would merely shed more workers to maintain profit margins, should minimum wages become the order of the day

It warned that the legislation would exacerbate the distinction between the haves in the formal sector and have-nots and unem-

ployed in the informal sector

Sacob's director of labour affairs, Gerrie Bezuidenhout, said Cosatu's tactics in calling for mass action while negotiating in a legitimate body like Nedlac were "highly inappropriate" as was the push to adhere to the deadline at the end of the month

He said that Sacob's members were not unanimously opposed to centralised bargaining "but to impose it through legal dispensation on the total economy is unacceptable"

Business and labour should be free to decide together whether centralised bargaining was the best approach for a particular sector, Bezuidenhout said

The issue of the right to strike was also too widely interpreted and needed to be limited "perhaps by a third party"

With a legitimate government in place, he added, employers should not have to bear the brunt of workers' anger over issues beyond their control such as an increase in the price of electricity or a dispute over rates and taxes

# Business says SA can't afford new Labour Bill

span 5/6/95 (16b)

■ BY CLAIRE GEBHARDT  
ECONOMICS EDITOR

South African business has hit out at the proposed new Labour Relations Bill, labelling it "unaffordable" in a country where 50% of the workforce were unemployed.

Ahead of rolling mass action by Cosatu to break the deadlock in negotiations over the draft Bill, business warned over the weekend that the forced implementation of several controversial clauses would simply put more workers out on the streets.

The mass action is scheduled to start tomorrow and to culminate in a nationwide half-day stayaway on June 19, which has the potential to bring the economy to a grindingly expensive halt.

At issue between capital and labour were sympathy strikes, socio-economic strikes and "compulsory" centralised bargaining

## Wage levels

The latter would force rigid wage levels on companies with unproductive workers at a time when the lowering of tariff barriers and cheaper imports pushed South Africa into global competition, they said.

It would also make poorer provinces uncompetitive by imposing higher wages on areas where unemployment was rife and the cost of living consider-

## COSATU threatens rolling mass action but business says the Bill would put more workers on the street and frighten off foreign investment

ably less.

Executive director of the Centre for an Open Economy (COPE), Steve Ntsane, launched a broadside saying the proposed new Labour Relations Act (LRA) would render South Africa a "no-go" area for foreign investors.

Draconian bargaining councils and workplace forums would make the investment climate so hostile as to guarantee the closure of businesses and stoke unemployment on an unprecedented scale.

"We can kiss goodbye to the RDP as there simply won't be sufficient funding."

The LRA would also have a disastrous impact upon all small-to-medium sized businesses (SME's) who employed the vast majority of workers and created the bulk of new job opportunities, he said.

Webber Wentzel Bowers Employment Law partner Rod Harper said the "cynical" aspect of the whole exercise was that the draft Bill had been prepared in favour of the trade unions and would shift the bal-

ance of power even further their way while having a detrimental effect on the economy "In my view the unions have become greedy in wanting more"

Harper said the important issue was that if employers were not brought to the party voluntarily, they wouldn't actively participate in the system.

Econometrix said business would merely shed more workers in order to maintain profit margins were minimum wages to become the order of the day

It warned that the legislation would exacerbate the distinction between haves and have-nots

"There appears to be a growing inequality in the distribution of income between the beneficiaries of affirmative action and a wage-earning elite lucky enough to have jobs in the formal sector, and a growing bank of unemployed and informally employed persons who have downgraded their consumption of basic essentials."

Sacob director of labour affairs, Gerrie Bezuidenhout, said Cosatu's tactics in calling for mass action whilst negotiating in a legitimate body like Nedlac were "highly inappropriate" as was the push to adhere to an end-June deadline

Where legislation was forced through without taking the collective business constituency with it, both domestic and for-

eign investment could be curtailed.

Bezuidenhout said Sacob members were not unilaterally against centralised bargaining — "but to impose it through legal dispensation on the total economy is unacceptable"

Business and labour should be free to decide together whether centralised bargaining was the best approach for a particular sector, he said.

The question of the right to strike was also too widely interpreted and needed to be limited "perhaps by a third party" in order not to jeopardise the future of a business

## Harm

"As it is worded now, if a union declares a dispute with a company in the chemical industry, workers in the building industry could go on a legal strike in sympathy even though there is no connection between the two."

The right to socio-economic strikes gave the go-ahead for mass action provided certain procedures were followed and could cause immense harm to the economy

Bezuidenhout said with a legitimate government in place, employers should not have to bear the brunt of workers' anger over issues beyond their control which could be an increase in the electricity rate or a dispute over rates and taxes

# Union mass action over Bill

BY JUSTICE MALALA

More than 1.5 million workers start a mass action campaign today in an attempt to persuade employers to agree to demands on the new Labour Relations Bill.

The unions' mass action will culminate in a half-day work stoppage on June 19. Employers said over the weekend their continued participation in the month-long negotiations on the Bill with the National

Development Bank was a success. The National Development Bank (NDB) has agreed to provide a loan of R100 million to the government to fund the development of the Natal province.

The campaign was decided upon by the Congress of SA Trade Unions (Cosatu) two weeks ago and later endorsed by the Federation of SA Labour Unions and the National Council of Trade Unions.

In KwaZulu-Natal yesterday - the Inkatha Freedom Party repeated its fears that the campaign would lead to an increase in violence.

IFP MP Phillip Powell said the party had asked for more security in Umhlati when a joint ANC/Cosatu march takes place. The march is part of the labour campaign but is also intended to back demands for the closure of a hostel said to harbour people implicated in the on going political violence within the province.

## March

Powell said he feared *agents provocateurs* among the marchers would cause the violence.

In Johannesburg the campaign starts with a march to the Chamber of Mines offices and then to the offices of the Gauteng legislature.

Workers will take part in placard demonstrations at lunch time today.

SA can't afford new Labour Bill - Page 11

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# Central bargaining tops unions' agenda

Sowetan 5/6/95

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IN NOVEMBER LAST YEAR, when many South Africans were still celebrating the birth of a new democratic dispensation, about 3 000 South African Commercial, Catering and Allied Workers Union members went on strike at more than 200 Spar outlets in Gauteng.

Central to the action was the union's demand for centralised bargaining, which the trade union movement in general regards as vital to the future of negotiations with employers.

Management wanted the workers to negotiate wages with individual stores, while the union wanted to secure an umbrella agreement on minimum wages and other conditions of employment.

Daggers were drawn and workers defied court interdicts in their determination to achieve their demands. This led to fierce confrontations between strikers and the police. At least 2 500 workers were dismissed, while another 68 were arrested for defying court interdicts, intimidating customers and damaging property.

The case against the 68 was thrown out of court last week after Johannesburg Regional Court magistrate Mr LJ van der Schyff refused to give the State more time to draw up charge sheets.

However, the battle is not yet over. The union wants all the workers reinstated, while management wants to employ only those it selects.

## Conciliation Board

Saccawu spokesman Mr Sthembale Tshwete said the union had referred the matter to the Conciliation Board, and added that the retail chain store would face a national strike if the board could not resolve the matter.

The anger that led to serious confrontations between Spar owners and Saccawu, and Cosatu's call for mass action today, indicate the urgency around the issue of centralised bargaining.

Cosatu's decision to embark on rolling mass action from today stems from its dissatisfaction with the lack of progress at National Economic and Labour Council negotiations.

Cosatu is demanding that centralised bargaining, the right to strike, a ban on scab labour and the establishment of workplace forums be enshrined in the new Labour Relations Bill.

The federation has accused business in Nedlac of refusing to move into the democratic era.

According to Cosatu, the employers are demanding to have the right to lock out workers, to force them to accept lower wages, dismiss workers in legal strikes, ban the close shop employment of scab labour and refuse to negotiate with unions at industry level.

Cosatu secretary-general Mr Sam Shilowa told a Press conference last week that, while labour

Labour Reporter **Abdul Milazi** looks at the issues behind today's rolling mass action called by Cosatu.



**FLASHBACK:** A meeting between Cosatu and Saccola. The federation is now accusing business in Nedlac of refusing to move into the democratic era.

attempted to accommodate the concerns of other parties, business had rejected labour's proposals and many aspects of the draft bill.

Cosatu and its allies in Nedlac, the National Council of Trade Unions and the Federation of South African Labour, want the new Labour Relations Act finalised this year.

Tshwete said Saccawu believed bargaining was at the heart of the industrial relations system, and that centralised bargaining was far more efficient for both employers and unions than the current collective bargaining system.

He said the present bargaining arrangement in different sectors encouraged segmentation and inequality in conditions of employment and wages. Tshwete also said collective bargaining encouraged employers to compete on the basis of cheap labour because each sector negotiated their own wage agreements individually.

Despite this, the number of strikes has dropped considerably compared to previous years, according to a Andrew Levy and Associates quarterly report, which singled out the Spar strike as the major industrial action so far this

year. According to the Department of Labour's annual report, the number of strikes increased from 790 in 1993 to 804 in 1994 — and workers lost R148 million in wages. The greatest number of man-days lost were in the manufacturing sector (50,55 percent), followed by mining (23,55 percent).

The highest number of strikes were in the Witwatersrand, accounting for 26,24 percent, while Pretoria registered 10,3 percent and Port Elizabeth 3,23 percent, the lowest rate recorded.

## Better wages

Strikes over wages accounted for 27,11 percent, while 36,37 percent were over better conditions of employment, including better wages.

The Food and Allied Workers' Union was responsible for 51 percent of all industrial action, followed by Saccawu (17 percent), the Chemical Workers' Union (14,6 percent) and the National Union of Mineworkers (4,6 percent).

The deadlock on centralised bargaining could see an upsurge in these figures for 1995 if this issue is not resolved speedily.

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# 40 000 join Cosatu march to demand Labour Act changes

ARC 6/6/95

**The Argus Correspondent**

JOHANNESBURG — The city centre ground to a halt today as an estimated 40 000 workers took part in the biggest post-election march by the labour movement to press home demands for changes to the draft Labour Relations Act.

The marchers, most of them members of the Congress of SA Trade Unions (Cosatu) and joined by Federation of SA Labour Unions and National Council of Trade Unions members, would present memoranda to Gauteng Premier Tokyo Sexwale, the Johannesburg Stock Exchange and the Chamber of Mines later today.

African National Congress deputy secretary-general Cheryl Carolus told the crowd the party supported their demands for the draft Bill to be changed, saying it had to be a worker-friendly piece of legislation.

"The ANC supports laws which will lead to the growth of the country, and that growth must be seen in the wealth going to the workers. If the workers are unhappy with the Act then it must be changed," she said.

She said the ANC had consulted all its MPs and when the Bill was debated in parliament they would all support inclusion in the new Act of workers' demands.

The march is part of the labour movement's mass action campaign to force business to accept its proposals on the draft Bill.

Cosatu spokesman Neil Coleman said the march was one of

several planned across the country as part of the rolling mass action campaign to culminate on June 19 with a half-day general strike. Other marches were in progress in Durban, Maritzburg and East London, he said.

In the wake of the protests, business has threatened to review its participation in the negotiating forum on the Bill, saying the mass action showed labour did not take the negotiations seriously.

Negotiators will meet for another round of talks on June 12 and 13.

At the heart of the dispute are differences between labour and business negotiators in the National Economic, Development and Labour Council (Nedlac) on centralised bargaining, industrial action and workplace forums.

Labour wants the new Act to compel all parties to bargain at central level. Business believes "a compulsion to bargain at central level is unworkable".

Another issue is the employee's right to strike, which business feels is not balanced with the employers' right to lock-out, which it says is circumscribed in the current draft of the Bill.

The third major obstacle is the proposal in the Bill that a union should be the sole agent which can call for the formation of a workplace forum. Business believes the formation of workplace forums should be more inclusive, with all workers, including those not belonging to a union, being able to propose that it be formed.

# Trade unions warn of SA standstill as protests begin

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Staff Reporter

TRADE unions have launched a programme of protest action which they warn could bring the country to a standstill on June 19

Two major unions — the Food and Allied Workers Union and the South African Clothing and Textile Workers Union — held rallies yesterday in the Western Cape to tell their members of the intended programme

Cosatu Western Cape chief Boss Nxul warned this was only a taste of what could be expected unless negotiators for the labour movement and big business could reach consensus at their next round of meetings on Thursday.

Mr Nxul said the labour movement — Cosatu, the National Council of Trade Unions (Nactu) and the Federation of South African Labour (Fedsal) — was working on regional and national programmes of action to try to persuade the business sector to see the urgency of getting a new labour relations bill tabled in parliament.

He said that since the beginning of May, when negotiations began, employers had not budged from their position, saying they needed more time to discuss the draft labour bill.

"This is totally unacceptable as we have been negotiating with big business since 1988 about changes to the Labour Act, and they are very aware of our thinking," Mr Nxul said

"They are just using this as another delaying tactic and the united labour

movement, and the country as a whole, cannot tolerate this as it is not in the interest of the country's economy to have uncertain labour relations"

Yesterday union organisers began laying the groundwork for the programme of action leading up to the big showdown in a fortnight.

Activities planned for this week included informing all workers of the unions' position and plans and lunch-time demonstrations at factories

"On Friday we will assess the outcome of the meeting between our negotiators and the employers before finally deciding on what action to take on June 19," said Mr Nxul

André Kriel, national education officer for the SA Clothing and Textile Workers' Union, said employees wanted finality on important issues raised in the draft bill, and the government had set the end of June as the cut-off date for final submissions

"We believe this can be reached if business shows seriousness about finding solutions and comes forward with proposals that can be discussed.

"But thus far they have only listed their rejection to a number of important clauses listed in the draft bill."

Mr Kriel said some of these issues, like the need for centralised bargaining, amendments to closed shop agreements, the right to strike and protest in solidarity for social economic reasons, were fundamental workers' rights which could never be rejected

"The employers want to drag us back to the dark days when workers had no rights and were entirely at the mercy of the bosses"

He said that in the past five years much economic restructuring had taken place with little or no consultation or input from the workers and that as a result rationalisation and retrenchments followed

"Part of the draft bill allows for workers and union members to make an input at a national level but the bosses are rejecting this. They are against central bargaining whether it's for wages or other aspects which affect the workers."

Mr Kriel said they were fed up with all the delays and would show on June 19 how serious they were about getting the draft legislation into parliament so that it could become law.

The executive committee of the joint labour forum had already decided on a national half-day stayaway for June 19 — employees would work until noon then march through the different city centres.

"Depending on the outcome of the meeting on Thursday, we could decide to call for a full day of protests with massive marches across the country which would effectively shut down the economy.

"And if no agreement is reached, there will probably be lots of turmoil in the country as a result, and this could all be blamed on business's attitude to the situation," Mr Kriel said.

# 40 000 join Cosatu march to demand Labour Act changes

ARG 6/6/95

The Argus Correspondent

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The march is part of the labour movement's mass action campaign to force business to accept its proposals on the draft Bill

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several planned across the country as part of the rolling mass action campaign to culminate on June 19 with a half-day general strike. Other marches were in progress in Durban, Maritzburg and East London, he said

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At the heart of the dispute are differences between labour and business negotiators in the National Economic, Development and Labour Council (Nedlac) on centralised bargaining, industrial action and workplace forums

Labour wants the new Act to compel all parties to bargain at central level. Business believes "a compulsion to bargain at central level is unworkable".

Another issue is the employee's right to strike, which business feels is not balanced with the employers' right to lock-out, which it says is circumscribed in the current draft of the Bill.

The third major obstacle is the proposal in the Bill that a union should be the sole agent which can call for the formation of a workplace forum. Business believes the formation of workplace forums should be more inclusive, with workers, including those not belonging to a union, being able to propose that it be formed.

# Cosatu's fortnight of mass action begins today

DT 6/6/95

~~1766~~ (1766)

JOHANNESBURG: Cosatu begins a fortnight of mass action today to press business leaders to seek changes in proposed labour laws

Labour Minister Mr Tito Mboweni has been lobbying Parliament to accept draft legislation entrenching a national minimum wage and workers' right to strike in

exchange for guarantees from unions to cut down strikes

Cosatu said for the next two weeks members would hold lunch-hour meetings and demonstrations at workplaces and in city streets to pressure businessmen into negotiating pro-labour changes to the draft legislation

"This phase of mass action will culminate in a national day of protest on June 19," spokesman Mr Neil Coleman said

Cosatu had reached deadlock in negotiations with the National Economic Development and Labour Council set up by Mr Mboweni and had decided on the

mass action programme "to drive the negotiations forward", Mr Coleman said

The South African Chamber of Business said the protests would have "an extremely negative impact on South Africa's attempts to attract foreign investment" — Reuter



# Troubled labour times are foreseen

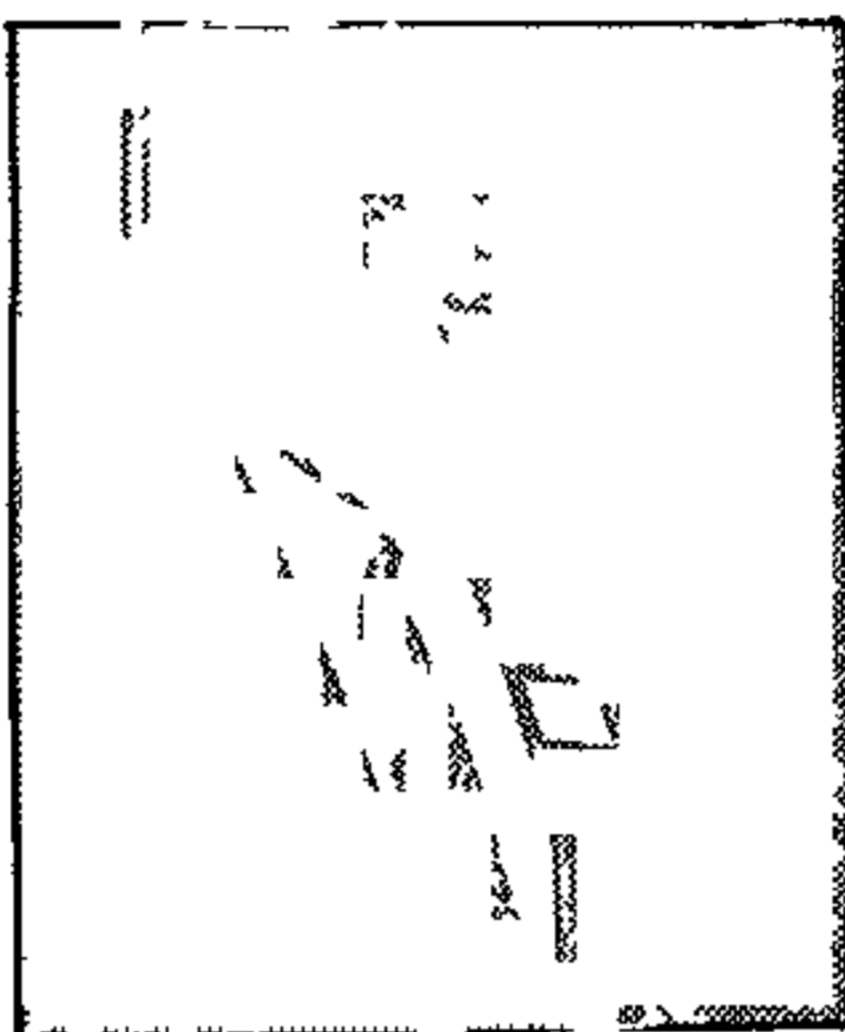
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■ ANALYSIS BY  
JUSTICE MALALA  
LABOUR REPORTER

The Cosatu-led (Congress of SA Trade Unions) mass action which starts in earnest today to pressure business over some clauses of the Labour Relations Bill heralds what many analysts believe will be the beginning of labour's winter of discontent

The mass action, for the first time also involving the largely white Federation of SA Labour Unions and the PAC-aligned National Council of Trade Unions, will end with marches across the country and a half-day work stoppage on June 19

At the heart of the dispute



Tito Mboweni centralised bargaining.

are differences between labour and business negotiators in the National Economic, Development and Labour Council (Nedlac) on centralised bargaining, industrial action and workplace forums

Business SA negotiator Adrian du Plessis says labour wants the new Act to compel all parties to bargain centrally. Business believes that "a compulsion to bargain at that level is unworkable"

Labour Minister Tito Mboweni and the Cabinet last week threw their weight behind the demand for centralised bargaining

Another issue is the employee's right to strike, which business felt was not balanced with the employers' right to lock-out, which it said was circumscribed in the current draft of the Bill

The third major obstacle had been around the proposal in the Bill that a union

should be the sole agent which could call for the formation of a workplace forum. Business felt that the formation of workplace forums should be more inclusive with all workers being able to propose that it be formed

A factor at play in the current dispute is that labour, steeped in the militant traditions of the '80s and concerned at perceptions that it has lost its teeth, is using differences in negotiations as a reason for re-grouping

As wage negotiations in various industries reach a stage where unions are considering industrial action to press home their demands, the mass action may be the trigger which will see workers hardening their attitudes

# PAC supports mass action

~~(11/11)~~ (16/11/92) Sowetan 6/6/92

THE Pan Africanist Congress yesterday threw its weight behind the labour movement in its confrontation with the business sector over new labour legislation.

In a statement issued by PAC national executive member Mr !Khoisan X, the organisation blamed business for the impasse over the Labour Relations Bill currently being negotiated in the National Economic Development and Labour Council. X said rolling mass action that began yesterday to highlight demands by labour, was the last resort in the process and was justified.

"Some of the issues in question ... enforced centralised bargaining, sympathy strikes and socio-economic strikes have been negotiated before. The

mass action by workers as a last resort is justified," X said.

"We are calling on employers not to adopt a laager mentality in the wake of the worker protests but to continue with meaningful negotiations."

He said the PAC believed the solution to the impasse should be based on certain principles. These include:

- The recognition of labour as crucial partners in the productive process;
- The establishment and maintenance of investor-friendly laws which do not trample on the rights of the workers, and
- The establishment and maintenance of the South African economy's global competitiveness.

"We believe a balance can be found in

accommodating these concerns in the new Labour Relations Act and that the concerns are not mutually exclusive," he said. He appealed to workers to stage disciplined and peaceful protests. The marches and other demonstrations end on June 19 with a partial general strike.

— Sapa.

**We are calling on employers not to adopt a laager mentality in the wake of the worker protests**

# No disruption as mass action starts

**T**HE FIRST DAY OF THE ROLLING mass action campaign led by the Congress of South African Trade Unions ended peacefully yesterday, with no disruptions reported from around the country.

Cosatu assistant general secretary Mr Zwelinzima Vavi said shop steward councils devoted yesterday's lunch hour to reporting back to workers their decisions on the type of action to be undertaken during the campaign in the various regions.

Thousands of workers will march to the Gauteng Legislature and to the offices of the Chamber of Mines today, while in KwaZulu-Natal two mass marches will be held in Durban and Maritzburg.

The Northern Cape began picketing the busiest streets in the local towns as part of the build up to the national day of protest on June 19.

The Federation of South African Labour Unions and Cosatu will hold joint shop steward councils tomorrow

*(166) (1107) (132) (30) some far 6/6/95*  
**Labour Reporter Abdul Milazi** reports on Cosatu's first day of national mass action, with more marches planned today.

to assess the progress and build-up of the mass action.

On the same day the Eastern Transvaal region will hold marches throughout the area while the Eastern Cape will begin lunch hour demonstrations and also conduct television and radio interviews to publicise the campaign.

The South African Chamber of Business and the Afrikaanse Handelsinstituut yesterday said no disruptions to business were reported.

Sacob spokesman Mr Gerrie Bezuidenhout said, however, that if the mass action demonstrations were confined to the lunch hour, business would not be affected.

Meanwhile in KwaZulu-Natal, security forces fired teargas at hostel residents in Umlazi near Durban yesterday and the situation remained tense during an ANC-Cosatu march in the township.

Hostel residents of Unit 17 in T Section, an Inkatha Freedom Party stronghold, rushed at razor wire surrounding the hostel. Police and members of the SA National Defence Force fired teargas to disperse them.

A shot was fired at the Umlazi magistrates court, increasing tension as several hundred marchers rushed towards the direction of the shot. Security forces patrolled the area while marshals supervised ANC supporters.

**Mandela being**

## NEWS

*Business and labour seek ways to reach consensus*

# Major union groups prepare joint action

Star 1/6/95

1/6/95

■ BY HELEN GRANGE

Three major labour federations are joining forces and bracing themselves for a joint mass action campaign to break the impasse in negotiations on the new labour legislation.

The Federation of SA Labour Unions (Fedsal) announced yesterday that its affiliates will participate in the campaign being spearheaded by Cosatu, which has said it will embark on a national half-day strike on June 19, which will be preceded by a two-week mass action campaign beginning on Monday.

The National Council of Trade Unions is also expected to announce its participation in the campaign to break the deadlock

## LABOUR Minister Tito Mboweni says the Cabinet backs centralised bargaining

later this week.

Fedsal general secretary Dannhauser van der Merwe said this was the first time organised labour had united in a campaign to further trade union rights.

Labour Minister Tito Mboweni said last night the Cabinet supported centralised bargaining and he had received a mandate from the Cabinet to explore ways to achieve this.

He said it had become apparent that there were weaknesses in the structure of the ne-

gotiations in the National Economic Development and Labour Council (Nedlac) and both business and labour had agreed in discussions yesterday to find mechanisms "to accelerate negotiations and reach consensus".

"We are convinced that negotiations will show progress within the coming weeks."

Democratic Party labour spokesman James Selfe appealed to Mboweni to extend the deadline for the new Labour Relations Bill to next year's parliamentary session, saying Mboweni was establishing unrealistic deadlines "on extremely complex legislation".

However, Mboweni said last night the deadline was agreed upon by parties at Nedlac, and

not imposed by the ministry.

"I would appeal to all parties to support our endeavours to agree on a Labour Relations Act this year rather than opportunistically trying to postpone agreements."

Issues over which there are strong differences are centralised bargaining, the duty to bargain, industrial action, scab labour and workplace forums.

Selfe said Cosatu's proposed mass action was inappropriate and constituted an act of bad faith. "The message being sent to investors, both domestic and foreign, is that South Africa, despite all the positive changes that have taken place, is still not an economically stable environment in which to invest."

# Cosatu threatens further mass action as march paralyses city centre

Renee Gravitzky

RD 7/6/95

A MARCH by more than 60 000 Cosatu members — which brought Johannesburg's CBD to a halt yesterday — was characterised by warnings that the economy would be brought to its knees with a half-day stayaway on June 19 if employers did not respond positively to labour's demands.

The march was given legitimacy by the arrival of President Nelson Mandela, who said the ANC was fully behind the protest action, but warned workers to act in a disciplined manner. He said the right "to de-

monstrate and strike was used throughout the history of the ANC" and this right was included in the constitution.

Cosatu assistant general secretary Zwelinzima Vavi said the rolling mass action would "roll and roll until employers agreed to our minimum demands".

Business SA spokesman Adrian du Plessis said that in view of the threat of continued mass action, BSA was considering its position in the National Economic, Development and Labour Council (Nedlac).

At the Chamber of Mines building a memorandum setting out labour's core de-

mands was presented to Du Plessis. He said business recognised the right of peaceful protest, but "sustainable solutions came out of negotiations around a table and not out of the streets."

Nedlac executive director Jayendra Naidoo told workers that deadlock had been reached quickly with the parties having presented only their first positions.

His statement that "where a person starts is not where they finish" was met with a stony silence by the crowd.

Labour Minister Tito Mboweni said he was confident of a settlement if a solution

was found on centralised bargaining, the closed shop issue and the right to strike.

NP labour spokesman Leon Wessels said "such one-sided action will not make SA appear as an investor-friendly country".

Naidoo said meetings between labour and business were scheduled to start today.

The march which was supposed to be part of a united labour campaign, was led by Cosatu's Vavi, Ebrahim Patel and George Nkadimeng, the ANC's Cheryl Carolus and the SACP's Jeremy Cronin. There was no Federation of SA Labour representation and the National Council of Trade

Unions is holding a meeting today to decide on participation in the campaign.

Rarouk Chothia reports that at a rally in Durban, Cosatu president John Gomo said the union demanded the disbandment of provincial governments as they would lead to fragmentation and would bring about uneven development.

Addressing thousands of workers, he said the lifespan of provincial governments should not extend beyond 1999. "Political parties are deviating from the first declaration in the interim constitution — the sovereignty of central government."

# Mandela backs Cosatu

CT 7/6/95

(166)

**JOHANNESBURG** President Nelson Mandela pledged his support yesterday to workers protesting against the business sector's position in negotiations for the draft Labour Relations Bill.

Traffic came to a halt when Mr Mandela made an unexpected appearance at the Cosatu-organised rally.

He told a cheering crowd of about 20 000 protesters "The ANC is fully behind you, but we want you to be disciplined."

The NP condemned Mr Mandela's pledge of support, saying his involvement in the march undermined the National Economic Development and Labour Council's efforts to resolve disputes between business and labour.

The party appealed to Mr Mandela "to encourage organised labour to return to negotiating structures".

Business sources also expressed dismay last night, saying they worried Mr Mandela's action would scare off potential foreign investors.

One source said the negotiations were "sensitive" and Mr Mandela's appearance "can be seen as intervention".

"The President is supposed to be impartial," the source said. "We don't think it's a good idea."

Business has threatened to review its participation in the negotiating forum discussing the new bill. The forum is set to meet



**FLAGS FLYING:** About 20 000 workers marched through the streets of Johannesburg yesterday in a Cosatu-organised march in favour of strengthening workers' rights.

PICTURE. AP

for another round of talks on June 12 and 13.

● Cosatu warned yesterday it would begin unprecedented mass action if the government privatised state-owned enterprises.

It expected a response from the government on its privatisation plans by June 19, the day the union federation plans to hold a protest march — Sapa-Reuter

● See Page 15

# Labour bill tussle takes a nasty turn

CT(RR) 7/6/95

BY THABO LESHILO

(166) (122) (30) STAFF WRITER

The tensions between organised labour and business over the Labour Relations Bill heightened yesterday as Business South Africa threatened to pull out of Nedlac and Cosatu warned that it would use the ANC to impose the Act.

"BSA has to ask itself whether mass protest action is reconcilable with the search for negotiated solutions and we will be reconsidering our role in these negotiations in the light of the unions' persistence to pursue mass action strategies," said Adrian du Plessis, BSA negotiator at Nedlac (National Economic Development and Labour Advisory Council)

Cosatu assistant secretary general Zwelinzima Vavi reacted angrily to the BSA position, calling it "blackmail, extremely arrogant and meant to put pressure on labour, not exercise its right to protest"

Said Vavi "They are in for a rude shock if they pull out. It will be left to the politicians alone to decide labour law and we want to remind him that we have powerful allies in the parliament"

Du Plessis said although business recognised the right of organised labour to take part in peaceful protest, this should not be a substitute for reasoned debate and negotiation

"Sustainable solutions to the differences between us will need to be found through negotiations. Our first prize remains a negotiated settlement, said du Plessis.

Sacob labour affairs director Gerrie Bezuidenhout said 40 000 people took part in the protest in Gauteng, while Cosatu put the numbers at no less than 100 000

Bezuidenhout said it was difficult to assess the impact of the protest on the economy, but investors' perceptions of South Africa would be negatively affected

# 150 000 march ~~(166)~~ ~~(133)~~ ~~(133)~~ over labour Bill

BY JUSTICE MALALA  
LABOUR REPORTER

The SA labour movement yesterday sent its most serious warning yet to business that it would not compromise on its demands for changes in the draft Labour Relations Act when an estimated 150 000 workers in four cities took part in marches around the country to back their negotiators.

But the deadlock at the National Economic, Development and Labour Council (Nedlac) on negotiations about the Bill, which led to the marches, could be resolved today. Business and labour representatives have agreed to meet to iron out their differences before they meet formally on June 12 and 13.

President Nelson Mandela appeared briefly at the Johannesburg march and gave his blessing to the 70 000 workers led by Congress of SA Trade Unions (Cosatu). He told them that the right to demonstrate and strike was used through-

out the history of the ANC

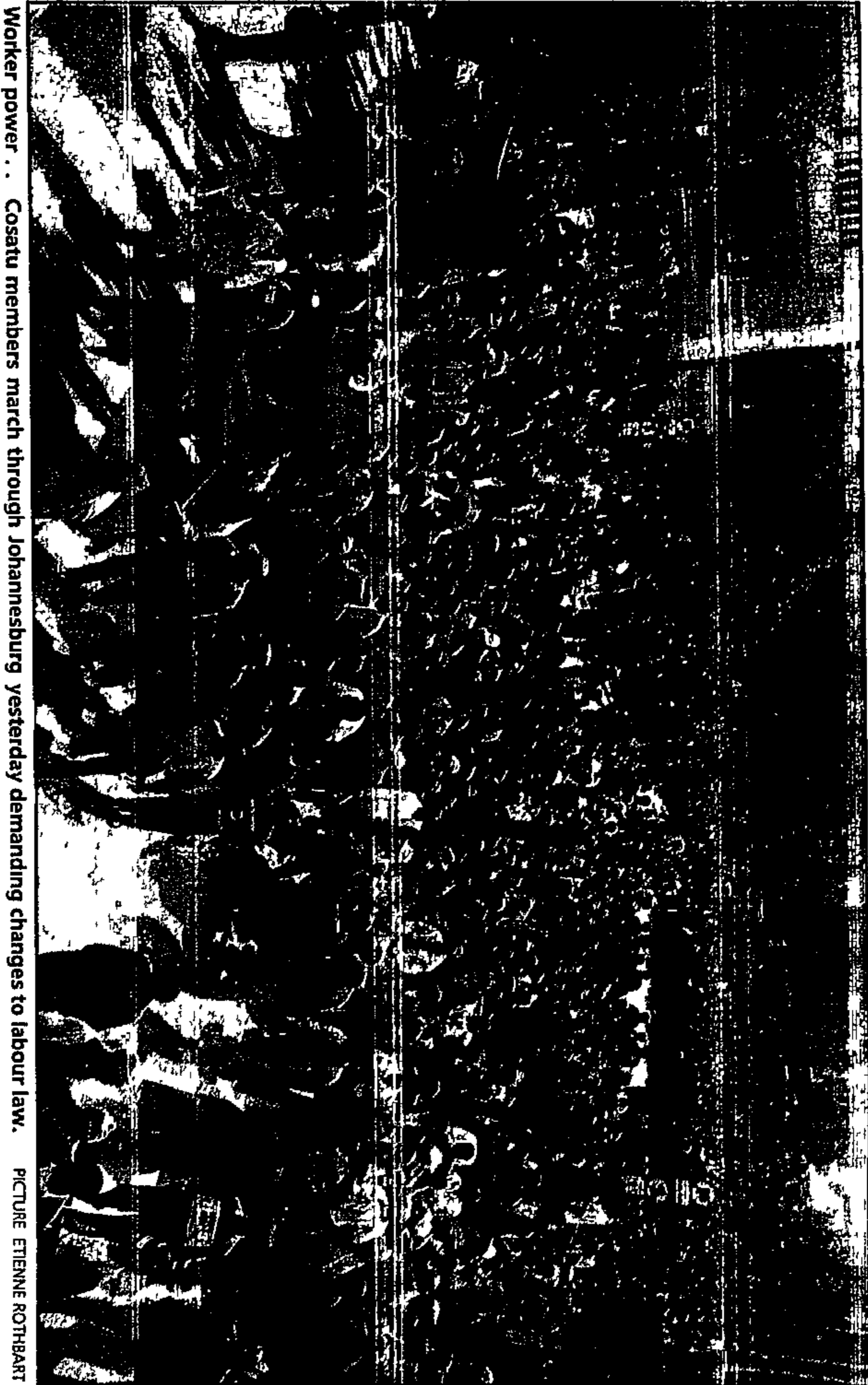
The protest brought the city to a halt as workers marched on the legislative offices, the Chamber of Mines and the stock exchange in the biggest worker turnout since the anti-VAT campaign of 1990

Nedlac executive director Jayendra Naidoo said yesterday he was optimistic a solution to the impasse could be found if "both parties showed their cards".

## Workers desert patterns - Page 2

But yesterday Cosatu leaders were unbending in their demands, saying if business failed to accede to them by June 19, when the mass action is set to culminate in marches and a half-day strike, further action, including a general strike, would be considered.

SA Chamber of Business spokesman Gerrie Bezuidenhout said it was still too early to say how much had been lost in production.



Worker power . . . Cosatu members march through Johannesburg yesterday demanding changes to labour law. PICTURE ETIENNE ROTHBART



## NEWS IN BRIEF

### IEC may be dissolved

CABINET had in principle approved the dissolution of the Independent Electoral Commission, Home Affairs Minister Mangosuthu Buthelezi said in the National Assembly yesterday.

The commission would then be replaced by a transitional electoral administration.

### R2,2m still unclaimed

MORE than R2,2m in benefits remained unclaimed for the 1993/94 financial year, according to the Compensation Commissioner for Occupational Diseases' annual report released yesterday.

The amount represented one-sum benefit payments to beneficiaries of which the cheques were either returned as stale or because the beneficiaries were no longer employed and their present addresses were unknown.

### Cape bid 'ridiculous'

CAPE TOWN's bid for the 2004 Olympics was dismissed yesterday as "ridiculous" by Britain's most acclaimed sports journalist.

Daily Mail columnist Ian Woolridge said there had been much sincere comment on the racial unifying power of the Rugby World Cup, but the harsh facts showed that SA still had "a long way to go".

Woolridge said SA had coped "superbly" with the World Cup so far but the housing needs alone made the Olympics bid absurd.

### Industry as a whole

BUSINESS Day yesterday reported that Edey Rogers economist Edward Osborn said most of the recent surge in manufacturing output came from expansion of Sasol's synthetic fuel business. Osborn points out the Central Statistical Service category of synthetic fuel industry refers to the whole petroleum industry.

REPORTS: Business Day Reporter, Sapa, Own Correspondent.

# 'Unreal' Labour Bill deadline

Renee Grawitzky

THE SA Chamber of Business (Sacob) — a member of Business SA (BSA) — said yesterday the "unrealistic" June 30 deadline for the completion of negotiations over the draft Labour Relations Bill should be reviewed.

This call is not in line with the general position presented by BSA to date which has regularly committed itself to the deadline.

Sacob's Gerrie Bezuidenhout said unless the climate surrounding the negotiations improved, in light of mass action and the possible escalation of strikes, business might have to review its participation in the National Economic Development and Labour Council (Nedlac).

Cosatu spokesman Neil Coleman said it was not constructive for employers to threaten to walk out of the Nedlac negotiations. "These are precisely the bad faith Inkatha negotiating tactics which business has been quick to condemn in the past."

He said if business withdrew, they would have sabotaged the negotiations and leave labour with no option but to "go the parliamentary route of getting a new Act passed without the participation of employers".

Labour Minister Tito Mboweni warned the international community it should not be alarmed by differences of opinion expressed by politi-

cal, social and business sectors in SA as this was part of democratisation.

Addressing the 82nd International Labour Organisation conference in Geneva yesterday, Mboweni said. "Major challenges remain to be tackled in pursuit of reconstruction and development."

He said despite "what may look like a breakdown in negotiations", the process was still on track and indications were that all parties were determined to reach an agreement.

Meetings between labour and business on the Labour Relations Bill continued yesterday.

The National Council of Trade Unions (Nactu) central committee resolved yesterday that labour should direct its fight against business and government to ensure the urgent enactment of the Labour Relations Bill.

Nactu's assistant general secretary Mahlomola Skhosana said government should "stop paying lip service by claiming to support labour" and ensure that the bill in the form presented at Nedlac was enacted.

Skhosana said the government was "responsible for the draft bill in the first place".

If this demand was not met by government by June 18 "without valid reason", mass action would continue beyond June 19.

● Comment: Page 16

## Crude oil companies slate Sasol report

Mungo Soggot

CRUDE oil refining companies yesterday lashed out at the investigation into Sasol's tariff protection in their first official reaction to the controversial report by consultants Arthur Andersen.

The SA Petroleum Industry Association said it was reviewing its position, but warned "the report and its

recommendations as they stand will be an entirely inappropriate basis on which to formulate future policy on a number of issues affecting the oil industry, including Sasol's subsidies".

Acrimony has delayed presentation of the report to the National Economic, Development and Labour Council's liquid fuels task force. However, sources said debate by the full task force would happen next week.

## CSS boss 'to help monitor quality of life'

Greta Steyn

MINISTER without Portfolio Jay Naidoo yesterday explained his decision to axe Central Statistical Service (CSS) head Treurnicht du Toit and replace him with sociologist Mark Orkin as necessary for proper monitoring of the reconstruction and development programme.

"The decisive factor had nothing to do with politics. It had everything to do with the role of an independent statistical service in guiding resource allocations and monitoring the impact of government spending on the

quality of life of our people," he said.

A panel including himself, Deputy Finance Minister Alec Erwin and a representative from business, Bokkie Orkin, had taken the decision. "Both Orkin and I are qualified to do the job. I decided Orkin has a better perspective," he said. He emphasised that Du Toit's technical and managerial capabilities were not in question.

He said the CSS had a vital role to play, and denied the move would lessen the CSS's independence. The plan was to strengthen the organisation's autonomy. Naidoo dismissed suggestions that he might have appointed

Orkin to ensure CSS figures would serve political ends.

Statistics would drive the strategic planning underpinning the Budget.

Asked whether more radical moves were in the pipeline, he said the government's economic policy capacity was being reviewed. The capacity was dispersed between the finance department, trade and industry, central economic advisory services and in the Development Bank of Southern Africa. "Rationalisation will have to take place."

● Comment: Page 16

# Labour law dispute reaches crisis point

ARG 8/6/95

(30) (166)

## Staff Reporters

A CONFRONTATION between business and trade unions over proposed new labour laws is reaching crisis proportions, with warnings that it could soon threaten economic recovery

As Cosatu's "rolling mass action" in support of the new laws gets under way, the business confidence index has plummeted to its lowest level since last year's elections

And organised business has announced it will "review its participation" in negotiations on the laws if rolling mass action continues.

This drew a sharp response from Cosatu, which threatened to use its sup-

port in parliament to push through the legislation

As the war of words raged on, the South African Chamber of Business (Sacob) called for a review of the deadline date for negotiations, saying June 30 was "unrealistic"

But Cosatu claimed the demand for a deadline extension was a "delaying tactic" aimed at ensuring that legislation came into effect only next year

Yesterday workers in various centres held lunch time meetings as part of the two-week campaign organised by Cosatu and joined by the Federation of SA Labour Unions. The campaign starts in

earnest with a half-day national strike planned for June 19

Sacob has warned that the economic upswing may be running out of steam, reporting that its monthly business confidence index fell in May to its lowest level since the elections

Yesterday the National Party accused Minister of Labour Tito Mboweni of "silently condoning" union attempts to "hijack" talks on labour legislation

NP labour spokesman Leon Wessels said the threatened strikes could damage seriously the National Economic Development and Labour Council — formed late last year of government, business and labour representatives

BUSINESS REPORT, THURSDAY JUNE 8 1995

## Nedlac progress despite crisis

(166) CT(BR)8/6/95

~~(80) (132)~~

Labour, business and government are making progress on a wide range of issues at the National Economic Development and Labour Advisory Council (Nedlac) even though the council faces a crisis over labour reform legislation with Business South Africa threatening a pull-out if labour goes ahead with mass strike action

Department of trade and industry officials told a parliamentary committee yesterday progress was being made over a wide range of policy issues from trade to industrial restructuring, with Nedlac members providing important contributions. And at least 12 double taxation agreements signed with other countries recently have not been put into effect because of confusion over parliamentary procedures. However, Chris Liebenberg, the minister of finance, had taken up the issue in Cabinet last week and movement was expected soon. — Bruce Cameron

# Labour bill should be passed this year

## MY TURN

Labour minister Tito Mboveni addressed yesterday's 82nd International Labour Conference on labour safety standards



Significant progress has been made in South Africa towards creating a democracy, but challenges remain that need to be tackled before we can achieve our goals

Our friends and colleagues internationally should not be alarmed when differences of opinion are expressed — sometimes fairly forcefully — by the various political, social and business forces in our country

On May 10, 1995, we received news of an accident at Vaal Reefs gold mine. A 12 ton carriage and locomotive plunged into a shaft and fell on to a cage, killing all 104 mine workers inside

Thus shameful and tragic accident raised awareness of health and safety in the workplace, especially on the mines. A commission of enquiry has been appointed to investigate this accident

South Africa has a history of mining accidents. For example, in 1960, 437 mine workers were killed in a coal mine disaster when a roof collapsed. In 1986, 177 were killed in a polyurethane fire at the Kurross Gold Mine

Commission of Enquiry, headed by the Supreme Court judge Mr Justice Leon, found that our mining legislation was inadequate

The commission recommended the overhaul of our mine legislation. Special emphasis was placed on the education of mine workers and the importance of implementing internationally accepted worker rights. Health and safety will only improve once a culture of occupational health and safety awareness is created in South Africa

It is against this tragic background that we will support the regulation of safety and health in mines internationally

On February 18 this year, we launched a statutory body called the National Economic Development and Labour Council (Nedlac) aimed at building social partnership in South Africa. The development of this council will ensure that the spirit of the International Labour Organisation (ILO) is alive in our country

One of the key issues before Nedlac is a draft Labour Relations Bill submitted by the department of labour for negotiation and finalisation. Sparks have flown on some of the more important issues such as centralised bargaining, the closed shop and workplace forums

Business and labour have tabled their opening negotiating positions and, despite what may look like a breakdown in negotiations, the process is on track

It appears that all the parties are determined to reach agreement for the bill to become law this year. It has been

carefully drafted with the technical and financial support of the ILO

Global restructuring and the post-Marrakesh developments have magnified the three main challenges which face labour, namely poverty, unemployment and social disintegration

The Social Summit provided an excellent opportunity for us to seek international co-operation and co-ordination in addressing these problems

The Social Clause has provoked one of the most contentious yet fruitful debates in recent ILO history

We have a far clearer idea of the type of relationship that should exist between labour standards and international trade as well as how such a relationship can be established

Global restructuring should not be at the expense of social development and justice and we should therefore continue to oppose the undermining of social justice on the pretext of economic growth

It is unacceptable for any country to achieve a competitive edge over other countries on the back of sub-human labour standards

We believe that the ILO should play a decisive role in achieving and maintaining civilised international labour standards

We support the director-general's initiative in urging member states to ratify core ILO conventions and encourage the office to engage in more promotional activities and technical co-operation. These conventions are designed to enable states to ratify and respect key conventions

ILO membership requires respect for rights of association and collective bargaining. We believe it is time to expand the net of axiomatic rights to include forced and child labour, as well as blatant forms of discrimination

Our Cabinet has approved ratification of the conventions which deal with freedom of association and collective bargaining. These have been submitted to Parliament

A group of "human rights" conventions may warrant a supervisory mechanism that is both more specific and more agile than the existing structures

Tighter budgetary planning and implementation should be a permanent feature of all our organisations. However, this cannot be attained by indiscriminate budget cuts

Last year's conference adopted a resolution committing the ILO to a programme of technical co-operation in South Africa. The office has met all their obligations. Although, not all the items contained in last year's resolution have been dealt with. That is largely because the technical co-operation actually delivered reflected our South African priorities. Co-operation was in the areas of

labour law reform, labour market policy development and the reform of the public service

There are other areas of technical co-operation that are being elaborated, namely in the sphere of capacity building for the department of labour and the establishment of a Commission for Conciliation, Mediation and Arbitration

Our concern now is to ensure that the joint activities started are sustained. The policy advice that has enabled us to implement our plans must be consolidated

This demands the training of new personnel and re-training of the old, the development of new structures and programmes

Ultimately, the policy will involve the systematic implementation of a qualitatively new system of labour relations and employment policy in South Africa

The effectiveness of ILO technical co-operation was complicated by the absence of an ILO office in South Africa as well as inadequate international experience of the labour department. However, structures will soon be in place to overcome these problems

Negotiations on the establishment of an ILO area office in southern Africa have been completed and an agreement to establish such an office has been signed

These are exciting and challenging times in South Africa and we are determined to succeed in creating a new and healthy world of work

Also see Background and Analysis page

CT(BR)8/95 (166) (157)

# Cosatu not fazed by walkout threat

(166) (23) (132) Star 8/6/95

■ BY JUSTICE MALALA  
LABOUR REPORTER

The Congress of SA Trade Unions has threatened to use its parliamentary allies to ram draft labour laws through Parliament while big business said it would review its participation in negotiations on the laws.

Cosatu spokesman Neil Coleman said yesterday if business carried out its threat to walk out of negotiations in the National Economic, Development and Labour Council (Nedlac), the labour movement would have no option but to let the legislation be passed through Parliament without business' input.

He said the threat was "certainly not constructive", adding that business was undermining the tripartite negotiating process in Nedlac.

SA Chamber of Business (Sacob) spokesman Gerrie Bezuidenhout yesterday called for a review of the deadline date for negotiations on the Bill

The June 30 deadline for the conclusion of talks between organised business and labour movements were "unrealistic", he said

Bezuidenhout reiterated that the Cosatu protest action on Tuesday had placed current negotiations under unnecessary pressure

Business would review its participation in Nedlac if mass action continued, he said

Cosatu has said that business' demand for an extension of the deadline is a "delaying tactic" aimed at ensuring that the draft Labour Relations Act only becomes law next year

## Unfortunate

Yesterday, workers in various centres around the country held lunch-time meetings as part of the two-week mass action campaign organised by Cosatu and joined by the Federation of SA Labour Unions (Fedsal)

The campaign, initiated to force business to accept worker

demands on central bargaining, industrial action and workplace forums, started in earnest with marches on Tuesday and will end with a half-day strike on June 19

Business and labour negotiators could not be reached yesterday to confirm whether planned bilateral meetings would be continuing.

Fedsal assistant general-secretary James Abraham said the threat by business to withdraw from negotiations was "unfortunate".

He said the labour movement had put its demands and proposals forward and was waiting for business to respond

"Business still has not presented us with anything tangible," he said

■ Sapa reports that the Conservative Party yesterday slammed President Nelson Mandela's support for trade union demands during Tuesday's march in Johannesburg, saying this proved he was not a responsible and just leader

**Yes to labour's Bill** (66)

BUSINESS Day on Thursday reported that National Council of Trade Unions assistant general secretary Mahlomola Skhosana said government should enact the draft Labour Relations Act. In fact he said government should enact the legislation in the form presented by labour to the National Economic, Development and Labour Council (Nedlac).

REPORTS Business Day Reporters, Sapa-Reuters

BP 9/6/95

the statutory negotiating forum, could have a dramatic effect on the small to medium enterprise (SME) sector

Opinion within this largely unorganised but hugely productive wedge of the economy is that the provisions of the Labour Relations Bill — including centralised bargaining and the creation of mandatory workplace forums — will discriminate against it, leading to closures, unemployment and an unfavourable investment climate (see *In My Opinion*)

Thus Steve Ntsane, executive director of the Cape-based Centre for an Open Economy (Cope), feels that the Bill "is a retrogressive step [that] will have a disastrous impact on all SMEs, who have no say or vote (in Nedlac) but employ the vast majority of workers and create the bulk of new job opportunities"

Accordingly, Cope was scheduled to host a seminar on the Bill this week, at the end of which it was expected to consider a motion to constitute a formal lobby for the SME sector. Such a lobby would then seek a place within Nedlac or at least be in a position to petition Labour Minister Tito Mboweni based on its strong representativeness.

According to Cope's Robbie Kleimot — a frequent employer of casual workers, a use-

action under way and a half-day national strike mooted for June 19 — has become highly politicised

The result has been "antagonism rather than partnership"

And, he says, the organised unions' militancy is aimed as much at the ANC as at big business — a demonstration of where power really lies after a year in which, for workers, little has changed. In all this, the SME sector's belief in, and reliance on, "competition in labour" becomes increasingly relegated

Mboweni should attend to criticisms emanating from the SME sector. His attempts to juggle the interests of the big unions and organised business have not worked well. His department needs to consider more carefully what would benefit the economic well-being of SA. ■



**Mboweni** . should listen to  
small enterprise

fully neglected category — the small-medium sector has been too mute on labour matters. "The Minister has to listen to the biggest voice — and the only loud voice is Cosatu. Complacency (on the part of the SMEs) is part of the problem. The government can only listen to those who..."

In essence, Cope's position is that the new Bill would damage it in two ways. First, the outcome of a Cosatu "victory" could be a minimum wage, second, pressure on workers to unionise would bring conflict within the doors of SME "workshops," a fate the sector has hitherto avoided.

Kleimot believes the issue — with mass

## BUSINESS AND LABOUR

### The enemy of jobs

(132) (166) (10)  
Looming conflict in the labour arena —  
focused on the differences between organ-  
ised business and the unions within Nedlac.

FM 9/6/95

# Send Labour Bill back to drawing board

W.M. (BM) 9-14/6/95

(166) (Free)

**Frans Rautenbach** argues that the new Labour Relations Bill should be scrapped

**T**HE problem with the Labour Relations Bill is that, in the best possible scenario, such a system would be a disaster for the South African economy. Growth, jobs, the Reconstruction and Development Programme and everything that goes with it.

The Bill is largely based on an adjusted version of the German model. Both systems provide for:

- The encouragement of centralised regional and sectional collective bargaining. This includes the power of the state to extend collective agreements to non-participating, non-consenting parties
- The right to strike on matters of collective bargaining, free from dismissal
- Legal protection of trade unions
- Compulsory conciliation and, failing that, arbitration mechanisms
- Workplace forums

One major difference is that Germany has a largely homogenous society in terms of educational levels and cultural values, such as respect for authority, agreement, and co-operation — all qualities South Africa lacks, with its rolling mass action, high crime rates, school boycotts, hostage dramas and road blocks. In other words South Africa comes out of the starting blocks at a huge

disadvantage, given a proposed system that depends for its success (such as it may be) on a disciplined pursuit of co-operation.

In any case, how successful is the German system?

Between 1970 and now German unemployment has climbed from 200 000 to six million (one million to two million of that being from East Germany). German labour productivity and unit labour costs lag behind those of America and the Far East.

True, Germany has few strikes more, but it also has more growth, more jobs and better productivity. Why is this? In a nutshell, any system that makes it more expensive to employ people, must expect to have fewer employed people.

The German system of centralised bargaining coupled with the huge legal strike threat leads to one of two outcomes: more strikes or greater concessions being made by employers in order to buy labour peace. The latter has mostly happened in Germany. This is nowhere better illustrated than in the recent metal strike in that country.

German metal union IG Metall went on strike in Bavaria. When they threatened to take the strike countrywide employers started making concessions. Eventually a nation-



wide strike was warded off by a series of compromises, including pay hikes and a shorter work week, resulting in an effective wage increase of 10 percent being phased in over a year. That effectively wiped out the increase in productivity that German manufacturers had achieved over the past year.

**R**esults like that unfortunately matter because, by failing to reduce unit labour costs while more competitive countries like the US, Hong Kong, Taiwan and Singapore manage to do so, Germany has weakened its position as a global competitor. It just falls further and further behind in the race. The price paid can be seen in the unemployment figures.

South Africa is much weaker than Germany in terms of education and skills levels, co-operation and productivity.

The new system is hailed as being "flexible", presumably more so than its now discredited predecessor. What on earth are the commentators who say this talking about? One can only

assume they have not read the Bill.

The proposed system of centralised bargaining makes provision for exemptions based on hardship, so does the present system. Strike protection is, if anything, more extensive under the new system and trade union protection will undoubtedly be beefed up. The system of workplace forums introduces no flexibility. On the contrary, employers have to consult, and must reach agreement on, various lists of operational topics before any such decision may be implemented, a dispute about any such matter must be referred to conciliation and that failing, to an arbitrator, the arbitrator (a third party civil servant) will then decide on commercial matters about which the parties themselves should have decided in the first place. What is flexible about that?

The system is, sadly, even more legalistic than its predecessor.

South African unemployment stands at an effective 33 percent, excluding the informal sector. The present growth rate of some three percent is hardly enough to absorb

the growth in the population of some 2.5 percent.

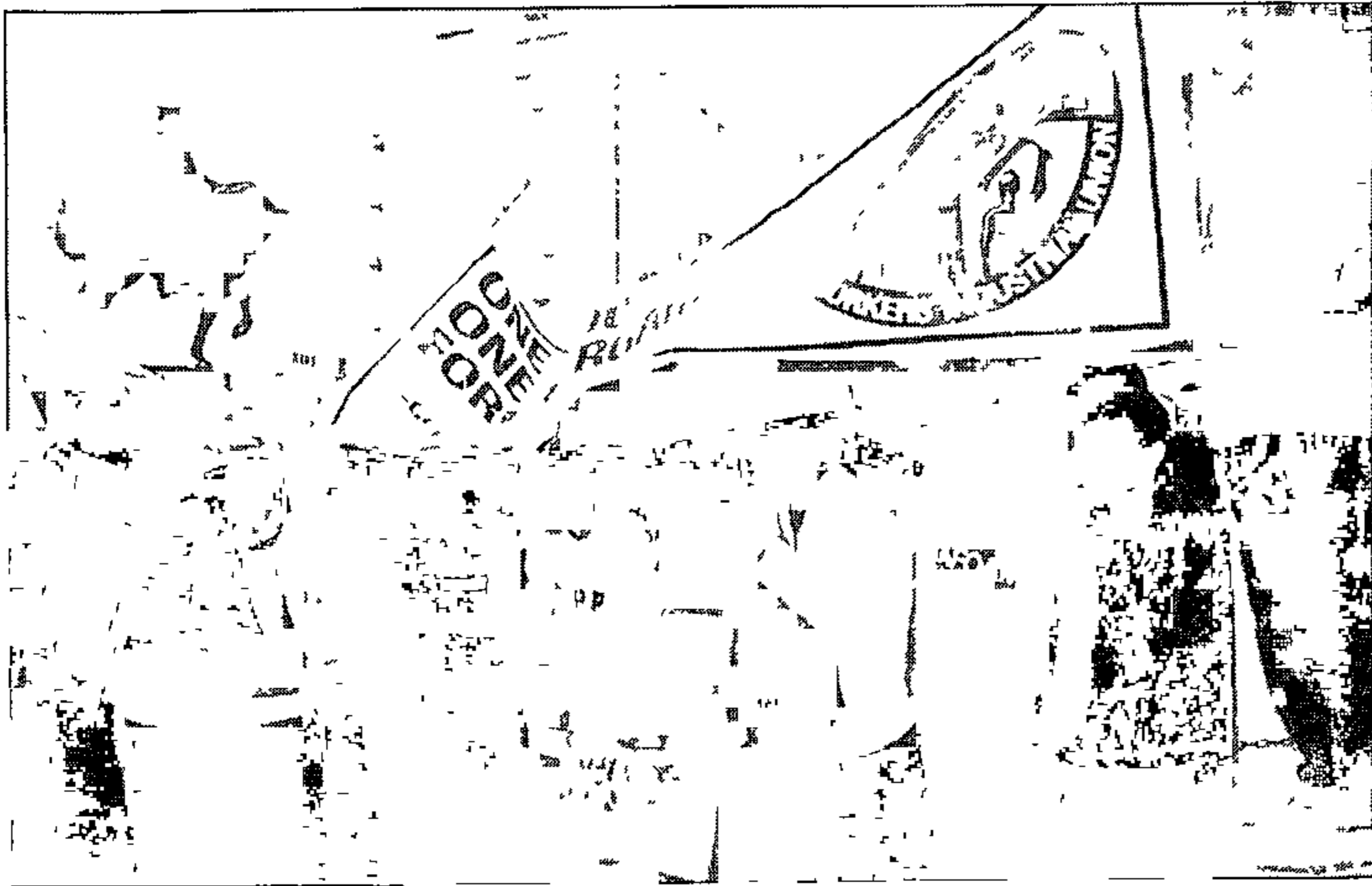
Because South African exports remain uncompetitive, and will as long as we follow a labour system that will at best have the kind of effects that the German system had on its competitiveness, our balance of payments will remain under threat.

Whenever the South African economy "heats up", the amount of imports will exceed the amount of exports. As seems now imminent, sooner or later that leads to increased interest rates, which does nothing for the export performance of the country, but dampens domestic demand. In short before long, our fragile three percent boom will turn into a zero percent bust or worse. And up goes our unemployment.

That is the reality of the new Labour Relations Bill. A compromise around its terms simply won't do. We need to go back to the drawing board.

Frans Rautenbach is a labour consultant and author of two books which argue for deregulation of industrial relations.





**WORKERS MARCH:** Some of the 6 000 workers who marched to Parliament to deliver a memorandum demanding a new labour relations bill. Drenched with rain, the workers recited the union's slogan, "Centralised bargaining means a better life for all"  
*PICTURE NIC BOTHMA*

## Workers' demands taken to Parliament

STAFF REPORTER (166) (132)

THOUSANDS of members of the Chemical Workers Industrial Union, marching in the driving rain, took their demand for centralised bargaining, a minimum wage and a new labour relations bill to Parliament yesterday.

Mr C Rani, branch secretary for the union, said the march was called as part of the Cosatu campaign of mass action to force business leaders to accede to the union's demand for centralised bargaining. Thus far, according to the union official, chemical companies have only been willing to agree to sectoral bargaining.

Mr Rani also said the workers of his union demanded government intervention through legislation. He said the failure of the bosses to agree to union demands by June 15 would force his union to take more intense action, including calling for a general strike.

CT 9/6/95

# Labour, business grapple to find common ground

Business and the trade union movement will move into quieter waters on Monday after labour-capital conflicts over the draft Labour Relations Bill this week produced mass marches through the streets and a sharp exchange of words

Attempts to break the deadlock over key issues shift from the public forum of the National Economic Development and Labour Council (Nedlac) to a process of "informal discussions" in Johannesburg

Adrian du Plessis, chief negotiator for Business South Africa, said the parties would be engaged in an "exploratory exchange of positions. These discussions are smaller, private and we will not be talking publicly about progress made," he said

"The advantage is that we can explore opportunities for settlement which might not arise in the context of formal negotiations. However, I must stress that informal talks are not a substitute for negotiations, but a supplement. You can't make deals in the informal discussions," he said

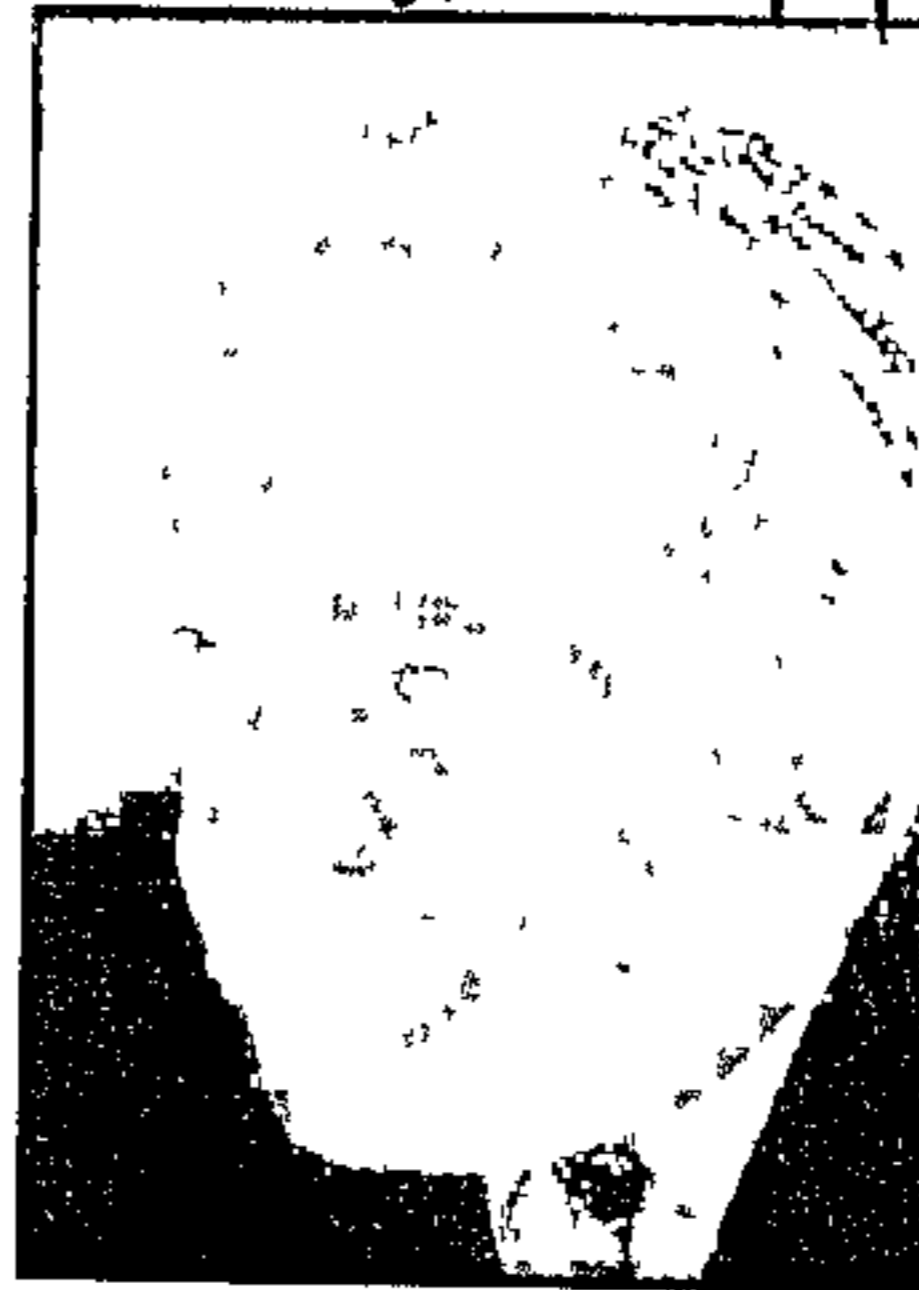
Du Plessis said the debate over the Bill was "not about good guys and bad guys, about

Workers throughout the country made their intentions clear this week: their grievances need to be addressed. It is with this in mind that the two parties get down to some serious talking in Johannesburg next week in a bid to break the deadlock and, hopefully, arrive at some sort of consensus, writes Chief Reporter JOHN PERLMAN

centralised or decentralised bargaining or even, as alleged, about apartheid or post-apartheid protagonists

"It is about the stakeholders trying to balance their interests in a piece of legislation that is going to frame our labour system and our economy for many years to come"

He said business's position was "informed by the economic imperatives of the market. Put very bluntly, our labour relations system has to meet the needs of the economy, the de-



ADRIAN DU PLESSIS

mands of competition and the expectations of investors

"The system has to be based on individual and collective freedom — not on deregulation, but freedom to engage and not to engage

"It has to be based on flexibility to the extent that parties can alter arrangements by agreement to meet changes in a dynamic market economy. And third, it needs to recognise diversity, that no two industries are the same and that within industries there is differentia-

tion," he said

Du Plessis said legally imposed central bargaining over wages and conditions of employment would "lift the rate paid to the lowest-paid worker to somewhere close to the rate of the highest-paid worker. But you also have to look at what that would do to the entry costs for new investors in that industry. If the effect is to raise the entry costs, you are going to diminish the employment-creating potential of that industry. We argue that the union proposals are not going to create growth"

Du Plessis repeated BSA's earlier criticism of this week's union marches. "Peaceful protest, as opposed to economic disruption, is a weapon of last resort. It should be used when negotiations break down, not when negotiations get tough," he said

Regarding the Government's role, Du Plessis said laws needed to have "the broadest possible support of the stakeholders"

"We are here talking about a piece of legislation which holds a very important key to the economic kingdom and there are very important interests that have to be accommodated," he said

# Captains of industry stick to their guns

ST(BT)11/6/95

By KEVIN DAVIE

**BUSINESS** South Africa emerged on Thursday night after a crisis meeting with new and unified resolve that "voluntarism" would be its bottom line in negotiations on a new dispensation for labour.

BSA did not issue a statement after the meeting, but it is understood its bottom line is "voluntarism" — meaning that there should be no legal compulsion to bargain with trade unions.

The meeting was attended by 40 of the country's top businessmen, including Julian Ogilvie Thompson, Marinus Daling, Basil Hersov, David Brink, Leslie Boyd, Dikgang Mosenke, Pat Retief, Paul Kruger and Johan Rupert.

"The captains of industry and their lieutenants were there," one participant said.

The countrywide

marches on Tuesday, further planned mass action this week leading to a half-day stoppage next Monday and violent incidents on two gold mines have led to a hardening of attitudes in some sections of business.

There has been widespread concern in business circles over Labour Minister Tito Mboweni's support for centralised bargaining and President Mandela's unexpected appearance at the march by 40 000 workers in Johannesburg on Tuesday.

"I bless your demonstration," Mr Mandela said.

While government has stopped short of supporting the Cosatu-led campaign for compulsory centralised bargaining, business is concerned that the high-profile support for mass action is sending the wrong signal to investors.

There are also concerns that Cosatu has been winning the propaganda war over the Labour Relations Bill.

Cosatu's position is that bargaining with trade unions should both be compulsory and take place in centralised forums which cover an entire industry.

Business negotiators say while they quibble on some of the detail of the Bill, they agree with its broad approach.

Labour spokesmen counter that it is labour which supports the broad thrust of the Bill.

"Business' proposals are way out of the architecture of the Bill. Ours complement the objectives of the Bill," says Ebrahim Patel, labour's man at Nedlac.

Anglo American this week reported two separate incidents at Anglo gold mines where picketers turned violent, leading to injuries, stonings and damage to vehicles.

Anglo spokesman Michael Spicer says the incidents "believe claims by Cosatu that its mass action campaign is not meant to be coercive and is peaceful".

Mine security officials responded to stonings at one incident with teargas and rubber bullets.

Mr Spicer says the "national leadership of NUM and Cosatu must immediately and publicly condemn this undemocratic, unprocedural and thugish behaviour".

"Failure to do so will sharpen the perception that the Cosatu campaign is designed to promote unacceptable ends — the introduction of further

labour rigidities which will inhibit job creation in the interests of the privileged few unionised insiders — through unacceptable means, violence and coercion."

Cosatu's Neil Coleman says Cosatu condemns violence. He says Cosatu's proposals aim to protect workers' right to picket to lessen the likelihood of conflict and violence.

A NUM spokesman says the union does not condone violence. It says it is unaware of the incidents at the two Anglo gold mines.

Informal meetings between business and labour were held this week and more discussions are planned for the coming week.

Mr Patel says it is possible to meet the end-June deadline to conclude negotiations so that the Bill can go to Parliament before the end of the year.

Mr Patel says labour will not be brow-beaten by suggestions its protests are deterring investors.

"We don't construct labour laws every year," he says, adding that the present laws date back to 1924. Investors want certainty. We're looking to bring a high level of certainty to labour policies."

Mr Patel says first prize is to get agreement on the new labour law with business at Nedlac. He says if final deadlock occurs Cosatu will pursue the option of a national strike and call on the majority party in Parliament to back its labour proposals.

BSA plans a follow-up meeting on Tuesday, whereafter media announcements may follow.

STANDING FIRM, union leader Ebrahim Patel, 'seeking a high level of certainty over labour policies'

# Business, labour haggle over best way to bargain

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ST(BT) 11/6/95

MASS action once again became part of the political landscape this week as labour initiated a campaign to ensure that its concerns are addressed in the Labour Relations Bill due to be passed later this year

A key disagreement between business and labour concerns centralised bargaining. While bargaining arrangements in most industrial sectors have already been centralised, labour wants centralised bargaining to be compulsory in the new Act.

During the heightening of tensions between workers and employers over the Labour Relations Bill this week, Nedlac negotiators Ebrahim Patel and Adrian du Plessis found time to talk to **KEVIN DAVIE**.

Business, on the other hand, says there should be no compulsion to bargain centrally. Some sectors may opt for centralised bargaining, others for de-centralised or plant-level bargaining. Ebrahim Patel, labour convener at Nedlac, says

bargaining councils should be set up for all sectors. Employer and employee representatives can then decide at these councils which matters will be negotiated at industry- and which at plant-level. Adrian du Plessis, Mr Patel's business counterpart at Nedlac, says la-

bour's proposal would introduce a compulsion to bargain. While a body of employers favours centralised bargaining, Business South Africa wants a flexible system so that bargaining arrangements can reflect differences among industries. Contrary to reports

which suggest that business is dragging its heels on the Bill, BSA is in broad support, says Mr du Plessis.

"We support the Bill's collective bargaining proposals," he says, adding that business wants to alter some of the clauses covering industrial action.

"But while we support the architecture of the Bill, while taking issue with some of the detail, business does not perceive labour to support even the architecture of the Bill."

Mr du Plessis says that while the preamble of the Bill promotes centralised bargaining, the Bill does not make centralised bargaining compulsory.

Mr Patel says labour does not want an uneven system which will bring centralised bargaining in some sectors and plant-level bargaining in others.

He says the media statements issued by Labour Minister Tito Mboweni after last week's Cabinet meeting were "very significant. The Cabinet has endorsed the principle of centralised bargaining."

Mr du Plessis, indicating that business views Mr Mboweni's statement with concern, says he understood Mr Mboweni to stop short of saying that government supported compulsory centralised bargaining.

Most sectors of the economy are already covered by centralised bargaining of one form or another.

Only three sectors — paper, chemicals and retail — do not yet have centralised bargaining forums.

There are moves in paper and chemicals to establish centralised bargaining while the retail sector worldwide typically is not centralised.

Mr Patel rejects suggestions that workers are unlikely to support strike action over the centralisation issue as most already are covered by centralised bargaining agreements. Mass action protest is not only for centralised bargaining.

Trade unions also have concerns over provisions in the Bill regarding organi-

sational and industrial action rights, he says.

Mr du Plessis says the industrial relations structure must reflect the diversity and heterogeneity of South Africa's labour market.

"There has to be a balance between the protection of the worker and the needs of the market. The Bill strikes the right balance."

Mr Patel says deregulation of the labour market which allows lower wages to be paid will simply result in conditions of a static market with employed workers being paid off to make way for the formerly unemployed.

He sees the potential to increase domestic demand through such means as "carefully thought out wage policies."

Other reforms which will boost the economy include management moving from a production to a consumer focus, proper human resource development through better training and education, a new export focus and more efficient government in the areas of customs, education, public transport and support for research and development.

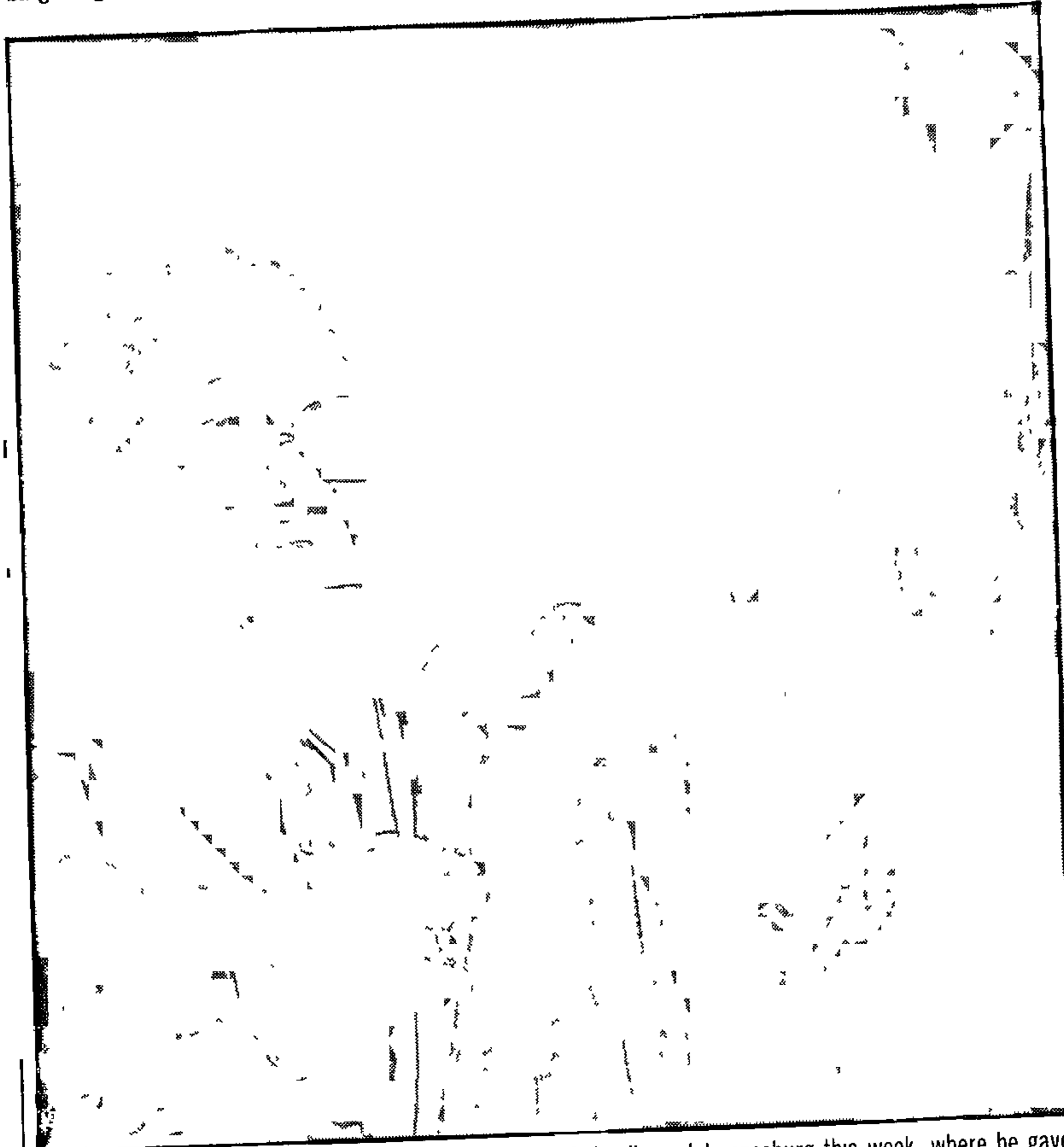
"Lomé alone could boost clothing employment by 5% to 10%," says Mr Patel.

Mr Patel says labour is sympathetic to the needs of small business and is keen for small business to be represented by its associations on bargaining councils.

Business is hostile to labour's position because it "wants to dismantle centralised institutions."

Notwithstanding the marked differences of principle between business and labour on the Bill, Mr Patel believes a compromise is possible before the end of the month, the deadline set by Nedlac so that the Bill can pass into law this year.

The Bill is the most important labour legislation since the early 1920s. It could set the tone of labour relations for decades to come. It is unlikely that parties will agree to support it unless totally satisfied they can live with it.



**BIG FIST...** President Nelson Mandela at the Cosatu-led rally in Johannesburg this week, where he gave demonstrators his blessing. Picture NICKY DE BLOIS

HE "consensus" reached at the National Economic Development and Labour Council (Nedlac) this week over the draft Labour Relations Bill has been proclaimed rightly as a breakthrough for the "social partners". But experience from new democracies elsewhere is that the real challenge is yet to come when ordinary workers lose confidence in tripartite arrangements which fail to deliver in the short term.

The significance of this week's achievement is best illustrated by comparing it with the Eghites. In 1988, after extensive consultation with employers, government tabled new Labour legislation in the form of the Labour Relations Amendment Bill. The purpose was to curb union power and rights won through industrial courts.

The threat posed by the Bill galvanised the unions. Over the next two years the labour movement held summit meetings and launched a campaign of protests, stayaways, and bans on overtime in protest against the Bill, which became law in a drastically amended form after negotiations with labour, triggered by the protests in September 1990.

In contrast between 1988/89 and 1995 is dramatic. Labour "took to the streets" twice during the two-and-half-month negotiations following the tabling in February of the draft Labour Relations Bill. But real negotiations took place elsewhere: in the 149 hours spent in formal meetings between labour, employers and government and in late-night "conversation groups".

"The conversation group made more progress that night (between 11pm and 6am last Tuesday in the Carlton Hotel) than had been achieved from that date backwards," a triumphant Labour Minister Tito Mboweni declared.

Comparative experience suggests that the minister has put his finger on the key to successful economic reform in new democracies. Put simply, tripartite arrangements are the best way of carrying out a programme of economic reform during the transition from dictatorship

# The true challenge to tripartite deals is yet to come

EDDIE WEBSTER

1995/2/21/95

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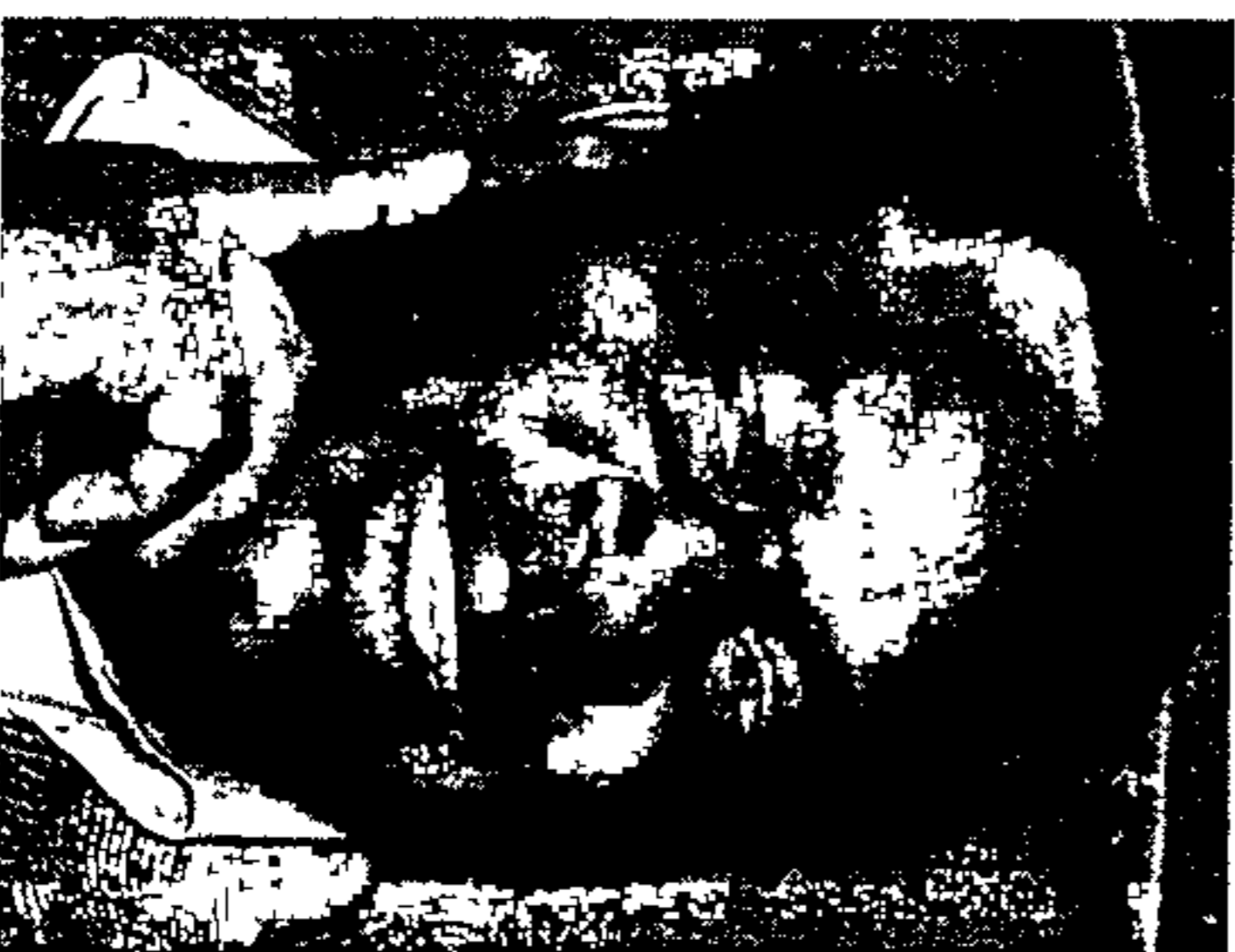
to democracy. Nedlac is also the clearest institutional manifestation of a shift towards "bargained corporatism" in SA.

Corporatism is a policy style that entails consultation and negotiation beyond the parliamentary actors to unions, employers' associations, or other interest groups. It emerges when the state is not sufficiently powerful to dictate public policy but is powerful enough to resist being captured by particular interests.

Those who argue that with a democratic government there is no longer any need for time-consuming and elusive attempts to build consensus in civil society, misunderstand the role of tripartite consultation in policy formulation. There are three reasons why tripartite policy style matters.

First, consultation may improve the quality of decisions. The proposed statutory councils are a case in point. They emerged in the process of consultation and were agreed to as amendments. They will manage pensions and other benefits. By promoting and establishing training schemes they will help overcome the reluctance of some employers to invest in employee training.

Second, negotiation may build political bases of support for the proposed reforms. The central objective of Nedlac is that agreement is



MBOWENI

reached by representatives who act on the basis of proper mandates. In other words, the negotiation process draws all parties into an identification with the proposed reforms.

Third, consultation helps consolidate democratic institutions. This point is central. Many commentators saw the mass action campaign in June as a challenge to the democratic process. Quite the opposite is the case. By engaging in peaceful

protest, the leadership of one of the key social partners was signalling to its membership that it was an autonomous actor.

Tripartitism assumes a pluralistic society where autonomous groups with divergent interests recognise each other's existence while promoting their own distinctive views.

By channelling their demands and organising their conflicts within the framework of representative institutions, the conflicts that took place in and around the Labour Relations Bill were playing a real role in shaping policies that influence work and living conditions.

Concern has been raised that "the Nedlac process" may usurp the function of Parliament and turn it into a "rubber stamp". But this will happen only if parliamentarians do not do their jobs. The idea behind tripartite co-operation is that representative democracy is complementary to parliamentary democracy. While the interests of employers and workers are promoted by political parties, these interests are diluted in national parliaments, which are forums where the needs of all constituents are considered.

The heart of the challenge facing Nedlac is that SA's transition to democracy is taking place under conditions of intense global compe-

tion. "This," writes American political scientist Adam Przeworski in his most recent book, "is the source of the dilemma facing new democracies: how to create incentives for political forces to process their interests within democratic institutions when material conditions must decline in the foreseeable future." Put differently, under corporatism government expects workers to forgo short-term benefits for long-term advantage.

In exchange for wage restraint — plus increased productivity — from their members, government cedes to union leaders a bit of their monopoly on policymaking.

This dilemma — what could be called the "dilemma of leadership" — arises from the need to respond to the immediate needs of workers during a period of economic reform, while simultaneously drawing out long-term objectives. The dilemma can be resolved only by a more nuanced use of power: a shift from the mobilisation of power, to the use of influence in the heart of decision-making at the plant, enterprise, industry and national levels.

But a condition of successful corporatism is that the organisations representing workers (and employers) must be sufficiently representative of their members to have control over their own affiliates. It is precisely the perceived "failure to deliver" which contributes to the loss of confidence in tripartite co-operation. This has been called the "interpretation gap" — a gap between what the leadership perceives as the long-term interests of members and what these members perceive as their immediate interests.

The close link between Cosatu and the ANC is likely to facilitate bridging this gap in the labour movement. Ironically, it is the existence of this "left pressure" inside the alliance that is likely to ensure the success of Mboweni's bold experiment. In this sense, all South Africans have an interest in labour's continuing alliance with the ANC.

Webster is professor of sociology at Wits University.

# Parliament could still delay labour Bill

Renee Grawitzky

AFTER Monday's tripartite agreement on the terms of the Labour Relations Amendment Bill, and almost certain Cabinet approval of it next week, the attention will turn to the parliamentary process. At issue is whether the select committee on labour will, in effect, rubber stamp the agreement, or override the compromise reached within the National Economic Development and Labour Council (Nedlac).

Earlier this week, Labour Minister Tito Mboweni fudged the question, saying the momentum needed to be maintained in the parliamentary committees to ensure the Bill is passed this year, but at the same time said: "We do not want to take away their democratic right to process the Bill."

The committee of principals, consisting of Mboweni, Cosatu general secretary Sam Shilowa and Business SA's (BSA) Bobby Godsell, has yet to decide on how the parliamentary process will be managed.

The committee which meets to hear public submissions during the second week in August, could quite easily become bogged down with new submissions by outsiders or attempts by the Nedlac parties to "have another bite at the cherry". This could not only delay the process but also undermine the consensus reached.

The intention of the original draft Bill published on February 2 was to promote labour peace, economic development and social justice. These objectives are an attempt to balance labour and business concerns — entrenching worker rights and promoting growth and equity. The Bill also claims to take into account unorganised workers and small- and medium-size enterprises,

which are generally not influential in larger employer bodies.

A number of issues remain outstanding, such as the inclusion of the SA Police Services within the scope of the Bill, the specifying of severance pay and selection criteria for retrenchment and issues around dismissals.

There are also issues where the parties have expressed reservations. These issues — the limitation on use of replacement labour during lockouts, the use of replacement labour during strikes, the right to strike over unfair dismissals and some wording around sympathy strikes — will either be left to the Cabinet to decide or to the minister's technical committee to resolve.

How different are the areas of agreement reached to the draft negotiating document tabled in February?

On centralised bargaining, which gave rise to the deadlock in negotiations, the draft Bill said it promoted collective bargaining at sectoral or industry level but it did not wish to "prescribe or impose this policy". The Bill did provide for Nedlac to devise a "coherent industrial or sectoral division by agreement".

The agreement reached provides for centralised bargaining only by mutual agreement. Where no bargaining council exists in an industry a union or employer association representing "the required threshold" of 30% of employees in the industry can apply to the Commission on Conciliation, Mediation and Arbitration (CCMA) to facilitate its establishment. If no agreement is reached the minister can establish a statutory council. The council will have the power to consider issues relating to social welfare funds and training and, by agreement, could consider wages and the development of

industrial policies. Thereafter the constitution should be amended accordingly. Workers will be able to embark on industrial action over a dispute about agenda items.

The draft did not specify the statutory threshold for organisational or collective bargaining rights, which caused some degree of discussion as labour attempted to entrench the prohibition of majoritarianism as opposed to business' view of an "all-comers" system which would imply a low threshold. The parties agreed that representivity for collective bargaining would be based on "sufficient representivity".

On the disclosure of information, the draft provided that where an employer was engaged in consultation or collective bargaining all relevant information should be disclosed "so as to allow the representative trade union to engage effectively in such consultation or collective bargaining".

Provision was made where an employer was not required to disclose information, some of which have now changed. Provision is now made for the referral of disputes about disclosure to the CCMA to determine whether the information is relevant and whether it will prejudice either the union or employer. The CCMA will determine disclosure "subject to appropriate measures for the protection of the confidentiality of the information".

The draft endorsed agency shops but made provision for the phasing out of closed shops as it was seen to be in contravention of the constitution and freedom of association.

Now, closed shop arrangements can be introduced if two-thirds of employees vote in favour. A ballot to test continuation can occur every three years at the request of 33% of employees.

In terms of industrial action, the basis of the draft is largely retained.

Agreement was reached that striking workers would be protected from dismissal. BSA submissions that firms should be able to dismiss if "irreparable harm" to the business was threatened failed. Employers will however be able to retrench strikers based on "operational requirements". Picketing will still be allowed with CCMA involvement in facilitating agreement on picketing rules.

Sympathy strikes will be allowed but the parties still have to find wording which will give effect to the agreement requiring a balance between the "right to engage in meaningful sympathy strikes and its functionality".

Workers participating in socio-economic strikes will be protected from dismissal subject to a number of measures, including an attempt by the parties to resolve the issue or unless a court order is breached.

Despite opposition from labour, strike ballots will be embarked on before a strike, but the technicalities will not affect the lawfulness of a strike.

Despite agreement being reached between the social but not equal partners, much debate is still taking place, certainly within business, as to whether this Bill is conducive to economic growth and whether it will provide the flexibility it needs to be able to compete in the global markets. Labour's concerns revolve around whether the Bill ensures sufficient central control, the entrenchment of union power and the protection of certain worker rights.

The question is whether this "Rolls Royce" Bill will be able to guide SA through a path of reconstruction and development to a new economic order?

## Labour and business to continue meetings on Act

Renee Grawitzky (166)

MEETINGS between labour and business continue today and tomorrow following a decision taken by the governing body of Business SA and its board of trustees on how to take the process forward.

Amid claims by labour that business was divided and had no proper mandate from its constituency, close to 70 chairman and CEOs of leading companies affirmed their confidence in the negotiating team and agreed on future action.

The delegates, including Julian Ogilvie Thompson, Johan Rupert, Leshe Boyd and Basil Hersov, endorsed the broad principles of voluntarism, flexibility and diversity which formed the basis of Business SA's position on the draft Labour Relations Act.

Since the start of bilateral meetings outside the formal negotiating committee under the auspices of the National Economic Development and Labour Council (Nedlac), both parties have attempted to move on their original positions on an unmandated basis in order to take the process forward.

Both have remained silent on how far they have moved on their original positions on the core areas in dispute such as the compulsion to bargain at central level and the protected right to strike.

Business sources claim that although the principles have remained the same, positions "may be moving in furtherance of exploring areas of settlement".

Mass action continues this week with June 16 rallies which will focus on the LRA campaign.

# New union federation proposed

(166) (162) CT 13/6/95

DURBAN: The IFP has entered the fray over the controversial labour relations bill, vowing to head the formation of a new union federation to oppose Cosatu.

The party has slammed Cosatu's plans for mass action to persuade business to accept the legislation.

IFP labour relations spokesman Mr V. Ndllovu said Cosatu should work within the National Economic and Labour Council.

The IFP would convene a workshop later this year of union sympathetic to its position to form a strong federation to oppose Cosatu.

Mr Ndllovu described the new labour bill as a "pocket" to Cosatu for its support of the bill.

— Staff Correspondent

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# Crisis week for labour negotiations

span 12/6/95  
(166) (42)

BY JOHN VILJOEN

This week's round of negotiations between employers and labour over the draft Labour Relations Act will be a last-ditch effort to prevent what Cosatu has threatened will be "the biggest national worker action the country has ever seen" on June 19.

Representatives of business and trade unions meet today and tomorrow in the National Economic Development and Labour Council (Nedlac) to discuss the contentious document.

Last week, while workers took to the streets — Cosatu claimed 100 000 protestors — in support of demands to have the bill passed this year, critics attacked the draft law for being "anti investment and anti-RDP".

University of Cape Town economist Hugh High said the bill, if it became law, would lower the rates of return for foreign investment in South Africa.

## Investment

"If this bill gets passed, I would be utterly amazed if there is anything but the most casual investment in South Africa," he told a Centre for an Open Economy Conference.

The bill would cause an increase in labour activity and was full of "incredibly bad provisions", he said, pin-pointing the right to strike in sympathy over any socio-economic issue in the interest of workers and workplace forums as particularly dangerous.

The International Labour Organisation, which had recommended socio-economic strikes and workplace forums, was merely "a talk-shop". South Africa did not need to carry out its mandates, Professor High said.

Wits University business economist Temba Sono slammed the bill for being "anti-RDP, anti-employment and workers, but pro-trade union aristocracy".

## Minority

The bill viewed the unions as the only vehicle for furthering workers' rights, yet unionised labour represented a minority of workers.

Professor Sono told the conference the bill could be unconstitutional. A passage in the draft instructed Nedlac to curtail the right of employers or owners to dispense of the busi-

ness or make acquisitions without consulting the workplace forum.

"This is authoritarianism."

Labour consultant Michael Bagram said the bill would create "a paradise for lawyers" and was riddled with vague terminology which would lead to "decades of litigation".

The word "reasonable" was used more than 50 times in the draft. "You can imagine how many cases we are going to have about that."

Free Market Foundation executive director Leon Louw called for an action group to be formed to stop the bill from becoming law.

Responding to these attacks, Cosatu spokesman Neil Coleman said he found the anti-investment objections "difficult to understand".

The countries South Africa looked to for investment spent large amounts of money in democracies which had strong trade union rights, he said.

"We are now living in a democracy which is undergoing a period of reconstruction.

"Unless these people are suggesting that we revert to a repressive union-bashing dictatorship, it is difficult to understand their point of view.

"Trade union rights and a stable industrial relations framework are critical to the RDP."

"The RDP calls for collective bargaining, the right to strike, no lock-outs and a number of principles which are contained in the draft LRA."

## Dreamworld

Critics like Professor High, Professor Sono and Leon Louw were living in "some kind of economic dreamworld".

"We have a constituency of 1,5 million members and these people are talking from their text books."

"We are basing what we are saying on our day-to-day experience on the factory floor."

Referring to the Asian Tigers as free-market successes, as was often done by critics of the bill, was misguided, he said.

"These were no free-market utopias. There was state intervention in the form of massive investment in human resource development."

"We need to develop a framework which is acceptable to the trade unions, management and the other stakeholders in our economy."

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EDITOR

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**CALL TO ACTION** Nedlac labour negotiator Ebrahim Patel (right) at yesterday's press conference, urging workers to take part in a half-day strike and marches on Monday to force business to agree to labour demands for compulsory centralised bargaining. Looking on is Nactu assistant secretary-general Mahlomola Skhosana. PHOTO: JOHN WOOLPOLE

# Unions lambast business for advertising campaign

BY THABO LESHILO STAFF WRITER  
CT(BR)15/6/95 (166) (3) (13)

Business South Africa's (BSA) growing aggression in handling its acrimonious struggle with organised labour over the disputed labour relations bill has angered the three union federations in Nedlac. Cosatu, Nactu and Fedal yesterday slammed BSA's nationwide advertising campaign this week, which outlined the position of organised business on centralised bargaining, workplace forums, trade union organising rights and industrial action.

"The adverts are a transparent ploy to draw attention away from their (organised business's) failure to address substantive issues," the federations said at a press conference in Johannesburg.

The trade union bosses also crit-

icised BSA for saying that companies were prepared to "take a six-month strike" rather than accept the unions' demands for compulsory centralised bargaining, an unfettered right to strike and that workplace forums be enshrined in law.

"The outbursts today reveal their true colours, which workers know so well. The velvet glove of reasonableness has been taken off to reveal the iron fist of *kragdadigheid* with which they run their companies," Cosatu assistant secretary general, Zwelinzima Vavi, told reporters.

According to BSA vice-president Bobby Godsell, the advertising campaign was part of the resolve by organised business to be "more aggressive and assertive" in countering the impression created by the unions that the business community was opposed to change

and favoured apartheid-style labour relations.

As attitudes continued to harden on both sides, the three union federations called on workers to take part in marches and a half-day strike on Monday, with a view to forcing business to agree to labour's demands in time for the new law to be passed this year.

Meanwhile Liberty Life deputy chairman, Dorian Wharton-Hood, has warned that the compulsory central bargaining demanded by the unions would be disastrous for South Africa's economy.

He said "This is a survival issue for South Africa. Compulsory central bargaining will make it impossible for us to compete and will harm small businesses. Unemployment will rise and foreign investors' perceptions of the country will be negative."

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# Mboweni confident of eventual settlement between labour

business

Report by Grawitzky

LABOUR Minister Tito Mboweni said yesterday he was confident that a settlement between labour and business was in the making on core issues in their dispute, despite utterances to the contrary.

Meanwhile, labour negotiator Ebrahim Patel said the parties were "not at a point where we can see a deal in place".

Business South Africa representative Adriaan du Plessis said: "There are potential areas of agreement, fundamental areas of disagreement and many areas which have

not yet been envisaged".

Mboweni said: "Perhaps more has happened than the parties are prepared to disclose publicly", despite public positions presented by both parties — the continuation of mass action by labour and the intensive media campaign by business and the placing of each party in an advantageous position for an advantage".

He said "each party is angling for an advantage" and National Economic Development and Labour Council (Nedlac) executive director Jayendra Naidoo said: "The information discussions have been useful as the parties have explored their positions and their bot-

tomlines comprehensively. The challenge to all of us is to make that leap that will bring a solution."

Mboweni said movement towards centralised bargaining in sectors, such as chemical and retail would go a long way to help the process.

Patel agreed, saying discussions had been taking place in sectors which did not have centralised bargaining structures. But the problem was the question of companies in the decentralised areas.

Liberty Life vice-chairman Dorian Wharton-Hood said it would be disastrous

for small employers to contemplate participation in a centralised bargaining forum. It was ironic that Business South Africa was fighting for the interests of small business and unemployed, as the draft Bill was more about the economy's survival.

Patel said if business was so concerned about small businesses and the competition to bargain at central level, "why did business not once raise the idea of compulsory centralised bargaining for large companies". Cosatu said business's adverts were "a transparent ploy to draw attention

away from their failure to address substantial issues".

Labour has called on government not to "give to the blackmailing tactics of business" and warned that it should stand firm on the mandate which brought it into office. The day of mass action on Monday would be ahead and labour said the programme of mass action was "the key to unlocking the deadlock".

After that the parties could re-evaluate their position and if the deadlock was not broken by the end of June, rolling mass action could continue.

# Union bosses lash out at BSA, Sacob joins fray

(166) (102) star 15/6/95

■ BY THABO LESHILO and  
DEREK TOMMEY

Business South Africa's (BSA) growing aggression in its acrimonious struggle with organised labour over the disputed Labour Relations Bill has angered the three union federations in Nedlac.

Yesterday, Cosatu, Nactu and Fedsal slammed BSA's nationwide advertising campaign this week outlining the position of organised business on centralised bargaining, workplace forums, trade union organising rights and industrial action.

"The adverts are a transparent ploy to draw attention away from their (organised business) failure to address substantive issues," the federations said in Johannesburg.

Meanwhile, the South African Chamber of Business (SACOB) last night called on

employers to follow a policy of "no work, no pay" for workers who do not attend work on Monday.

It also called for disciplinary action to be taken at the discretion of the company.

It said in a statement it was disappointed at Cosatu's failure to call off Monday's planned work stoppage. While it upheld the right to peaceful protest, this particular action was inappropriate while the issues in contention were being negotiated in Nedlac.

At the same time, Cosatu assistant general secretary Zwelinzima Vavi was saying: "The outbursts today reveal their (organised business) true colours, which workers know so well. The velvet glove of reasonableness has been taken off to reveal the iron fist of kragdadigheid with which they run their companies."

# Unions, business in deadlock over Labour Bill

NO PROGRESS was made in talks with business on Monday and Tuesday on the Labour Relations Bill, trade union federations said yesterday

At a joint Press briefing in Johannesburg by the Congress of SA Trade Unions, the Federation of South African Labour Unions and the National Council of Trade Unions, Cosatu general-secretary Mr Zwelinzima Vavi said "The velvet glove of reasonableness has been taken off to reveal the iron fist with which they (employers) run their companies"

He said employers could not come to terms with the core issues of centralised bargaining, the right to strike without dismissal and organisational rights

Progress on centralised bargaining was being prevented by the chemical, retail and paper sectors which refused to make concessions, he said. Labour would not budge from its stance that centralised bargaining should be compulsory

Employers insisted on the right to fire strikers if they put a company's viability in jeopardy, Vavi said. Strikes meant employees lost wages and companies were destabilised, two factors essential to effective negotiations, he added

On organisational rights, Vavi said business supported allowing more than one union at any firm, to divide the trade union movement. Instead unions having the most members at a firm should be protected

He said there was no change to plans

for a half-day strike on June 19 to pressure business to make concessions. If business refused to budge, additional mass action would be considered

Cosatu, Nactu and Fedsal called on the Government to "not give in to the blackmailing tactics of business" such as newspaper advertisements detailing business' views on the Bill

Earlier yesterday Minister of Labour Mr Tito Mboweni said the Government could not detail its position on the Bill until negotiations between business and labour were over

Mboweni also said he saw progress being made between labour, business and the Government in talks on the Labour Relations Bill

"Some bubbles are beginning to emerge in the negotiation process which I think is a very good sign," he told a Press briefing in Johannesburg after returning from an International Labour Organisation conference in Geneva, Switzerland

"The issue of centralised bargaining is, as far as I can read, acceptable to all three parties," Mboweni said. "The problem lies in its compulsion"

Labour convener Mr Ebrahim Patel said business had to make the leap to democracy in the work place just as whites had made the leap to political democracy in last year's general elections

Labour and business are to continue their talks on June 20 and 21 —  
*Sapa*

## Libel suit against Jomo Sono

By S'Busiso Mseleku

KAIZER Chiefs coach Augusto Palacios has demanded R50 000 in damages from National Soccer League executive member Jomo Sono. Sono, who also owns Jomo Cosmos Football Club, was yesterday served with a letter of demand from lawyers representing Palacios

A spokesman for Wertheim Becker, attorneys acting on behalf of the Chiefs coach, yesterday confirmed they had demanded R50 000 from Sono who had failed to apologise for an alleged defamatory statement against Palacios. The statement was attributed to Sono in a weekly newspaper

Responding to allegations that he (Sono) had sold Chiefs an injured player in Henry Gondwe, Sono was quoted as having said "That is a South American lie"

Palacios' lawyers demanded payment of the amount within three days and said failure to do so would result in 'action instituted' against Sono for recovery of the damages. In a letter sent to Sono yesterday, Palacios' attorneys said their client's reputation was harmed as a result of Sono's alleged remarks

Speaking to *Sowetan* from his central Johannesburg office, Sono said "I won't pay or retract my statement. I'm prepared to face him in court and repeat those words." Sono said it was strange that Gondwe had a sterling performance against Mamelodi Sundowns at Odendaal Stadium on Sunday

"If Mr Palacios wants a fight with me I'll give him one," he said

# Cosatu: More mass action to come

ROGER FRIEDMAN  
Staff Reporter

COSATU has warned that countrywide marches to support labour demands for the inclusion of certain rights in a new Labour Relations Act were only "the beginning of rolling mass action"

Worker rights that the unions believe should be legislated by government include centralised bargaining, the right to strike and an end to so-called scab labour

Yesterday, Cosatu was joined by the other two major trade unions federations — the National Council of Trade Unions and the Federation of South African Labour — in staging marches throughout the country

In Cape Town, about 6 000 workers met on the Grand Parade where they were addressed by various politicians and union leaders before marching to parliament and the Cape Chamber of Commerce and Industry. The march was peaceful.

When the workers returned to the Grand Parade after handing over memoranda at parliament and the Cape Chamber, they did so to the strains of the well-known Bob Marley standard, *Keep on Moving*.

Cosatu president John Gomo congratulated the marchers for their discipline.

"This is the beginning of our rolling mass action," he said. "Business thought this was just a threat, that workers would never march straight after a long weekend."

Mr Gomo stressed that unions wanted to help build a strong economy — but not at the expense of labour.

Earlier, speakers from the Pan Africanist Congress, African National Congress and South African Communist Party assured the workers that a labour bill which did not incorporate their demands would not be allowed peaceful pas-



LABOUR MEETS GOVERNMENT: Cosatu president John Gomo, left, addresses workers outside parliament before handing over a memorandum to Trade and Industry Minister Trevor Manuel, right. Mr Manuel accepted the memorandum on behalf of Labour Minister Tito Mboweni.

APR 20/6/95

A spokesman for the Cape Chamber of Commerce and Industry said thousands of workers reported for work yesterday and then promptly left, after informing management they had been coerced into participating in the march.

"One or two" factories experienced a 100 percent stayaway while elsewhere, stayaway figures varied between 10 and 40 percent.



UNITY IS STRENGTH. Part of the crowd that massed outside parliament



ANOTHER NEW FLAG. One of the 6 000-odd workers who marched to parliament and the Cape Chamber of Commerce and Industry displays a South African flag with a new symbol

# Unions plan action for Monday on labour bill

Staff Reporter

16/6/95  
FURTHER trade union mass action aimed at forcing business and government to accede to their demands over the proposed Labour Relations Bill takes place on Monday

South Africa's three trade union federations — the Congress of South African Trade Unions, National Council of Trade Unions and Federation of South African Labour — are united in demanding that centralised bargaining, the right to strike and organisational rights be entrenched in the new bill

At a Nactu press conference,

(158) (159) (166)  
regional secretary Peter Roman appealed to students to join the mass action

Assistant general secretary Mahlomola Skhosana said Nactu's central committee had decided to "direct the fight" at government and business

The government was responsible for the bill, he said

● Nactu does not believe that its targetting of the government will place "undue strain" on its allegiance with Cosatu over the issue of the Labour Relations Act

Cosatu is part of the ANC ruling alliance.

# Mass action 'treason', says employer leader

Staff Reporter

COSATU'S call for rolling mass action on Monday is not only illegal, but tantamount to treason, says Lawrence McCrystal, chairman of the Confederation of Employers of Southern Africa (Cofesa).

And employers in the clothing industry have threatened not to pay workers for today's Youth Day, if they do not report to work on Monday.

Cosatu has called for a half-day protest on Monday against employers' intransi-

ence in the... about rela-  
tions bill

The employers say the clothing industry council agreement does not provide for payment if workers absent themselves from work the day preceding and/or following a public holiday.

But the South African Clothing and Textiles Workers' Union (Sactwu) disputed the legality of the threat and warned that they would take urgent action against those who tried to realise it.

Mr McCrystal said the country's pro-

ductivity figure was the lowest in the world, and rolling mass actions and strikes would erode it even more.

"It is in the interest of the country's economy that employers and employees combine forces to pull the economy together. So far, negative mass actions of trade unions have seriously jeopardised the economy.

"This not only constitutes a crime against economic growth, but also treason against all who are trying to build democracy in South Africa."

ARC 16/16/85

(166) (153)



# New labour law a threat to jobs, say economists

CT 16/6/95

(166)

By AUDREY D'ANGELO

CAPE BUSINESS EDITOR

Although the current mass action by Cosatu will have only a short-term effect on the manufacturing industry, the effect of proposed labour legislation could be to reduce the number of jobs in South Africa, economists warned yesterday

Old Mutual economist Rian le Roux commented "At the end of the day we need a more flexible labour market

"It is important that labour and business sort things out. There is a risk that labour will become a problem in terms of efficiency and will price itself out of the market

"Then we shall have a return to capital-intensive policies, with companies investing in more machinery and with fewer jobs available"

Nedbank chief economist Dennis Dykes said this was not just a domestic squabble but something

which could affect labour relations for the next 10 years "And it could have long-term effects. People will just not invest in South Africa if all the demands of labour are met."

Board of Executors economist and senior portfolio manager Rob Lee commented "The last thing we need now is industrial confrontation. But there are some pretty important issues here and business has decided to take a firm stand

"It is better that we should have some short-term pain now than suffer a long-term disadvantage in international markets and in competing for investment"

Boland Bank economist Francois Jansen said he believed that "at the end of the day, labour law will look very different from the present proposals

"You cannot have centralised bargaining, for instance, in a country made up of regions with very different employment levels. A lot of jobs could be lost in that way, particularly in smaller firms"

**A**dvocate June Wilson, author of *Giles Files*, an employment law information service in Durban, discusses the changes in the new Act.

# One labour Bill for all if all goes well

(166) ~~166~~ SPAN 16/6/95

**T**HE draft Labour Relations Bill proposes several far-reaching changes to the present system of labour law and industrial relations, although many proposals are based on the original framework of laws, structures and procedures which have been developed incrementally over the past 90 years

**New Legislation:** It is proposed to repeal all existing labour legislation, including the Labour Relations Act 28 of 1956, the Public Service Labour Relations Act 105 of 1994, the Education Labour Relations Act 146 of 1993 and Chapter I of the Agricultural Labour Act 147 of 1993, and to replace them with a single Act applicable to all employers and employees throughout the country

Employees in the public service and the educational, agricultural and domestic sectors will all be included within the same legislation, the only exceptions being members of the SA National Defence Force, agencies and services established by the Intelligence Services Act, and the SA Police Services

Certain special bargaining arrangements and agreements which are already in place, such as in the public service and the agricultural sector, will continue to be in force through the operation of transitional provisions in the Bill, and will only be phased out over a period of time

**Freedom of Association:** The basic rights of freedom of association for both employees and employers are spelt out in chapter two of the Bill

They include the right to join and take part in the activities of a trade union or employers' organisation, and not to be victimised for so doing.

The victimisation provisions extend to persons seeking employment

**Collective Bargaining:** The Bill grants trade unions specific rights of access to the workplace to organise and to conduct union activities, and obliges employers, in some cases, to provide information to a union or its representative, and to allow representatives time off for union activities

The thresholds of representativeness at which these rights accrue to unions have been left for negotiation by Nedlac

As at present, registered unions and employers or employers' organisations will be able to conclude legally binding collective agreements, but these will be enforceable by arbitration rather than through criminal or civil action

The criminal sanction has been removed for nearly all breaches of the Bill's provisions, including engaging in illegal strike action

Agency shop agreements, which require the deduction of agency fees from employees who are not members of a representative

trade union, will be allowed, but the future of full-scale statutory closed shops remains clouded, as they may contravene the new Constitution

Meanwhile, existing statutory closed shops will remain in force, but non-statutory closed shops will have to convert to agency shops

The present industrial council system will be converted into a system of bargaining councils which will operate along similar lines, but with simplified procedures for registration, etc

Important changes include

- The inclusion of both public and private sector interests within a single council,
- Representation of small business interests on councils,
- An annual review of their representativeness,
- Additional protection before council agreements may be extended to non-parties

Bargaining at national level is facilitated through the new bargaining council system, but is not made compulsory

**Industrial Action:** The procedural steps which employees or their union must follow before embarking on a legal strike are greatly simplified and expedited. The need for prior balloting is dispensed with. The definition of a "strike" specifically includes partial stoppages and a refusal to work overtime

Once on a legal strike, an employee is protected against civil actions for debt and for breach of contract, and enjoys a very high degree of protection against dismissal

The full extent of this protection is, however, not entirely clear, and dismissal may be permissible for "operational requirements" after compliance with certain procedural requirements

Employees who strike illegally are not protected from dismissal by the Bill, but their dismissal is not automatically fair

An employer's right to embark on a legal lock-out is retained, but lock-out dismissals are prohibited

Secondary strikes and picketing are recognised and protected subject to certain restrictions, and protest action taken to promote or defend employees' socio-economic interests is also protected in limited circumstances

The right to strike or to lock-out is limited

- If the matter is regulated by collective agreement or wage determination
- If the collective agreement prohibits strikes or lock-outs
- Where the issue must be referred to arbitration by agreement
- Where the dispute is one of "right"
- In an "essential service, in which case the dispute must be referred to compulsory arbitration.

## Smuts chose the Canadian path

A proper understanding of "labour law", or employment and industrial relations law as it is also known, needs some understanding of the history and development of a system created at the beginning of this century

It is customary to stress the tripartite nature of the system and particularly the functions of the State, employers (including management) and employees (including trade unions).

In theory the State is expected to protect and foster the "public interest". This includes people who are unemployed, elderly and sick. In addition the State should protect the interests of all citizens by ensuring certain services cannot be disrupted because they are "essential".

Again, in theory, the State should have a clear vision of what objectives need to be attained and ensure that its industrial relations are the most suitable for attaining such goals.

Collective bargaining and "power-play" have generally been accepted in SA as the preferred way of resolving most disputes of "interest", like wage disputes. After exhausting collective bargaining and reaching an impasse, certain prescribed procedures must be followed before the trade union and employees may "strike", and employers "lock-out", but only to resolve the dispute

In labour law the words "strike" and "lock-out" have special meanings and are defined in the Labour Relations Act 28 of 1956 (LRA) and must be read with sections 65 and 79 of the LRA.

Almost all modern economies accept that conciliation is a necessary step in the process of trying to resolve "interest" disputes

Disputes in "essential services" must be resolved by some form of compulsory arbitration to avoid the adverse consequences of a power-play. However, upon the failure of parties to resolve a dispute in non-essential trades, industries or services, various options present themselves.

Some systems completely forbid power-play while others allow it. In the US the general rule is that an employer faced with an economic strike is allowed to replace the strikers

Jan Smuts considered different systems before introducing laws in the Transvaal in 1909 in a bid to resolve serious conflict after the end of the South African War

**COMPLICATED laws govern conciliation in 'interest' disputes. Graham Giles, a Durban attorney and part-time law professor at RAU, analyses labour laws in SA.**

He opted for the Canadian model, which allowed for "power-play" but only after conciliation, instead of the Australasian model of compulsory arbitration in all instances

Smuts and Louis Botha represented South Africa at Versailles in 1919 at the Peace Treaty and were founder signatories to the International Labour Organisation (ILO)

During the "Rand Revolt" in 1922 Smuts intervened in the power-play on behalf of the employers with the might of the armed forces and "resolved" the dispute, but killed or injured hundreds in the process

Thereafter, Smuts tried to appease his supporters, many of whom had been involved in the Revolt, by introducing laws to give effect to ILO principles. This was done in 1924 and South Africa became the first country to do so

However, Smuts was ousted by the Pact government in 1925 which gratefully endorsed Smuts's new dispensation, the Industrial Conciliation Act, 1924 (ICA)

A mechanism was created in the ICA allowing for a high degree of "self-government" for employers and employees, mainly through voluntary industrial councils with equal representation of employers and trade unions

Agreements concluded by the parties to such councils were ratified by the Government and made binding on all parties to the council. Provision was also made for the establishment of conciliation boards in the unorganised sectors

In addition, the ICA recognised certain basic worker rights and repeated the principle of the 1909 Transvaal law by insisting on conciliation through a council or conciliation board before allowing a strike or lock-out

■ Giles will continue his overview in Star on Monday.

# Sacob warns on labour's day of action

More than 23 marches and other activities are expected countrywide

By Abdul Milazi  
Labour Reporter

**T**HE SOUTH AFRICAN CHAMBER OF Business yesterday advised employers to draw up contingency plans to counter organised labour's planned national day of action on Monday

Sacob spokesman Mr Gerrie Bezuidenhout said although a half-day stoppage was planned for Monday, the likelihood was that a full day's work would be lost.

Monday will be the climax of Cosatu-Nactu and Fedstal's rolling mass action that began on June 5 to try and break the impasse at the National Economic Development and Labour Council negotiations

## Country wide

More than 23 marches and other activities are expected to be held countrywide. There will be marches in the Northern Cape and Free State towns of Kimberley, Taung, Kuruman, Kroonstad, Welkom, Bloemfontein, Qwaqwa, and Bethlehem

All the marches will start between 10am and noon. In the Western Transvaal, marches will be held in Klerksdorp starting at 11am from Checkers to the Department of Labour, in Vereeniging

workers will assemble at 11am near the Vaal Show Grounds and march from 1pm to the Post Office

Carletonville marchers will gather at the Traffic Department at 10am and march on the Department of Labour

Four marches have been planned for the Eastern Transvaal in Nelspruit, Witbank, Middelburg and Leandra. Starting times vary from 10am to noon

## Pretoria march

In the Northern Transvaal, three marches have been planned in Pretoria, Pietersburg and Rustenburg, starting at 10am

The main march in Pretoria will start from Brown Street to the Union Buildings

In the Western Cape, the main march will be in Cape Town where workers will gather at the Grand Parade at 10am and march to the Chamber of Commerce.

Four marches will be held in the Eastern Cape cities of Port Elizabeth, East London, Butterworth and King William's Town.

In Gauteng, a report-back meeting on the demands tabled during the June 6 meeting will be held at the Library Gardens in Johannesburg at 9am.

Details on the KwaZulu-Natal situation were still not available at the time of going to press.

# Labour pact: Win some, lose some

Argus Correspondent  
JUSTICE MALALA

**A**MID the cigarette butts, empty water jugs and masses of scrawled notes that lay in the Carlton Hotel ballroom after the last, 15 hour lap of negotiations on new labour laws on Thursday was a scrawled message that characterised the nature of the talks over the past two months

It is being turned down, but it'll take 10-15 minutes before you notice it," the message said

After bruising negotiations in the National Economic, Development and Labour Council since May 4, the parties agree that they have struck a deal which would be beneficial to the country and to their constituencies

But at the end of the day the question will be asked, whose proposals were largely turned down, as the scrawled message put it? On whose side is the Bill tilted? Did labour register the victories they embarked on mass action for? Has business managed to entrench the "voluntarist" perspective it brought to the negotiations in the new laws?

The one party which has clearly come out tops is government, represented by Labour Minister Tito Mboweni. Besides the fact that the Bill is central to his bid to put in place an investor-friendly and stable labour market, on Monday the parties reached agreement on what is referred to as his baby, the workplace forums

They agreed that a representative trade union, or more unions in a workplace acting jointly, may apply to the new Council for Conciliation, Mediation and Arbitration for a workplace forum to be put in place. This agreement which is supported by both parties, ushers in a new era for co-operation between employers and workers

The one main issue which the three parties are still not agreed on and which parliament might have to make a final ruling on is that of employers' right to hire temporary replacement or scab labour when they feel that their business is in danger of collapse during a strike. Labour wants the hiring of scabs restricted in law

But generally, both parties came to the negotiating table with proposals which they both knew would be watered down until agreement was reached. On the major issues, here is how they fared

Centralised bargaining. Initially business indicated it supported this "in principle" but was opposed to labour's demand for it to be made compulsory. Labour was adamant that the Bill should require employers to bargain with trade unions centrally, with national bargaining councils set up in all industries

The agreement reached after Mr Mboweni's intervention ensures that if trade unions organise enough workers they can initiate the formation of a centralised bargaining forum. It proposes that where there is no such forum a trade union or employer association with at least a membership of 30 percent in the industry can initiate the formation of one

The forum will be responsible for the establishment and administration of social welfare funds, the promotion and establishment of training and education schemes and dispute-resolution functions. Most important, the forum may agree to negotiate wages and conditions of employment development of industrial policy for the concerned industry and may amend its constitution

The new deal is a victory for employers in that it does not enforce the formation of bargaining councils. But it is also a victory for labour because for them to ensure that councils are set up in an industry they have to organise sufficient workers for their objective to materialise

The closed shop. Labour wanted a closed shop — an agreement between an employer and a trade union that the union will be the sole representative of workers in that workplace — to be permitted and yet room be made for constant review of the agreement by holding secret ballots among workers testing their agreement

But to limit the power of the union in terms of this agreement, unions will have to command 66 percent support of all workers to have this agreement put in place. If at any time 33 percent of the workers require a ballot to test the validity of the agreement, then one should be held

PR 19/3/95

AR 19/3/95

This agreement will shift the balance of forces in workplaces — where in the past mainly white unions have had closed shop agreements with employers — to the unions which can now do the most organising. The labour movement, particularly Congress of SA Trade Union affiliates, will gain power with this new dispensation as they command majority membership in most workplaces

Workplace forums. Business held that it should not be the sole right of a representative trade union to apply for the establishment of a workplace forum but that those rights should be extended to all employees or the employer

This issue marked a significant victory for labour, in the sense that at the end the parties agreed that the workplace forum must be set up by initiation of the trade union. Although most of the issues it could handle will be confined to wage bargaining forums, the forums will have wide-ranging powers to handle matters of co-operation between the parties such as retrenchments and restructuring

Disclosure of information. Business's main concern with union access to confidential information was that it would not be able to ensure that this information did not reach other parties

The Bill will now provide that where the employer feels that he should not provide confidential information, the Commission for Conciliation, Mediation and Arbitration (CCMA) shall determine whether the employers' reservations are valid and will give a ruling

The CCMA will take into consideration the union's past record in terms of confidentiality, and may impose a sanction for proven breaches of confidentiality by the union. This marks a victory for employers, who will have protection of information they consider vital for competition

The parties agree that the process has seen a lot of giving and taking and hopefully the winner is South Africa, which will have a more coherent, integrated and worker-friendly Labour Relations Act :

NEDLAC

## Still on track

FAN 16/6/95

After threatening to pull out of Nedlac negotiations on the draft labour Bill when organised labour last week took its demands to the streets, Business SA (BSA) seems to have pulled back and decided to "hang in there" after all. The threat is seen by one leading businessman as having "put down a marker," though

"We are continuing with negotiations," says BSA assistant secretary-general Carina Gardiner, adding that a statement would be issued this week after a meeting of the board of trustees and governing body. "But we are sticking to the principles of voluntarism and flexibility in labour relations, which must be aimed at promoting economic growth and jobs."

The BSA's decision to continue participation in Nedlac emerged at a meeting of its governing body last Thursday, which was attended by the big guns of industry — including Julian Ogilvie Thomson, Johan Rupert, Les Boyd, Basil Hersov, Marinus Daling, Dikgang Moseneke, Pat Retief, Paul Kruger and BSA president David Brink.

The meeting also reaffirmed support for the BSA negotiating team, led by Adrian du Plessis of the Chamber of Mines. Du Plessis had issued the threat to pull out on the basis that business could not take part in talks while labour held a pistol to its head in the form of escalating mass action to achieve its demands.

Labour, which last week received indirect and ill-advised backing from President Nelson Mandela personally when he reaffirmed their constitutional right to peaceful protest, plans a national half-day stayaway next Monday afternoon if its demand for compulsory central bargaining is not met, affirms Cosatu's Neil Coleman.

Government's plan is to achieve consensus on the labour Bill by June 30, which

many regard as unrealistic.

There had earlier been reports that business was divided in its approach especially regarding the key issue in contention — compulsory centralised bargaining.

About two-thirds of industry, including the mining and metal sectors but excluding retail, chemical, paper and food, bargain centrally. This issue, more than differences over workplace forums and unions' (unlimited) right to strike, led to deadlock in the labour chamber of Nedlac after only a couple of meetings, giving rise to speculation that this corporate decision-making forum had died on the vine. Indeed, experience elsewhere of tripartism in labour and industrial policy-making is mixed, even in far less divided societies than SA.

Sacob spokesman Gerrie Bezuidenhout says business is not in principle against either centralised or decentralised bargaining. "It is the compulsion aspect that we don't accept, it should be left to the parties in any sector to decide what form of bargaining they want." He accepts there are

advantages and disadvantages to central bargaining but points out it may be inappropriate for some such as small and medium enterprises. He says about 80% of Sacob members are small businesses.

Nedlac chairman Jayendra Naidoo says the council is not under threat at all. He says the heat and dust around the Bill is not necessarily all negative, Nedlac acts as an early warning system to government and fo-

cuses everybody's minds on finding creative solutions. It would be "premature" to write it off. Formal and informal contacts between labour and business are continuing and the parties had "constrained" themselves. Naidoo is sure a way around the problem of central bargaining will be found, saying "there are possibilities for finding a practical solution both parties can live with."



**Nedlac's Naidoo** the parties can find a practical solution

# Showdown looms over Labour Act

(166) ST 18/6/95

By RAY HARTLEY: Parliamentary Correspondent

COSATU general secretary Sam Shilowa has challenged Business South Africa's David Brink and Anglo American's Bobby Godsell to a public debate over the Labour Relations Act.

The union federation is spearheading a nationwide "day of action" in 27 centres tomorrow to get centralised bargaining and an unlimited right to strike written into the Act.

Mr Brink has said that business was prepared to sit out a six-month strike before giving up its fight to have businesses decide voluntarily whether to bargain with unions at industry level.

"I hope they will retract that statement because if

there is anybody who is scaring off investors, it is David Brink and Bobby Godsell," Mr Shilowa said at a press briefing yesterday.

He warned that companies that took disciplinary action against workers for taking part in the mass action would be "black-listed" and targeted by the union movement.

Cosatu spokesman Neil Coleman said the federation would wage a nationwide minimum wage of R1 500 if the Act did not entrench centralised bargaining.

Meanwhile, in the engineering industry, the National Union of Metalworkers' 120 000 members edged closer to declaring a dispute with the Steel and

Engineering Federation. Numsa's general secretary, Enoch Godongwana, said the 10 percent increase offered by management did not address the union's demands.

● See Page 25 and Business Times

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# Cosatu turns up the heat in labour row

ST(BT) 18/6/95

(166)

By KEVIN DAVIE

THE labour movement has promised widespread mass action protests during tomorrow's planned half-day national work stoppage to demand amendments to the Labour Relations Bill.

Cosatu's Neil Coleman says the protest will be much more widespread than last Tuesday's marches in the main centres.

"There are 24 marches planned, in every region and with non-union support from the ANC, Sanco and church organisations."

Mr Coleman says negotiations between business and labour are "effectively deadlocked".

There have been no discussions since Tuesday. Mr Coleman expects negotiations to begin on Wednesday. This will leave only nine days for agreement to be reached on the Bill if the June 30 deadline set by Labour Minister Tito Mboweni is to be met.

But with at least 75% of the contents of the Bill — including points of major contention — yet to be discussed, the deadline does not appear achievable.

A further 230 submissions of about 4 000 pages are understood to have been made to the Labour Ministry.

Mr Mboweni this week expressed confidence that

a settlement was achievable, but both parties say there has been no progress, even on core issues.

The central dispute remains legal compulsion on employers to bargain with trade unions.

Employers support the right of workers to organise through trade unions but say the requirement to bargain with unions should be achieved through the union's organisational strength.

Unions want a legal compulsion to bargain to come into effect at a certain level of representivity.

They also want legislation to require bargaining in councils which represent an entire industry.

Employers believe these arrangements are best made by the parties and may vary from one industry to the next.

Compromise, but unmandated, proposals were explored this week.

Business has suggested industry forums be set up, possibly under the Nedlac umbrella, to discuss sectoral (non-wage) issues.

Labour rejects the proposal as it excludes wages

A labour survey understood to have been rejected by business — is that there be no prescription on what is negotiated

at the bargaining councils but that once agreements have been reached, these will apply to the sector covered by the council.

Most unionised workers are covered by agreements struck in centralised bargaining forums.

Labour says business will collapse these forums if they are not legally protected.

Business argues that the labour relations system needs flexibility so that bargaining arrangements can be renegotiated in response to competitive pressures.

Business also says legal protection can lead to corruption and a distancing of the union leadership from its members.

Negotiators agree they face a power struggle.

"It's a question of power, unfortunately," says Mr Coleman.

He says he believes the government will accept a degree of legal compulsion to bargain in the new Act.

Business South Africa's David Brink said this week that business will sit out a six-month strike if necessary rather than depart from its bottom line of "voluntarism".

The Labour Ministry is understood to remain hopeful that progress will follow Monday's stoppage and that agreement will be reached before or soon after the June 30 deadline.

# DRIVING HARD B

The public slanging match between business and labour over the new Labour Relations Act is set to take to the streets tomorrow with the first national stayaway since last year's election. RAY HARTLEY looks at the issues behind the dispute

ST 18/6/95

**R**IDDLED with perplexing jargon, the battle over the shape of South Africa's new labour legislation is in danger of succumbing to the very thing it seeks to eliminate — emotional public shows of strength over issues that should be resolved around a table

At stake is the shape of the new Labour Relations Act — legislation that will shape the relationship between business and trade unions for years to come by establishing the rules for negotiations on wages and conditions of service

Drafted by labour lawyer Halton Cheadle at the behest of Labour Minister Tito Mboweni, the legislation has been under discussion in the newly created National Economic Development and Labour Council (Nedlac), a body comprising government, business and labour representatives.

Talks in the council ran into trouble after labour insisted that centralised bargaining — a process which would see minimum wages and working conditions discussed at industry level as is the case in the mining sector — be made compulsory in the legislation

Business rejected this, saying the principle of "voluntarism" should apply, allowing trade unions and employers to decide whether or not to centralise bargaining in a particular industry

For Business South Africa's David Brink, making centralised bargaining compulsory would be "disastrous". "Compulsory centralised bargaining is a nonsense. Why labour decided to go for it, I don't know," he says from his first-floor office in Sandton.

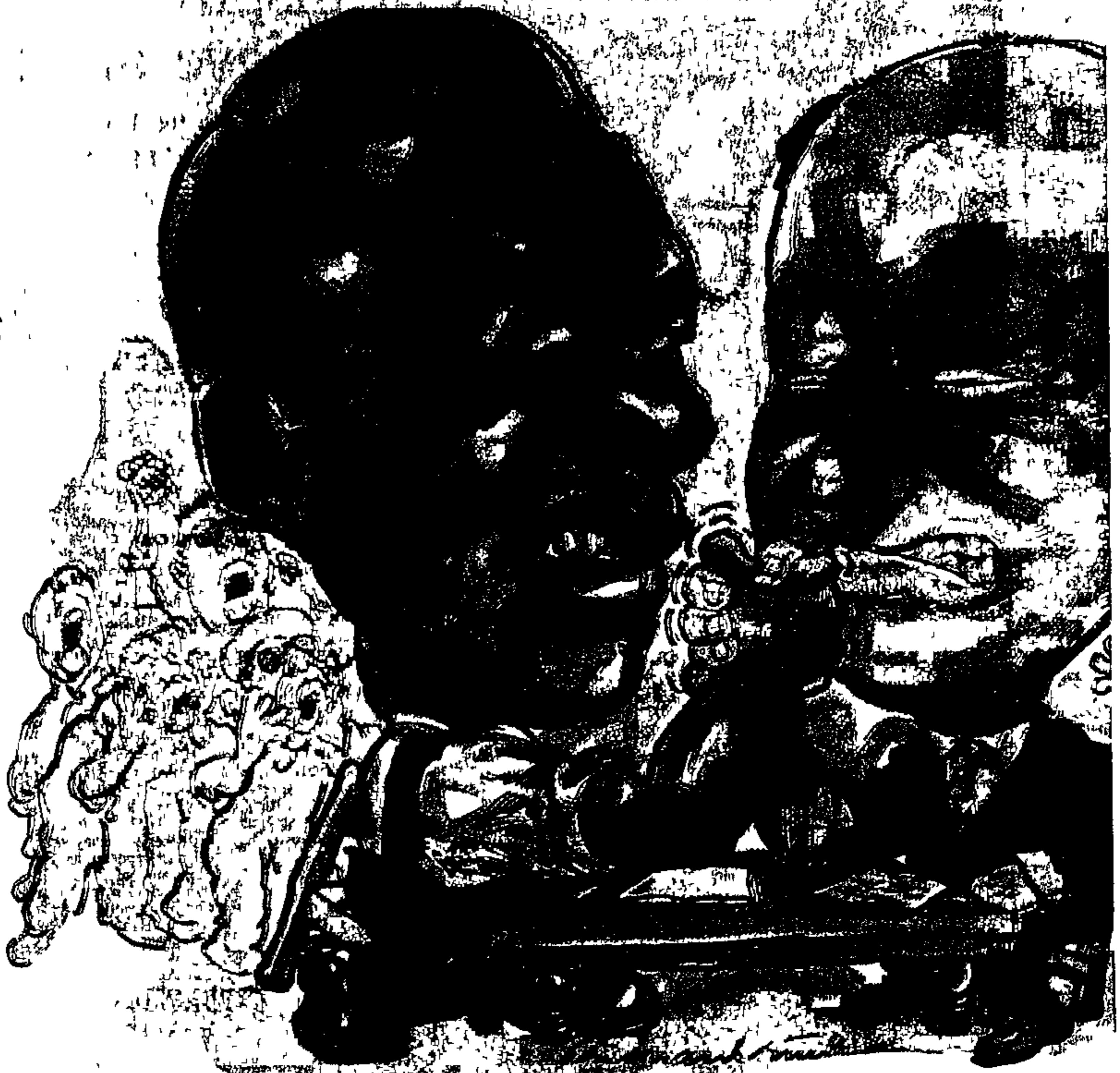
To illustrate his point, he sketches the implications of introducing centralised bargaining into the paper and pulp industry

**W**ITH enterprises ranging from one-man shows to conglomerates and activities as diverse as growing trees, sawing logs and the "world class capital intensive" operation of turning the wood into pulp and paper, the industry is simply too diverse to cope with a uniform wage scale, he says.

Centralised bargaining would decimate smaller businesses by forcing, for example, a small company growing trees to pay the same basic wages as pulp factories.

"I've spoken to a tycoon who pays his sweepers R2 500 — a small business can't do that. Bargaining structures have to be tailored to specific circumstances," he says

Cosatu's Ebrahim Patel



says this argument presents an unfair caricature of labour's vision of centralised bargaining. "We've said that small business's voices must be heard very clearly in the bargaining councils."

Using criteria such as the number of employees, turnover and the nature of ownership to define legitimate small businesses, the centralised bargaining process would allow for special wage and service dispensations to ensure their viability.

The "voluntarist" position taken by business was in fact the cover for a plan to fragment unions by confining them to plant-level bargaining and ultimately, creating a host of smaller unions within factories.

By proposing that just 15 percent of workers sharing a common work environment would be sufficient to allow a union to be formed, employers were seeking to weaken worker power, by turning negotiations into a set of piecemeal discussions.

Using a clothing factory as an example, Mr Patel points out that business's plan would see 15 percent of cutters, designers, sewing machine operators, labourers and clerks all able to form their own unions.

"You could end up with five unions in each of these categories and well over 40 unions just in that workplace."

Mr Patel believes that business is being held hostage by three industrial sectors — chemical, paper, pulp and printing, and retail — where no centralised bargaining arrangement exists.

Centralised bargaining has long been entrenched in the metal and mining sectors

**A**LSO a cause of union anxiety has been the question of whether, or not scab labour should be allowed to take the place of striking workers during industrial action.

While trade unions want the new legislation to ban scab labour altogether, business has opposed this, saying it would go against international practices.

Says Mr Brink: "If there are strikes for whatever reason, there are some companies that have to keep running."

The alternative, he says, is for businesses to lose market share to less disrupted competitors and "to do permanent damage with a temporary dispute"

For Mr Patel, any limita-

tion on the right to strike in the interests of preventing permanent damage, is unacceptable.

"Business has argued for a range of proposals, the effect of which would be to strip away the right to strike. In every strike that I've been involved in there has been the prospect of irreparable damage being done," he says.

This week, as Cosatu's half-day work stoppage loomed large, business and labour exchanged increasingly acrimonious statements. Mr Brink said business would sit out a six-month strike rather than give in to labour's demands.

Zwelenzima Vavi, Cosatu's assistant secretary-general, has since raised the stakes, saying this week that it would retaliate by campaigning for an across the board minimum wage of R1 500 in 1995, if centralised bargaining was not made law

The consequences of such a populist campaign among workers could be devastating for marginal businesses

But even as the public display of hostility grew, negotiators resumed discussions in Nedlac, seeking a way out of the impasse and signalling that both parties still respected the negotiation option.

Underlying the arguments over centralised bargaining and the unqualified right to strike is the question of the future of trade unionism in South Africa.

While unions have been in a state of structural decline in the rest of the world, shedding

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R AND BUSINESS

# WARD BARGAINS



is the best way of preserving the power of its unions and the persuasive power of union federations such as Cosatu, which are in danger of losing their political clout as their ANC allies become increasingly enamoured of the possibilities of an alliance with business.

Critical to the tussle between labour and business is the third player in the arrangement — government.

The question both business and labour are asking is which way government will lean should the dispute prove irreconcilable.

Headed by Mr Mboweni, the government delegation has so far focused on goading business and labour into finding common ground with out government interference.

Last week President Nelson Mandela entered the fray, announcing that government supported the right of workers to protest without restraint, but he carefully avoided committing himself to centralised bargaining.

Addressing the same rally as Mr Mandela, ANC deputy secretary-general, Cheryl Carolus, was less equivocal than the president, stating that the ANC supported the demand for centralised bargaining.

**C**OSATU president Sam Shilowa has already briefed the ANC's parliamentary caucus on the draft legislation in anticipation of a possible legislative fight.

Says Mr Vavi. "We have talked to some Cabinet ministers and they seem to fully support our position."

But the ANC faces other pressures, for organised workers are but a fraction of the people who voted them into office.

Mr Britik is quick to point out that around 50 percent of economically active South Africans find themselves unemployed. "Whose looking after them? So far I don't feel confident that those interests are being looked after."

If no result can be produced during this parliamentary session, South Africa will have to live with its current system of adversarial bargaining and the prospect of enhanced industrial conflict next year when trade unions will have a score to settle.

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Underlying the arguments over centralised bargaining and the unqualified right to strike is the question of the future of trade unionism in South Africa.

While unions have been in a state of structural decline in the rest of the world, shedding

members and giving up centralised bargaining for plant-based arrangements, South Africa has bucked this trend to the frustration of local businessmen.

Many of them now see the redrafting of the act as an opportunity to bring the coun-

try into line with the rest of the world by reducing trade union power and freeing up individual producers to cut wage deals that make them viable against low-paying foreign competitors.

From labour's point of view, centralised bargaining

(12) (166)  
**SA labour laws  
'fare well' globally**

SA FARED well internationally in terms of its labour legislation and trade union movement, Cosatu general secretary Sam Shilowa said on Saturday.

"Depending on the outcome of the draft Labour Relations Act, I think that we will fare even better," Shilowa said at a news conference in Johannesburg after returning from the International Labour Organisation (ILO) conference in Geneva.

The ILO conference acted as a forum to exchange ideas on labour relations laws, as well as tackling topical issues. *BO 19/6/95*

Cosatu announced this month labour had reached a deadlock with business over key issues in the draft Bill.

Shilowa doubted the conference would affect the Bill's components or would break the deadlock, but said international labour leaders offered "new lessons to be learned".

One of the main achievements of the conference was the convention on mining safety which would be drafted this year, he said. — Sapa.

# Cosatu insists today's mass marches and strike action go ahead

Business Day Reporter

A HALF-DAY strike — called by labour to press home demands on revised labour legislation — would go ahead today, with rallies and marches in all major centres, Cosatu said at the weekend.

The demands, including stable centralised bargaining institutions, promotion of strong representative trade unions and the full right to strike would be spelled out at rallies around the country. Tens of thousands of workers were expected to attend. Cosatu's call was heeded by the National

Council of Trade Unions and the Federation of SA Labour Unions. Their 500 000 members were expected to join the action.

Almost 30 towns and cities would be affected. Marches were scheduled to start between 11am and noon. It was unclear whether those who joined in would report for duty later.

The SA Chamber of Business (Sacob) advised employers to adopt a "no work, no pay" policy. This was condemned by the National Civic Organisation's Gauteng branch, which warned Sacob against its "arrogant attitude".

Labour said employers who took disciplinary action against workers participating in the marches would find themselves on a black list for "victimising workers for exercising their constitutional rights and we will be targeting them for action".

Cosatu planned its major march from Cape Town's Grand Parade via Parliament to the Cape Chamber of Commerce. In Johannesburg, workers would march to the Library Gardens; in Pretoria the Union Buildings would be a rallying point, Cosatu general secretary Sam Shilowa said. SA Police Service spokesman Capt W-

kus Weber said contingency plans were in place "should anything go wrong".

Business SA chief negotiator Adrian du Plessis condemned the stayaway, saying a "boycott" involving representatives of all three parties — labour, business and government — was planned for this weekend to try to thrash out a deal on the controversial Bill.

Top-level negotiators were expected to attend the meeting in a last-ditch attempt to meet the end-June deadline set by government to ensure revised legislation was put before Parliament during the current

session. *BD 19/6/95*

Government was expected to table revised proposals, which Du Plessis said business awaited "with bated breath". Their content was unclear, but compromises on workplace forums, bargaining levels and closed shops were expected.

Du Plessis said protest action should follow, not precede, negotiations. He denied the parties were in deadlock, despite Shilowa's assertion that this was the case. "Protest action... should be used as a last resort. We are not there yet," he said.

# 6 000 march against new labour laws

□ *Bill won't be allowed to pass, parties warn* ARLT 19/6/95 (166)

**ROGER FRIEDMAN, Staff Reporter**

THE "business friendly" Labour Relations Act will not be allowed to proceed through parliament, the ANC, PAC and Communist Party have warned

Speakers from the three political parties told a rally on the Grand Parade today it would be preferable for business to accept labour demands before the bill got to parliament.

About 6 000 workers from several unions and labour federations were at the rally before marching to parliament and the Cape Chamber of Business and Industry to hand over memoranda

Organised labour is demanding that centralised bargaining and the right to strike be included in new labour laws

ANC Western Cape leader Chris Nissen promised his party's support for labour "inside and outside government".

He said it was time business came to terms with democracy — "they cannot enjoy the privileges they had before"

The government was not "on the side of business" Mr Nissen said

He reminded workers it was the ANC which had initiated the draft labour relations bill.

Patricia de Lille of the PAC said "When this bill comes to parliament, we will use our vote to push through a bill that will please the workers

"Because of you, we are in parliament today. We must show our loyalty to you and that is what we are going to do"

Phillip Dexter of the SACP said business should stop accusing labour of sabotaging the reconstruction and development programme (RDP)

"When we come with a concrete bill, they don't support it.

"They must decide whether they support the RDP, or there is no place for them in this country."

Cosatu president John Gomomo appealed to the ANC and PAC to support the working class when labour minister Tito Mboweni reports to parliament on the progress of the bill on Thursday

He said workers could not count on support from the NP or the DP as they were "on the side of the bosses"

The National Council of Trade Unions (Nactu) regional co-ordinator Peter Roman said workers should prepare themselves "to strike against the bosses"

At midday, the workers gathered outside the main entrance to parliament, blocking Plain and Roeland streets.

A line of police with riot shields and helmets lined the gates to parliament

The memorandum to the government was accepted by Trade and Industries Minister Trevor Manuel.

He said it was the government's intention to ensure that the new Labour Relations Act was passed by parliament before September 15, the closing of the current parliamentary session

He urged the unions to continue negotiating in a peaceful manner

● Sapa reports that security was tightened in central Johannesburg today as thousands of workers gathered for a protest to press for concessions from business in negotiations on the bill

Police in armoured vehicles and traffic officers kept a close watch on the singing and placard-waving crowd

"Don't murder the working class by privatisation", a banner held aloft by workers proclaimed. Another read "An injury to one is an injury to all"

● Few companies in Durban were affected by today's strike, according to Durban Regional Chamber of Commerce spokeswoman Priscilla Brett

Most companies would close early to allow workers to attend a march through the city at noon, she said



Picture HANNES THIART, The Argus

**WAITING GAME:** Police and union members wait in Koeberg Road, Milner-ton for news on whether the workers could march to Cape Town

# Nedlac unlikely to heal labour rift

CT(BR)19/6/95

BY THABO LESHLO

STAFF WRITER

With only 11 days left before the June 30 deadline for labour and business to heal their rift over the labour relations bill, the parties remain so fundamentally divided that it is highly unlikely the deadlock will be broken in time.

And, given the growing determination by Business South Africa (BSA) to resist any pressure from organised labour on the matter, today's nationwide strike and

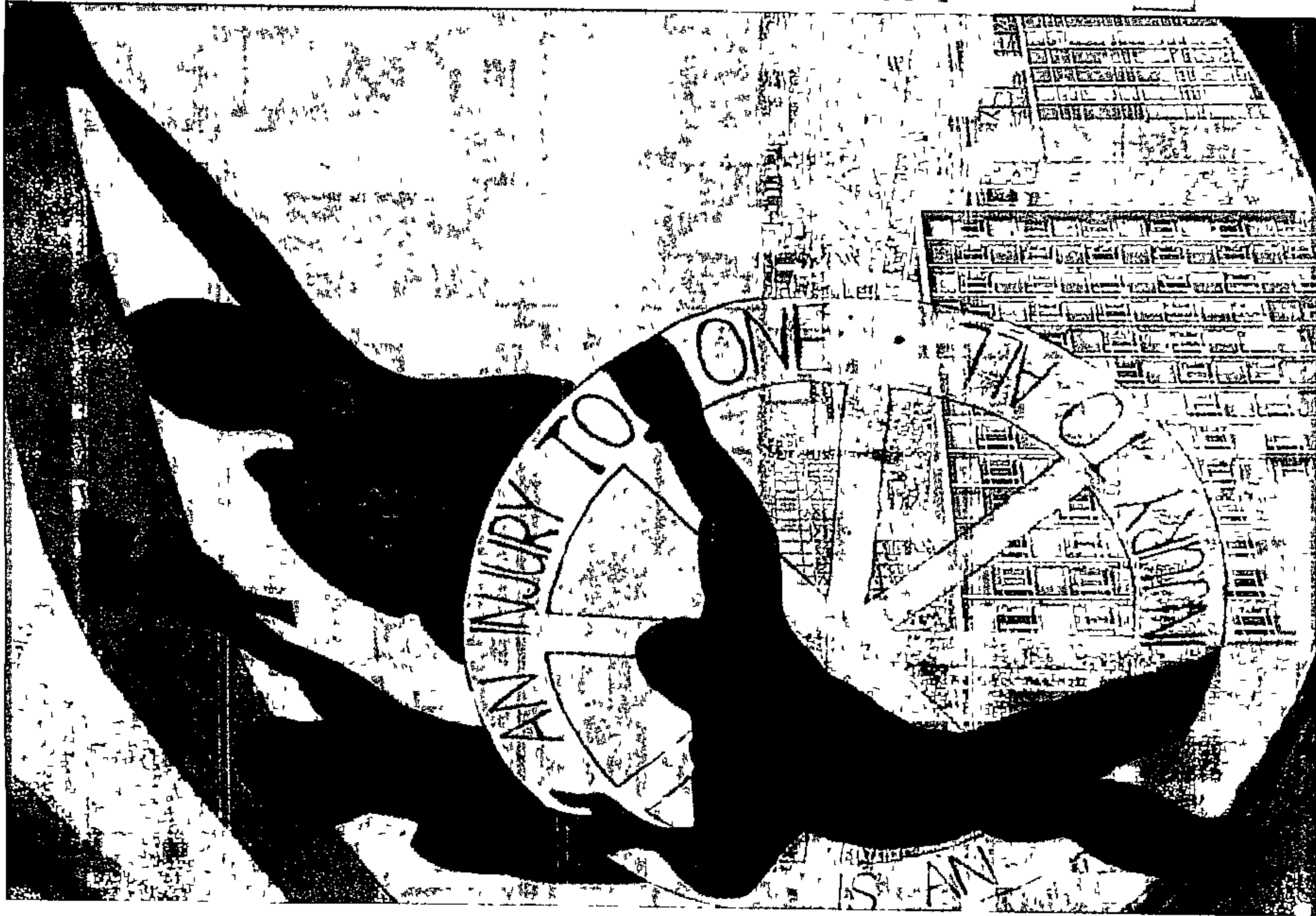
marches by Cosatu, Nactu and Fedral seem unlikely to move the process forward.

Organisers said the protests — expected to be the biggest in years — would take place in at least 27 towns around South Africa despite further talks scheduled to start today in the National Economic Development and Labour Council (Nedlac) negotiating committee.

Sacob has advised employers not to pay employees who stay away from work to join the

protests. Speaking on his return from the International Labour Organisation conference at the weekend, Sam Shulowa, Cosatu secretary-general, criticised the business community for "stalling the process" of establishing a new industrial relations system.

Shulowa repeated previous warnings by trade union federations that the government and parliament would have to pass the law this year to advance workers' rights regardless of the deadlock.



**LABOUR UNREST** The view from Cosatu's head office in Johannesburg. Sam Shulowa, the union's general secretary, has warned the government and parliament to pass the labour relations bill regardless of the deadlock.

PHOTO: JOHN WOODROOF

# Police on standby for worker marches

ET 19/6/95

JOHANNESBURG: Police had contingency plans to deal with possible outbreaks of violence during country-wide marches by workers today, a spokesman said

Western Cape police spokesman Captain Wicus Holtzhausen said additional police were on standby, though violence was not expected

Cosatu said on Saturday the half-day strike, meant to push employers into a new mindset on the draft Labour Relations Bill, would continue as planned

Cosatu said it and employers could not agree on centralised bargaining, the right to strike without dismissal and other rights

Today's mass action, said general secretary Mr Sam Shilowa, was meant to show that "apartheid leg-

islation" had to be re-written for democracy in the workplace

"We are not naive, we know that behind employers' motives are profits at all costs," he said

The half-day strike was expected to be the biggest in years

The major march will take place in Cape Town, where workers will assemble on the Grand Parade at 10am and march via Parliament to the Cape Chamber of Commerce

Gauteng's big march will begin at the Library Gardens in Johannesburg. Workers will also march to the Union Buildings in Pretoria

Eight towns in the Northern Cape and Free State will see marches, as will Durban, Mantzberg and Ladysmith in kwaZulu/Natal — Sapa

# PRODUCTIVITY

SPECIAL REPORT

## Business and workers battle for new labour Bill advantage

By ANN CORTY

SPECIAL REPORT

Last year's annual wage negotiations took place in the shadow of the first democratic elections. The coincidence of events is believed to have affected the manner in which the parties approached negotiations.

This year's annual wage negotiations are similarly being undertaken against the backdrop of business and labour battling for advantage in the negotiations over the new Labour Relations Bill.

It has inevitably hardened attitudes on both sides especially in the metal industry negotiations which deadlocked last week.

However, one aspect of labour relations within the metal industry offers encouragement for those who believe labour and capital can work together effectively to improve productivity.

### Workplace forums

The draft agreement for worker participation being discussed by business and labour in this industry could become a model for the workplace forums that have become a stumbling block in the National Economic Development and Labour Council (Nedlac) negotiations on the draft labour Bill.

The National Union of Metalworkers (Numsa) said the immediate cause of the metal industry deadlock was the reluctance of the Steel and Engineering Industries Federation of South Africa (Seisa) to deal with the need to close the "apartheid wage gap".

The dispute puts in jeopardy the productivity document that the two parties have been working on for years. If the productivity pact becomes a victim of this wage battle, it will be a major setback for the forces of reason in the war zone of industrial relations.

At this stage it looks as though the document will survive to become part of the industry's long-term negotiation



**PINPOINTING PRODUCTIVITY** More complex than just plant-level activity and getting workers to work harder

agreement. One of the negotiators said, "Everything is affected by the negotiations around the yearly wage settlement, so inevitably discussions around productivity will be affected — it is one of the bargaining chips that the parties can use."

Feeling within the industry is that much of the future that has accompanied the release of the new Labour Relations Bill could have been avoided if the government had first given business and labour six to 12 months to come up with their combined views on what themes should be incorporated in a new Bill.

It is against this acrimonious backdrop that the engi-

is therefore likely to be a powerful reference document for Nedlac especially as much of its content is pertinent to the debate on the role of workplace forums as laid out in the Labour Relations Bill.

The introduction to the draft agreement stresses that the guidelines contained are an attempt by industry representatives to assist employers and employees to develop a "world class" approach.

"It should be emphasised that all parties agreed that no single overseas model was suitable for the particular circumstances of South Africa. The framework outlined here is an attempt to put the ideas of world class strategies into a South African context."

Likely to win if some support within Nedlac is the frequent emphasis that it is not a "how to" manual but a set of guidelines "aimed at encouraging workers and management to start discussing and dealing with the challenges the industry faces."

### Plant level talks

"Its purpose is to encourage employers and employee representatives to enter into negotiations at plant level on productivity related matters. In order to succeed, productivity bargaining needs to be entered into freely and willingly by all parties concerned. It must be carefully tailored to suit the requirements and circumstances of each individual company."

That said, the draft does provide some fairly detailed guidelines on the concept of productivity as well as key issues and areas for negotiation — including a step by step process for implementation.

As with most of the parties who have difficulty with aspects of workplace forums, the Seisa and Numsa negotiators fully support the basic concept.

However, they disagree with some of the details, specifically the notion that wealth distribution can be separated from wealth creation in a negotiation forum. The proposed productivity framework includes a section with guidelines

on "how to distribute the additional wealth." As Numsa's Chris Lloyd points out: "Wealth creation cannot be separated from wealth distribution."

He added that if South Africa was ever to move towards world-class production, a number of critical issues had to be realised by key players in the local economy. "From the workers' point of view, demands for more money must be linked with the need to be more productive in order to be able to create more money."

"On the employers' side must be the realisation that productivity is not just a function of getting workers to work harder. Productivity is more complex and involves capital, material and managerial input as well as workers." There also has to be a realisation that productivity does not just deal with plant-level issues. Also important are input prices and the need to ensure these are internationally competitive.

These issues will also be part of Nedlac's broad agenda which will in turn help to formulate government policy. Instead of talking about workplace forums, Numsa and Seisa talk about consultative committees. These seem similar to workplace forums except that in the Labour Relations Act forums there is no room for the discussion of the distribution of wealth — only for its creation.

In contrast, discussion of how to distribute the additional wealth is a prominent part of the proposed role of the metal industry's consultative committees.

Seisa's Dave Carsen expressed support for the establishment of workplace forum-type structures, noting: "It is one way of giving effect to the Labour Relations Bill and is aimed at moving from an adversarial relationship between the owners of capital and labour to a co-operative one."

But he expressed concern about limited flexibility in the proposed workplace forums: "I'm not comfortable with the idea that unions have the sole right to determine whether or not a forum will be established — all the parties concerned should be involved in that decision."

He also believes all the parties should decide what issues are discussed in the forums.

# Major adjustments to these Acts nothing new

(166) (100) STAR 19/6/95

**T**HE only real blemish in the system of conciliation through a council of conciliation board — as provided for in the Industrial Conciliation Act — was its limited application to certain employees, thereby creating a dual system and a deep chasm which increasingly haunted the country.

The 1924 ICA was updated in 1937 and 1956, and the essential features remained intact except that "non-whites" were increasingly excluded from its provisions.

After the Natal riots in 1973 the government commissioned Professor Nic Wiehahn to consider the entire system of industrial relations. The Wiehahn Commission reported initially in 1979 and made many important recommendations, including the scrapping of the dual system, the creation of a "labour" or industrial court and the introduction of a new concept, an "unfair labour practice" (ULP).

The new court was empowered to depart from the common law of employment and issue guidelines and also to enforce its notion of fairness in a wide range of employment situations by ordering reinstatement or compensation as required by the definition of an ULP, a distinction had to be made between disputes of "right" and "interest". In the absence of a negotiated settlement, disputes of "interest" still had to be resolved through striking and locking-out. Such conduct was specifically excluded from the definition of an ULP.

Other disputes were referred to the industrial court for determination and were generally referred to as disputes of "right".

During the period September 1988 to April 1991 the definition of an ULP was

**TIES with ILO go back many years, Graham Giles, Durban attorney and part time RAU law professor, writes in this labour overview**

extensively altered to provide for "unfair dismissals" and did not exclude strikes and lock-outs. This allowed the industrial court to determine the fairness of any power-play.

The other important development in 1988 was the creation of a Labour Appeal Court (LAC) in which a Supreme Court judge sat with two assessors to hear appeals and reviews with a final right of appeal to the Appellate Division of the Supreme Court.

Before September 1988 ULP determinations of the industrial court were final and binding. With effect from May 1991 the main features of the original definition of an ULP were restored and still apply today.

Great interest has been shown in this rapidly growing branch of law by an ever-increasing number of academics and practitioners. This, in turn, has generated a body of law which surpasses that of any other field of law in modern times with the possible exception of the allied branch of human rights and constitutional law.

With the inclusion of other sectors of the economy, such as farming and public and domestic services, a thorough knowledge of the law on this subject is of vital importance to virtually every citizen. Other vital areas of knowledge include

- Of their association with the International Labour Organisation since 1919
- Of being the first country to

enshrine ILO principles in legislation, albeit selectively at first.

■ That the Government accepted the right of employers and employees to govern their own affairs.

■ That "interest" disputes could be resolved by the parties without government interference.

■ That many forms of discrimination in the workplace were scrapped as from 1979.

■ Of the introduction in 1979 of fairness into the employment relationship.

■ Of the creation of labour courts in the form of an industrial court and a Labour Appeal Court.

On the other hand, all South Africans have an interest in considering ways and means of

■ Focusing on objectives, such as job creation and economic growth, to ensure that poverty and crime are combatted.

■ Reducing conflict between management and other employees by creating opportunities to achieve acceptable objectives in the interests of all citizens, such as the unemployed, elderly and sick, whose interests are not represented by mainly large employer bodies and trade unions.

■ Ensuring that the services of acceptable mediators are engaged at the earliest possible stage of any conflict, more particularly in wage and "other interest" disputes.

■ Limiting the situations in which judges and officials of any labour court will interfere with the legitimate rights of trade unions, employers, management and other employees.

■ Creating an environment in which the legitimate interests of employers and management are balanced against those of other employees.



## Protests on today despite more talks

(166) (22) Gray 19/6/95

■ BY THABO LESHILO

With only 11 days left before the June 30 deadline for labour and business to heal their rift, the parties remain so fundamentally divided it is highly unlikely that the deadlock will be broken in time.

And, given the growing determination by Business South Africa (BSA) to resist any pressure from organised labour on the matter, today's nationwide strike and marches by Cosatu, Nactu and Fedsal seem unlikely to move the process forward.

The organisers said the protests expected to be the biggest in years and could take place in at least 27 towns around South Africa despite further talks scheduled for today in the National Economic Development and Labour Council (Nedlac) negotiating committee.

Sacob has advised employers not to pay employees who stay away from work to join the protests.

Speaking on his return from the International Labour Organisation conference at the weekend, Sam Shilowa, Cosatu secretary general, criticised the business community for "stalling the process" of establishing a new industrial relations system.

Shilowa repeated previous warnings by the trade union federations that the Government and Parliament would have to pass the law this year to advance workers' rights regardless of the deadlock.

Marches planned for 27 towns

# Showdown as unions protest

(166) (5)

19/6/95

## ■ STAFF REPORTERS

Johannesburg workers turned out in full force early this morning, although traffic and transport problems were expected later today when thousands of workers join the midday protest in the city centre

Labour is staging rallies and marches in 27 cities and towns today, to pressure business into accepting its demands regarding the Labour Relations Bill

Their action is seen as a crucial event in terms of the six-week-old tripartite negotiations on the proposed law

Business organisations are standing firm on their positions and are highly critical of today's protests. The two sectors have deadlocked on clauses in the draft Act related to centralised bargaining, the full right to strike, and the new workplace forums

Only 33% of conductors on Wits Metro Rail Services reported for work today, but trains operating from Soweto were full, a spokesman for the services said

Putco reported higher-than-normal loads in Soweto as passengers switched to buses be-

cause of problems on the railway. But passenger loads in Natal were 20% down, mainly in predominantly ANC areas, Brian Treweek, head of Putco industrial relations, said

He had been advised that many employees would leave work at lunchtime to join the protest and they were trying to reach an understanding with drivers to ensure there was no interruption to afternoon services

Witwatersrand police spokesperson Lieutenant Jan Combrink said all was quiet, but that traffic and transport problems were expected later this afternoon

Sapa reports that police will use helicopters and patrol car to monitor the march

Additional police are on standby in case of emergency, but violence is not expected

Protesters in Johannesburg were scheduled to assemble at the Library Gardens from 9am where leaders were to give speeches and read out responses to memoranda handed to the Government and business during marches on June 6

The Pretoria march was due to start in Brown Street at 10am

and proceed to the Union Buildings

SA Chamber of Business spokesman Gerrie Bezuidenhout said yesterday the organisation had recommended that employers adopt the no-work, no-pay principle regarding today's action.

"In our opinion the mass action is inappropriate as the negotiations have not broken down and are continuing in a legitimate forum. This is really a return to tactics suited to the old South Africa," he said.

The marches, coupled with a call for a national half-day strike, are the culmination of the first phase of a campaign to break the deadlock on certain clauses in the draft Act.

The various union federations last week threatened to demonstrate and take action against employers who penalise workers for participating in the mass action

Formal negotiations with Government, labour and business resume tomorrow. Labour Minister Tito Mboweni said last week the Government would present new proposals tomorrow to help break the impasse.

# Unions turn on the heat

(166) *semetan 19/6/95*

**By Abdul Milazi**  
Labour Reporter

SOUTH Africa's labour movement will intensify pressure on employers today with thousands of workers marching countrywide to back trade union demands in national talks

The labour action, which is spearheaded by the Congress of South African Trade Unions (Cosatu), involves marches in 27 centres, with workers taking the half day off

It has been sparked by disagreements between unions and employers over aspects of labour legislation, including the right to strike and centralised bargaining

Ahead of the protests, Cosatu warned at the weekend that it would act strongly against employers who took disciplinary measures against workers taking part in today's national day of action

## Contingency plans

The South African Chamber of Business called on employers to draw up contingency plans to counter today's demonstrations. Sacob spokesman Mr Gerrie Bezuidenhout said although a half-day stoppage was planned, the likelihood was that a full day's work would be lost



**Cosatu's general secretary**  
**Mr Sam Shilowa**

Cosatu general-secretary Mr Sam Shilowa, addressing a weekend Press conference on his return from an International Labour Organisation conference in Geneva, said companies that carried out last week's threats by business to take disciplinary action against workers who stayed away would be blacklisted

Other types of action, including consumer boycotts, still had to be discussed by Cosatu's national executive committee, said Shilowa

Marches have been planned to begin at 10am until noon in all major centres and provinces

In Gauteng an open-air meeting to report back on the demands tabled by major union federations — Cosatu, National Council of Trade Unions and the Federation of South African Labour — on June 6 will be held at the Library Gardens in Johannesburg at 9am. Workers will also march in Pretoria

In the Northern Province, similar protest action will take place in Pietersburg and Rustenburg

Marches will also be held in Klerksdorp, Vereeniging, Carltonville, as well as in Nelspruit, Witbank, Middelburg and Leandra in the Eastern Transvaal

In the Northern Cape marches have been planned for Kimberley, Taung and Kuruman, while in the Free State they will take place in Kroonstad, Welkom, Bloemfontein, QwaQwa, and Bethlehem

## Western Cape marches

The main march in the Western Cape will be in Cape Town, while four others will take place in Port Elizabeth, East London, Butterworth and King William's Town

Shilowa said it was irresponsible of business to dare Cosatu to continue its mass action for the next six months, and called on business to retract the statement

# Workers heed call to protest against business

Renee Grawitzky  
and Edward West

BUSINESS reported a work stayaway from noon to 3pm yesterday — ranging from 50% to 100% absenteeism in different places — as workers heeded a call from unions to protest against business's stance in negotiations on new labour legislation.

A snap survey of the main industries showed that large numbers of workers reported for work but left to attend marches and rallies in various regions. Gauteng and Eastern Cape appeared to be hardest hit.

Cosatu said close to 500 000 workers took part in marches and rallies. Many had stayed at home because of misleading reports that the day was to be a stayaway, the union federation said.

Sacob said the half-day strike was substantial although it was difficult to quantify how many people were involved.

Labour consultants Andrew Levy & Associates director Brian Allen said it appeared the action was widespread.

Volkswagen SA spokesman Raymond Hartle said there had been no work at his factory during the afternoon, resulting in lost production of 170 vehicles.

Anglo American Corporation reported no disruption during working hours.

Although a large number of retail outlets were affected in the main centres, trading continued.

In Cape Town Trade and Industry Minister Trevor Manuel said government intended ensuring that the new Labour Relations Act was passed before Parliament closed on September 15.

On behalf of Labour Minister Tito Mboweni, Manuel accepted a memorandum and spoke to about 5 000 Cosatu and National Council of Trade Unions (Nactu) members who had been demonstrating outside Parliament.

AD 20/1/95 Continued on Page 2

## Workers

Continued from Page 1

Cosatu president John Gomo, saying employers were delaying the passing of the Act until next year, demanded that it be passed during the current session of Parliament. Big business was using small business to avoid the issue of centralised bargaining, he said.

Threatening further mass action, Nactu regional co-ordinator Peter Roman said that while labour had to honour its agreement to negotiate, "if our demands are not met by June 30, it will be something else".

Business SA spokesman Adrian du Plessis said negotiations on the Act would continue this week.

Cosatu said, "The massive turnout of workers in support of labour's negotiating position at the National Economic, Development and Labour Council should make employers realise workers will not be intimidated by bellicose threats. David Brink of Business SA must hope workers do not decide to take him up on his irresponsible

challenge of a six-month strike."

Cosatu and alliance leaders warned government that it had to side with workers if it wanted to stay in power.

Cosatu general secretary Sam Shllowa warned government not to stand in the way of organised labour, while Gauteng premier Tokoyo Sexwale called on employers to refrain from making inflammatory statements.

At a Johannesburg rally, SA National Civic Organisation national president Mlungisi Hlongwani said the action was a message to people in Parliament that "we elected you, you taught us how to fight and through your teachings we are demanding certain rights".

National Union of Metalworkers of SA general secretary Enoch Godongwana said if employers were allowed to dictate labour legislation, the "future of trade unions and worker rights will be bleak".

● Picture: Page 3  
● Comment: Page 14

# Liebenberg raps business, labour

*Dispute over draft Labour Relations Bill 'threat to investment'*

ARC 20/6/95

(166) (195)

**ALIDE DASNOIS, Business Editor**

FOREIGN investors could be scared away by a confrontation between business and labour over the Labour Relations Bill, Minister of Finance Chris Liebenberg has warned.

At a media briefing in Cape Town today he rapped both business and labour over the knuckles for their dispute over the bill

From where I'm sitting, both are wrong," the minister said

South Africa needed an investor-friendly atmosphere to attract foreign funds, but investors were worried about the stability of the relations between business and labour, Mr Liebenberg said

"I'm concerned that we're sending the wrong signals"

But he praised the unions for holding wage demands down to the inflation rate

In general, he said, the days of "irresponsible" strikes and wage demands were over — "the political venom has gone"

Recent wage settlements had all been around the inflation rate

On the question of foreign investment, the minister said May 10 last year — the date of inauguration of President Mandela — had been a decisive date

Outflows of capital from South Africa had been reversed and capital was now flowing into the country. Initially this was short-term money, but now medium-term funds were coming in

"And if we continue with political and economic stability, it'll soon be long-term money"

Mr Liebenberg said direct investment in factories, which would create jobs, could not happen overnight

"Just because we've become a democracy, we can't expect people to close down a factory in Budapest and build one in Cape Town"

He was confident the economy was growing well and the government would be able to meet its targets for reducing the budget deficit

Capital and aid were flowing in and money from the reconstruction and development programme (RDP) would find its way back into the economy

The secondary tax on companies (STC), introduced two years ago, would "hopefully" be dismantled in next year's budget as it was an obstacle to investment

South Africa's basic company tax rate was investor-friendly, but STC took the company tax rate up to over 40 percent

But the tax netted R1,5 billion a year. This would be hard to scrap entirely

On the issue of tax collection, Mr Liebenberg said a major restructuring of the Department of Inland Revenue was on the cards, with the collaboration of the accounting profession

Another "wrong message" SA was sending to the outside world was on white collar crime

"I'm concerned that white collar crime is seen to be let off more lightly than other criminal offences," he said

● Olympic bid up and running, page 5.

# Low turnout for city march

CT 20/6/95

(166) (152) (153)

## STAFF REPORTERS

LESS than a third of an expected 30 000 workers took to the city streets yesterday to protest against the controversial Labour Relations Act, which they say "favours the bosses who still want to live in the old South Africa"

Cosatu, with the National Council of Trade Unions and the Federation of South African Labour Unions, organised the strike to press business leaders to make concessions

A memorandum handed to Minister of Trade and Industry Mr Trevor Manuel said

business had refused legally to entrench centralised bargaining, an unconditional right to strike, a ban on employers hiring scab labour and protection for majority unions

The unions have vowed to keep up mass action until all the demands are met, Cosatu President Mr John Gomomo said.

● The Cape Chamber of Commerce and Industry said many industries had functioned normally yesterday

Only the building industry, which reported a complete stayaway, was badly affected

● See Page 5.

# Nedlac meeting seeks new plan for negotiations

BY PATRICK LEEMAN

(166) (32)

SPECIAL WRITER

CT(BR)20/6/95  
Some "interesting proposals" would come up in the next few days which could accommodate the interests of employers in the wake of the impasse over the draft labour relations bill, said Jayendra Naidoo, the executive director of the National Economic Development and Labour Council.

Referring to tomorrow's "bosberaad", which will probably be held in Cape Town in an attempt to resolve the deadlock, Naidoo said he did not believe the meeting itself would be a "breakthrough".

"This is one of the meetings we have been holding in an informal mode," he said. "If it doesn't go far enough, we will have another one."

"We will continue to bang our heads on this matter until we have a solution."

Naidoo said the test of the proposals would be whether they could be structured to make economic sense for employers. The unions would also have to agree with the proposals.

He said each delegation could send up to 10 representatives to the bosberaad.

Naidoo said the reaction of business to the stayaway had been more measured than its previous signals. Originally some employer bodies had said they wanted to pull out of the negotiation process.

# Employers weigh strike responses

BY THABO LESHILO

STAFF WRITER

As the rolling mass action resulting from the stand-off in Nedlac over the labour relations bill intensified, companies hurriedly sought guidance yesterday on whether they should deal harshly with employees who went on strike

Deon Nel, a partner at the leading law firm, Webber Wentzel Bowers, warned yesterday that some companies could eventually consider suing the trade unions for lost production resulting from the ongoing protests

He said that employers were entitled to dismiss employees for abandoning work to join the protests

Workers who withdrew their labour to join the strike were "blatantly in breach of contract"

Nel said "We gave employers a whole list of their rights and advised them that they could either adopt the no-work no-pay principle or take disciplinary action"

Steuart Pennington, managing partners at SPA Consultants, said his firm had been telling its clients that the voluntarist stance taken by Business South Africa (BSA) on centralised bargaining was the right one.

Said Pennington: "Cosatu's position is a confused one. Employers must resolve the matter with their workers as they see fit,

CT(BR)20/6/95  
which is the characteristic of the voluntarist system"

Brian Allen, a consultant at Andrew Levy and Associates, said the company advised against disciplining workers, given the sensitivity of the struggle in Nedlac

"Taking disciplinary action might be unwise at this stage. It is really a national issue and to start exercising discipline at plant level would be unwise," said Allen

Sacob said yesterday's mass action was relatively peaceful, with only isolated instances of intimidation being reported. Spokesman Gerne Bezuidenhout said "numbers of workers" took part in the strike after reporting for work in the morning and then taking the afternoon off. "Unfortunately, in the case of some companies, union members did not report for work at all, while in certain other cases companies closed down completely for the day"

He said most businesses had implemented contingency plans and had thus minimised the impact of the strike

Sacob emphasised that mass action could not be reconciled with the search for negotiated solutions to the key questions surrounding the labour relations bill

Said Bezuidenhout: "A new labour relations system must emerge out of meaningful compromise and reasoned debate in Nedlac — not from mass action"



**WORKERS UNITE** Union members staged demonstrations and marches across the country yesterday to pressure business into accepting concessions on the labour relations bill

PHOTO THEMBA MADEBE



**L**abour, business and Government finally reached agreement last week on contentious clauses of the draft Labour Relations Act. Labour Reporter **Justice Malala** reports on the parties' gains and losses.

# What does SA gain with new labour Bill?

Star 19/7/95

(166)

**A**mid the cigarette butts, empty water jugs and masses of scrawled notes that lay in the Carlton Hotel ballroom after the last, 15-hour lap of negotiations on new labour laws last Thursday was a scrawled message that characterised the nature of the talks over the past two months.

It is being turned down but it'll take 10-15 minutes before you notice it, the message said.

After bruising negotiations in the National Economic, Development and Labour Council since the beginning of May, the parties have agreed that they have struck a deal which will be beneficial to the country and to their constituencies.

But at the end of the day the question will be asked whose proposals were turned down, as the scrawled message put it.

Did labour register the victories they embarked on mass action for?

Has business managed to entrench the voluntarist perspective it brought to the negotiations?

The one party which has clearly come out tops is the Government, represented by Labour Minister Tito Mboweni. Besides the fact that the Bill is central to his bid to put in place an investor-friendly and stable labour market, on Monday the parties reached agreement on what is referred to as his baby, the workplace forums.

They agreed that a representative trade union, or more unions in a workplace acting jointly, may apply to the new Council for Conciliation, Mediation and Arbitration for a workplace forum to be put in place.

This agreement, which is supported by both parties ushers in a new era for co-operation between employers and workers.

The one main issue which the three parties are still not agreed on and which Parliament might have to make a final ruling on is



**Looking good** Transport workers demonstrated in Johannesburg last week but labour leaders believe that with the agreements on the draft Labour Bill, strikes will be thing of the past. PICTURE THEMBA HADEBE

that of the employers right to hire temporary replacement or scab labour when they feel their business is in danger of collapse during a strike. Labour, by contrast, wants the hiring of scabs restricted by law.

But, generally, both parties came to the negotiating table with proposals which they both knew would be watered down until agreement was reached. On the major issues, here is how they fared.

**Centralised bargaining** Initially, business indicated that it supported centralised bargaining in principle but was opposed to labour's demand for a duty to bargain centrally to be made compulsory.

Labour was, on the other hand, adamant that the Bill should require employers to bargain with trade unions on all matters at a central level, with national bargaining councils set up in all industries.

The agreement that was reached after Mboweni's inter-

vention ensures that if trade unions organise enough workers they can initiate for the formation of a centralised bargaining forum.

The agreement proposes that where there is no such forum in existence, a trade union or employer association with at least a 30-strong membership can initiate the formation of one.

The forum will be responsible for the establishment and administration of social welfare funds, the promotion and establishment of training and education schemes and dispute-resolution functions.

Most importantly, the forum may agree to negotiate wages and conditions of employment, development of industrial policy for the concerned industry and may amend its constitution.

The new deal is a victory for employers in that it does not enforce the formation of bargaining councils. But it is also a victory for labour because for them to ensure that councils are set up in

an industry, they have to organise sufficient workers for their objective to materialise.

**The closed shop** Labour wanted the closed shop - an agreement between an employer and a trade union that the union will be the sole representative of workers in that workplace and that a constant review of the agreement be held by holding secret ballots among workers, testing their agreement with the obtaining position.

But to limit the power of the union in terms of this agreement, unions will have to command 66% support of all workers to have this agreement put in place. If at any time 33% of the workers require a ballot to test the validity of the agreement, then one should be held.

This agreement will shift the balance of forces in workplaces where in the past mainly white unions have had closed shop agreements with employers to the unions which can now do the most organising. The labour

movement, particularly Cosatu affiliates, will gain power with this new dispensation as they command majority membership in most workplaces.

**Workplace Forums** Business held that it should not be the sole right of a representative trade union to apply for the establishment of a workplace forum, but that those rights should be extended to all employees or the employer.

This issue marked a significant victory for labour, in the sense that at the end the parties agreed that the workplace forum must be set up by initiation of the trade union.

Although most of the issues it could handle will be confined to wage bargaining forums, the forums will have wide-ranging powers to handle matters of co-operation between the parties such as retrenchments and restructuring.

**Disclosure of Information** Business' main concern with union access to confidential information was that it would not be able to ensure that this information did not reach other parties.

The Bill will now provide that where the employer feels that he should not provide confidential information, the Commission for Conciliation, Mediation and Arbitration (CCMA) shall determine whether the employers' reservations are valid and will give a ruling.

The CCMA will take into consideration the union's past record in terms of confidentiality, and may impose a sanction for proven breaches of confidentiality. This marks a victory for employers, who will have the protection of information they consider vital for competition.

At the end of the day, the parties agree that the process has seen a lot of giving and taking and hopefully the winner is South Africa, which will have more coherent, labour legislation.

# Deadlocked

# labour talks

# restarted

(166) # Stan 4/7/95

## ■ LABOUR REPORTER

Deadlocked talks between labour, business and government on the draft Labour Relations Act are back on track.

It is expected that the proposed law will be passed by Parliament this year, negotiators said yesterday.

## Progress

After a meeting to consider Labour Minister Tito Mboweni's proposals to break the deadlock, the parties said substantial progress had been made.

Mboweni said three task groups to discuss differences between the parties on the new laws had been formed.

The task groups would hold meetings over three days starting tomorrow, and they would then present their reports to a committee consisting of Mboweni, labour leader Sam Shilowa and Business SA's Bobby Godsell for fine-tuning.

# No delay in labour Bill, says Tito

(166)  
By ESTHER WAUGH  
POLITICAL CORRESPONDENT

The Government, labour and business reached agreement on the draft Labour Relations Bill this week — but the public sector has yet to make its recommendations on it.

Labour Minister Tito Mboweni said he did not foresee the public sector's recommendations delaying the Bill. He was expecting a report from Public Service Administration Minister Dr Zola Skweyiya on negotiations in the public sector bargaining chamber.

Sources close to the negotiations said agreement had been reached on "most of the issues" dealt with in the Bill.

It was understood that the public sector had reaffirmed its current position on centralised bargaining, which was that it took place within the bargaining chamber.

However, the view has been expressed that the bargaining chamber should be restructured to deal with public servants in different sectors. It has yet to be decided whether the police service will take part in the bargaining chamber.

Sources said there was agreement that the State, as an employer, would have the right to lock out workers, while workers would have the right to strike. The chamber agreed that workplace forums should be open to all workers, and should not be union-based.

STW 3/7/95 (166)

## Fresh talks on labour

Government, business and labour leaders resumed talks to break the deadlock in negotiations on the draft Labour Relations Act yesterday, confident that progress ensuring the passage of the Act through Parliament this year would be made.

Both organised business and labour federations have been studying Labour Minister Tito Mboweni's deadlock-breaking proposals presented to them two weeks ago.

Although neither party has made any formal responses, Mboweni said last week there were indications they were moving to a solution on the centralised bargaining issue.

The parties were expected to table responses to Mboweni's new proposals on centralised bargaining, closed shop agreements and workplace forums at the bosberaad at a secret Gauteng venue. — Labour Reporter.

# Confidence grows for business, labour deal

By ESTHER WAUGH  
POLITICAL CORRESPONDENT

Negotiations on the controversial Labour Relations Bill remained on track after talks yesterday, Government, labour and business said yesterday.

Three working groups, set up a week ago, reported to Labour Minister Tito Mboweni, Cosatu general secretary Sam Shilowa, and Business South Africa's

Bobby Godsell at a meeting in Johannesburg

The meeting also discussed further outstanding issues on which Mboweni would submit proposals at a "bosberaad" on Monday.

The Government - in a first for South African law-making - referred the draft legislation to the National Economic, Development and Labour Council (Nedlac) in the hope that con-

sensus would be achieved among Government, business and labour

However, talks deadlocked last month on the issues of centralised bargaining, lock-outs by employers, organisational rights and workplace forums.

Mboweni proposed deadlock-breaking measures to business and labour on June 21 during a 12-hour meeting. Since then sev-

eral rounds of negotiations took place, leading to the establishment of the three working groups last week in an attempt to nail down agreement on the draft legislation.

Nedlac said in a statement last night that yesterday's meeting confirmed the negotiating process was on track.

The parties reiterated their commitment to seeking agreement on the Bill "within the agreed time-limits"

(166) Star 8/7/95

# RA! EXTRA!

# Strike LRA deal 'now' to aid investment - call

(172)(166) SAN S/7/95

■ BY THABO LESHILO

Businessman Dr Nthato Motlana yesterday made an impassioned plea to all parties at Nedlac to immediately strike a deal on the disputed labour relations bill in order to encourage foreign investment.

Said Motlana: "Unless labour, Government and the corporate sector can come up with some agreement that would give investors assurance, we have a big problem."

Motlana was speaking to local and international visitors at the 'Rebuild South Africa' conference held at the World Trade Centre in Kempton Park.

Dennis Fulton, from the Department of Trade and Industry, said the country was well on the way to normal economic conditions after a lengthy "anti-competitive and



**Explaining ... a translator with Russian delegates at the conference.**

PICTURE: JOHN WOODROOF

anti-export" era during apartheid. He said South Africa's return to the global economy hugely increased demand for local goods and services, which was previously restricted to the small white population.

Opening the conference, earlier, Minister of Provincial Affairs and Constitutional

Development Roelf Meyer said South Africa would have to meet its people's expectations in order to safeguard its new democracy.

The conference comprises a tourism forum and a small and medium enterprise development section.

It ends on Friday.

# Draft Labour Bill can become law

(166) (102) SOWETAN 18/7/95

**Sowetan Correspondent**

**R**EPRESENTATIVES OF business, labour and government have agreed that the draft Labour Relations Bill should be made into law in spite of remaining differences on three critical issues

The National Economic, Development and Labour Council's (Nedlac) executive council agreed yesterday to recommend to Cabinet that the draft Bill be adopted subject to revisions on the contentious issues

The Bill will now be submitted to Cabinet on July 22 before going to Parliament

The parties are still deadlocked on

**Nedlac agrees to submit labour Bill to Cabinet despite outstanding issues**

employers' right to use temporary replacement or scab labour during lock-outs and the notice period when it comes to using such labour, the tightening of the Bill's provisions regarding picketing, and the agenda and dissolution of workplace forums

Congress of SA Trade Unions general-secretary Mr Sam Shilowa, speaking on behalf of labour, said the fact that there were still reservations on all sides on the three issues did not mean that there was opposition to the clauses in the

Bill as agreed upon

"There have been far more agreements than disagreements and the Bill, as a package, meets the criteria that we set ourselves at the beginning of this process," he said

Yesterday's meeting, attended by Labour Minister Tito Mboweni, brings to an end the Bill's passage through Nedlac, which was supposed to ensure that there was agreement on it before it was put before Cabinet and Parliament

# Deadlocked talks to be resumed

Business and labour groups may be moving towards solution *Sowetan*

## Sowetan Correspondent

**G**OVERNMENT, business and labour leaders yesterday resumed talks to break the deadlock in negotiations on the draft Labour Relations Act, confident that progress that would ensure the passing of the Act through Parliament this year would be made

Both organised business and labour federations have been studying Labour Minister Tito Mboweni's deadlock-breaking proposals presented to them two weeks ago

Although both parties have made no formal response, Mboweni said last week that indications were that they were moving to a solution on the centralised bargaining issue

The parties will table responses to Mboweni's new proposals on centralised bargaining, closed shop agreements and workplace forums at a *bosberaad* to be held at secret Gauteng venue. The gathering will also consider further proposals by Mboweni on the thorny issue of the replacement of striking workers by temporary workers

"A solution to this is clearly very important in order to ensure stability

and peace during lawful strikes," Mboweni

National Economic, Development and Labour Council spokesman Mr Lomun Saayman said the meetings are scheduled to end today, but the parties have been requested to keep tomorrow free in case further talks are necessary

Mboweni also revealed that the Cabinet had approved a new set of dates for the Act to be negotiated by the three parties

He said despite the passing of the June 30 deadline originally set by the three players for the ending of negotiations, "the parties have shown their commitment to negotiations and we are therefore still on track for this year's legislative programme"

He said the draft Act would be presented to a special Cabinet meeting on July 26, and the final draft would be considered by the Cabinet on August 2 for final approval

After further debate and hearings by the National Assembly and Senate select committees on Labour the Act will be presented to Parliament for adoption on August 18

Labour embarked on mass action last month to force business to accede to its demands on the Act, but so far business has not budged

*(166)*

*3/7/95*



# 'Toys' help seal labour's new deal

ST 16/7/95  
(166)

By CAROL PATON

FIFTEEN minutes before signing the new deal on labour relations, the labour contingent broke into a hurried caucus. Anxiously drawing on cigarettes, they huddled around the tall figure of Cosatu boss Sam Shilowa before rushing back into the Carlton hotel ballroom.

With only minutes to go before tying up an agreement on all but three points of the new Labour Relations Bill, there were still things that could be said only in whispers.

Later, at a hastily convened news conference to announce the deal, unionists, bosses and government officials alike were still reluctant to talk, afraid that anything they said would spark another debate.

Their last-minute deliberations, in the National Economic Development and Labour Council (Nedlac), had been shunted off into a partitioned section of the ballroom after the delegation had overstayed its welcome by two days.

At 6am on the second day, weary hotel staff, kept up all night by orders for coffee, eventually persuaded the diehards — business's Bobby Godsell, Mr Shilowa and Labour Minister Tito Mboweni among them — to leave.

A makeshift conference table was set up in the middle of the ballroom and talks resumed a few hours later under the light of the giant chandeliers.

After 30 hours of talks in three days Mr Shilowa, Mr Godsell, Nedlac executive director Jayendra Naidoo, Mr Mboweni and exhausted members of their negotiating teams faced the media red-eyed. They issued a brief statement. "The talks were short on detail, but great on humour," Mr Godsell told reporters.

But by the time the news conference was convened, Mr Godsell no longer cared about the quality of the humour. He seemed to have lost the ability to discriminate, and laughed through most of the proceedings.

Mr Godsell's bantering also provided light relief

during negotiations. After a particularly long government caucus during which business and labour were kept waiting, Mr Godsell took out his cellular phone, dialled Mr Shilowa — who was sitting across the table from him — and tried to cut a deal, while Nactu president Cunningham Ngcukana bargained with Raymond Parsons.

On returning, the government team was surprised to find the room filled with talk and laughter. "The boys had taken out their toys," said government spokesman Shireen Singh.

But if there had been an award for stamina, it would have gone to labour's key negotiator, Ebrahim Patel. "He can carry on and on

and on and on . . ." said Nedlac's Lomin Saaijan.

"It was tough," said Mr Mboweni, who said he had managed only three hours sleep in three days. "You lose concentration for a minute and you're in trouble, then people want to go outside and smoke, others get difficult . . ."

The minister also had other problems. He had run out of fresh shirts, and had resorted to buying new ones.

But, although the Bill took more than 15 days of meetings to negotiate, it still cannot be described as a deal struck by exhaustion.

Even after two sleepless nights, there was still time to refer the stickiest issues to another committee.



SLEEPLESS NIGHTS . . . Cosatu's Sam Shilowa, Labour Minister Tito Mboweni and business's Bobby Godsell

Picture: RAYMOND PRESTON

# Mboweni hailed as 'the star of the show' as Labour Bill gets on track

By CAROL PATON

LABOUR Minister Tito Mboweni emerged from marathon negotiations on the ground-breaking Labour Relations Bill this week to all-round acclaim.

Proposals presented by Mr Mboweni last month on core contentious issues — such as centralised bargaining, the closed shop and trade union rights — were decisive in brokering the deal.

Industrial relations analyst Andrew Levy described Mr Mboweni as "the star of the show" and praised his skill in guiding the Bill.

Business, labour and government negotiators this week said the Bill would promote stable labour relations.

"Everybody won," said Mr Mboweni. "People have had to shift from their original positions and arrive at new positions that could provide an agreement."

Dr Duncan Innes of the Innes Labour Brief said that the establishment of workplace forums and centralised bargaining represented "gains for labour, but not absolute victories".

A more participative style of management brought about by the forums would especially benefit strong unions, which could be expected to make their demands felt, said Mr Levy.

One of the most significant features of the Bill would be a greater use of arbitration, he said. Parties are obliged to use the Commission for Conciliation, Mediation and Arbitration before embarking on industrial action.

Key features of the bill are:

● Centralised bargaining.

There will be no compulsory centralised bargaining over wages, as labour had demanded, but where no industrial council exists, unions or employer associations can apply for a statutory council to be established.

These councils will administer pension schemes and other benefits for workers and industry-wide education and training. By mutual agreement, the councils can bargain over wages and industrial policy.

● Closed shops

Union demands to allow the establishment of closed shops have been included in the Bill but these must be set up by agreement and not compulsion. Workers will not be forced to join closed-shop unions but will have to pay for the services they provide.

● Strike ballots

It will be compulsory for unions to ballot before a strike, in accordance with their own rules set out in their union constitution. This is a point that business argued strongly for.

● Disclosure of information

Employers will be obliged to disclose all relevant information to

workers. Where parties cannot agree, the commission will determine which information must be disclosed.

● Organisational rights:

Unions will be entitled to a broad range of rights, including time off for union activities.

● Socio-economic strikes.

Workers will have the right to take industrial action on socio-economic issues, but these will be subject to certain conditions and procedures.

Core issues that are still to be resolved include:

● Workplace forums

Forums, inclusive of all workers, will be established where employers will be obliged to inform, consult or take joint decisions with workers. Inclusive forums represent a loss to labour as the forums may, in some cases, threaten the power of unions. However, the forums will give workers a greater say in workplace decision-making.

● Scab labour

This is one of the stickiest issues in the negotiations and must still be resolved. Indications are that scab labour will not be banned by law, but an attempt will be made to put in place mechanisms to restrain its use, for example through picketing rules.

The outstanding issues are expected to be dealt with by tomorrow, when the executive council of Nedlac meets.

ST 16/7/95 (166)

# Mboweni gets labour reforms flying again

(166)  
ST(P) 16/7/95

**TRIUMPHANT** Labour Minister Tito Mboweni has forged a deal between business and labour, setting the scene for a new era of labour relations in South Africa.

The deal shows tripartite negotiations can produce results so long as the parties are given strict deadlines and government provides the necessary leadership.

"Government's role took business and labour by surprise. They're used from the National Economic Forum days to a lame duck government," one government negotiator says

Mr Mboweni said in an interview on Friday that, "left to themselves, business and labour could have discussed the draft Labour Relations Bill forever"

He sat through 30 hours of negotiations this week, including a 15-hour session which ended at 6am on Wednesday.

The government's intervention during the past three weeks got the process back on track, meeting this week's deadline to conclude negotiations in time to get Cabinet approval this month before the draft law goes to Parliament later in the year

Mr Mboweni says he is "pro-labour", but "that doesn't mean that I endorse every demand of the union movement"

"Labour also knows that we are not business bashing. We want better wages but also want to improve

By **KEVIN DAVIE**

competitiveness"

He stresses that if consensus is not reached on the relatively minor outstanding issues, these will nonetheless be covered by the new Act in terms of recommendations he will make to the Cabinet

A remaining contentious issue is the sympathy strike. Labour supports the right to sympathy strikes, business is opposed.

Business is understood to have proposed that these strikes can only be extended to employers directly involved in the dispute

Both parties had sufficient time from February, when the draft Labour Relations Bill was tabled, to develop their positions

Mr Mboweni was guided by international labour practice in his interventions, but "this is something unique" in SA

Agreements struck this week fall short of union demands for compulsory centralised bargaining

Statutory forums will be set up for industries not covered by voluntary centralised bargaining, but there will be no compulsion to negotiate wages

Workplace forums can be set up at the union's request, but all workers rather than just union officials can participate.

The issues to be discussed by the forums will be by agreement.

Closed shops will be permitted, but will be set up

by agreement rather than by legal compulsion

Cosatu wanted exemptions from bargaining council agreements to be decided by the councils, but an independent body will rather decide exemptions.

Halton Cheadle, principal author of the Bill, is re-drafting the Bill to include the agreed changes.

Professor Cheadle says the "quite substantial" changes improve the Bill while not altering its spirit.

The new statutory councils will manage pension schemes and other benefits for workers. Workers who remain employed in the same industry will be able to transfer their pensions

"This will help relieve the burden on the fiscus to provide social pensions," says Professor Cheadle

The statutory councils offer the potential for improving skills

While individual employers may be reluctant to train workers who may leave to work for opposition firms, training schemes at industry level should increase the skills base without hurting individual employers.

Mr Mboweni says the negotiations have improved the legitimacy of the proposed law "This gives it a better start when we begin to implement it."

Cosatu's Sam Shilowa called the agreement "a quantum leap for workers" while Business South Africa's Bobby Godsell said "it strikes the right balance between growth and equity"

# Hard labour bears a new era

WIN 21-27/7/95

(166)

The process leading to the acceptance of the new Labour Relations Bill is more important than the outcome, argues **Andrew Levy**

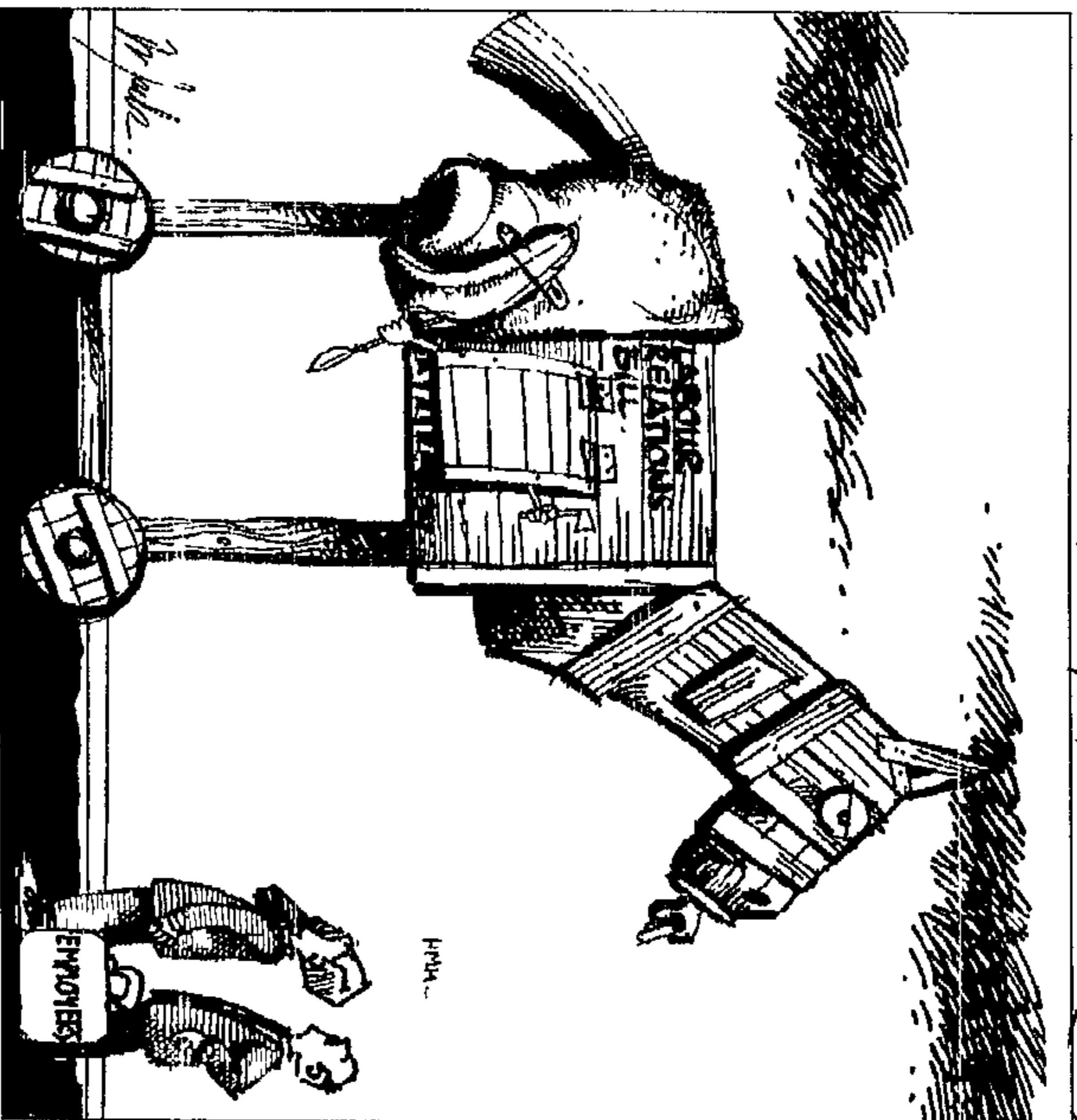
**I**n terms of a long-running show, with episodes regularly ending with the parties close to the edge of the cliff the negotiations over the draft Labour Relations Bill seem to have (for the time being at least) come to the end of their run. *Ego!* can breathe freely again.

The outcome, certainly in terms of content, probably holds few surprises — the range of possible settlement was really quite limited. There seemed, on any rational analysis, little or no chance that the unions would obtain compulsory centralised bargaining or that employers would be able to avoid the certainty of workplace forums in some form or other.

Although there are many details yet to be worked out, or communicated, and undoubtedly a few more slips 'twixt the cup and the lip, the most important comment that I can make, is that the process itself seems to have been infinitely more important and a greater triumph for all parties, than the outcome.

On the ground, as we are wont to say these days change will probably be slow and evolutionary rather than a radical revolution in the way that we do our labour relating. It will be at least two years before we see the new system coming into its own, and whether this will usher in a messianic era of industrial peace has yet to be seen. I, for one, have short-term doubts. However, the parties have learned a lot about each other in the process and this bodes well for the future.

Star of the show, it seems to me, is Labour Minister Tito Mboweni, who managed the process of consensus-building in a particularly slick way. While making it quite clear that the Bill would go through, he managed to bring the parties together, without alienating, at least as far as the public is aware, either of them. My guess is, however, that he would have had to do a fair amount of headbanging behind the scenes. The fact that there has been no public rift in the alliance is testimony to his political agility.



Much of the Bill is technical, and much of it is sophisticated and competent. In revising the manner in which we handle our disputes, Halton Cheadle has done much that will bring sanity to a branch of our employment practice that was suffering serious abuse. The real contentious stuff lies in the area of collective relationships. Really here at least in the medium term, will probably fall a little short of Cheadle's vision.

Centralised collective bargaining of wages would have been an unmitigated economic disaster at this stage of our development but, nevertheless, the principle of voluntarism (as understood and applied by strong unions to reluctant employers), is an acceptable democratic solution and, indeed, those issues that

have been set down for centralised debate, such as training, provident funds and the like, are suitable for regulation at this level.

**W**hile there is no doubt solid ground to employer fears that they have been sold nothing other than a Trojan Horse, it seems equally probable that the smallest employers and the informal sector will be excused. Thus as it should be, for it is here that job growth occurs, and jobs, it seems to me, have a greater national importance at this stage than Cosatu's living wage Exemption, should this come about, should not be seen as a charter for wholesale exploitation, for those who are employed in the corporate productive sector of our econ-

omy are, to a large extent, already covered by wage negotiating arrangements at a centralised level — as mining, automotive and metals testify.

Workplace Forums too, in Cheadle's mind, were a bold attempt to catapult us into the industrial relations equivalent of the Age of Aquarius — all peace light and love. Once again, the Mboweni option seems to focus on letting the players sort it out for themselves — a pretty good option for a society that values free, collective bargaining — although there does appear to be a position reserved for unions on these bodies which does not accord with the original drafter's intention.

**O**f course things are not entirely balanced and many blue-blooded employers are still apoplectic about the protection of strikers in certain circumstances. However, given that this right is conferred in our Bill of Rights and, in fact, had been well-established by some 10 years of industrial court decisions, what did they really expect? By the same argument, Sam Shilowa could not, in a lucid moment, have believed that we would have unfettered protection — especially for workers who take the law into their own hands and break every procedural rule in the book. While the detail has yet to be clarified the principles appear sound.

We will undoubtedly find ways of defining areas of information sharing, consultation and participation, and the issue of scab labour but these will all come out in the wash. To me the important issue is still the process.

For the Bill to have been delayed or defeated would have been a major slip in the face for Mboweni, as well as the RDP. Thus has been avoided, despite the threats from die-hards on both sides. Mboweni has his agreement, both parties appear to be reasonably happy/unhappy and are still talking. Nedlac, too, has delivered and while there is still a huge programme of labour reform in the pipeline (undoubtedly with measures of candy and castor-oil for both sides), the way ahead is clear. Thus, for the time being at least, it appears to be a case of all's well that ends well.

Levy is senior partner at labour consultants Andrew Levy and Associates.

# Labour Relations Bill

## deadlock set to break

WM 7-13/7/95

The labour ministry has brokered a compromise on the stalled Labour Relations Bill, report **Eddie Koch** and **Marion Edmonds**

**L**ABOUR Minister Tito Mboweni is set to break the deadlock over the new Labour Relations Bill with a set of compromises that have won broad support from organised labour and also industry on flashpoint issues which have left the parties bitterly divided in recent weeks.

Tripartite talks between the ministry, unions and employers are taking place to reach rapprochement on the ground-breaking proposals, so that the draft law can be submitted to parliament by the middle of the month — and some commentators are predicting a breakthrough as early as the weekend.

After last month's spate of rolling mass action by disgruntled union members, the labour ministry and a team of advisers, headed by Halton Cheadle, moved rapidly to hammer out a set of concessions to both trade unions and employer organisations on key divisive issues in the draft law.

Mboweni held extensive discussions at Cabinet level and with officials from the International Labour Organisation (ILO) over ways of resolving the differences. It appears a broad consensus has already been reached on most of the bill's flashpoint clauses.

Bobby Godsell, chief negotiator for business in talks on the bill, said it was a "little early" to predict a major breakthrough. "But considerable progress has been made in Cape Town and Johannesburg. The proposals which government put on the

table made a real contribution to the progress," he said.

Cosatu general secretary Sam Shilowa was not available for comment.

The Mboweni proposals offer compromises on the key issue of compulsory collective bargaining at industry level. Organised labour has steadfastly demanded that a statutory duty to bargain over wages and conditions of employment be included in the bill, much to the chagrin of employers, and small business in particular.

The new proposals appear to have already defused most of the conflict around other contentious issues. Union demands for a ban on the right of employers to use scab labour during strikes is probably the only major area of conflict that has not been successfully addressed by the ministry's consensus-seeking process.

Issues on the verge of being resolved include union demands for rights to implement closed shops — a system that makes it obligatory for members of a company or industry to join a representative union — and also the heavily debated question of whether companies can lock workers out of the factories as a tactic to ensure compliance with management strategies.

After discussions with officials from the ILO, Mboweni's advisers confirmed that there is no industrial relations system anywhere in the world that imposes a legal duty on all employers in a sector of the economy

to negotiate wages at industrial level — although there is agreement in the Cabinet that the country should have a strengthened system of centralised collective bargaining.

The ministry's new proposals suggest that trade unions or employer associations representing a significant section of the industry and its workforce can apply for an industrial council — or statutory council — to be set up in industries where such bodies do not currently exist. The ministry's job will be to establish such a body by consensus, but can do so even if no agreement is reached.

**T**his "statutory council" will then have the right to resolve major disputes in the industry, promote training and education schemes to enhance productivity, set up social welfare funds, and develop proposals on policy and legislation which may affect the industry.

Importantly, the proposals do not prescribe a duty on these councils to bargain over the critical issue of wages and conditions of employment. Employer associations and unions on the statutory council will be able, by agreement after negotiations, to add wage bargaining to the council's list of duties, thus converting the institution into a fully-fledged industrial bargaining council.

The proposals thus meet the Cabinet's requirement that centralised systems for industrial relations be strengthened, goes a long way to satisfying union demands for statutory industry-wide councils and, at the same time, satisfies concerns expressed by industry that the law should not impose rigid prescriptions on the collective bargaining process

**Renewed thrust**

2011-7/17/95

**Flanked by Business SA's Bobby Godsell, labour's Sam Shilowa and Nedlac's Jayendra Naidoo, ever upbeat Labour Minister Thro Mboweni this week announced "substantial progress" in talks to resolve the outstanding issues in the draft Labour Relations Bill**

All three parties say they are committed to ensuring passage of the contentious Bill this year. The deadlock-breaker appears to be based chiefly on the "compromise" proposal on centralised bargaining tabled by the Minister in Cape Town last week (*Current Affairs* June 30)

The three sides met in a marathon session last Sunday and focused on the responses of business and labour to Mboweni's proposal. "What is now happening," the Minister explained, "is that we are introducing a new system that seeks to quicken the process and ensure that we reach our deadline."

To this end, a "principals committee" has been established, made up of Mboweni, Shilowa and Godsell, with Naidoo in attendance. The committee will oversee the functioning of three new working groups. These will look at a number of issues, process them and report to the principals.

The working groups met and reported to the principals for the first time this week. On July 11, the tripartite delegations will gather in plenary to receive a report from the principals. Three days later, the Nedlac secretariat will make a report available to the members of the executive council of Nedlac, which will again convene on July 17—the new deadline.

The ministerial task team (which, under Halton Cheadle, drafted the labour Bill) has been reconvened to assist in the drafting of technical issues and sections where there is already sufficient agreement.

"What we have achieved, as the three parties here, is that we have managed to identify all the remaining issues that need to be dealt with in negotiations. We have set up the working groups to operate under the principals committee, we have succeeded in ensuring that the momentum for reaching our deadline is maintained and that the strategic initiative for ensuring we have a

new Labour Relations Act this year is maintained," says Mboweni.

The working groups will tackle union-authorised strikes, defensive lock-outs and ballots, outstanding issues on organisational rights, including the deduction of union subscriptions, time off for union

work, information disclosure in workplace forums, and dismissals and information disclosure on options other than retrenchment.

Mboweni says a number of issues are increasingly being referred to the Commission for Conciliation, Mediation & Arbitration. He lists registration issues, constitutional requirements, financial statements, information to the registrar and the question of the private and public sector bargaining councils.

"We want the social partners, in the spirit of social partnership, to deal with these questions in the working groups, making it much easier to resolve remaining issues."

While there were "encouraging responses" to the Minister's proposal on centralised bargaining, "these still need to be



**The principals**

*Godsell, Mboweni, Naidoo and Shilowa*

worked on to reach finalisation, so it would be improper for me to disclose the full range of responses."

Shilowa says that, based on their exchanges, "all parties are confident that, with the sort of political will that exists among ourselves, it is still possible to find one another and ensure that we take the process forward."

Godsell says business found Mboweni's earlier proposals "useful as a way of going forward, but the discussions are not yet concluded and from (the weekend talks) we think we are making progress."

Shilowa added: "I think the country is more interested in what the settlement is going to be, rather than what are the differences now. We are inching forward."

**CURRENT AFFAIRS**

Asked whether he speaks on behalf of business, which appeared to be divided over the Bill, Godsell explained:

"The team, which includes Business SA and Nafcoc, has functioned more cohesively and more unanimously than at any time in 20 years (of organised business activity). We have reported back to our constituency in the form of our board of governors — an elected body — and our board of trustees — an elected body. We have reported back four times in the last four weeks. Business is absolutely unified in our sense of the issues in our sense of the strategy."

Mboweni emphasised "that we should see all of these things within the context of the Nedlac cloak. It is the institution bringing all of us together within the context of building social partnerships and ensuring that Nedlac succeeds."

LABOUR AND BUSINESS

# Devil in the detail

FM 21/7/95

(166)

Despite failure to agree on certain crucial issues — notably replacement labour during employer-initiated lockouts, picketing, and strikes over unfair dismissals — Nedlac “social partners” business, labour and government have given the green light to the draft Labour Relations Bill under consideration since February

As a result, Nedlac’s full executive council resolved this week to recommend that Cabinet adopt the Bill “subject to the necessary revisions and stated reservations of the parties,” promulgate it into law this year, and that the committee of principals (Labour Minister Tito Mboweni, business’ Bobby Godsell and labour’s Sam Shilowa), “remain seized with the matter during the parliamentary process.”

“That is the deal,” Mboweni announced to a somewhat sceptical press corps on Monday night “I think you should congratulate us I must say the executive council clapped hands and was very pleased with our report.”

However, as Sacob’s Raymond Parsons points out, there is still unfinished business on certain provisions to be negotiated before legislation can be finalised. “The road through the parliamentary process will be characterised by further debate, negotiation and lobbying. No doubt we will find, as always, that ‘God is in the principle — but the devil is in the detail.’”

There seemed to be a touch of anxiety on Mboweni’s part regarding the Bill’s passage through parliament, as if to suggest that it could just unravel at some stage

On the issue of replacement labour in lockouts, labour proposed its restriction, government “indicated its willingness to accept such limitation” and business opposed but this “would not detract from its support of the Bill and the agreement as a whole”

It was, however, agreed that an employer would be required to give seven calendar days’ notice of his intention to use replacement labour after a dispute had been referred to the conciliation commission, or bargaining council, or in terms of any collective agreement

Similar notice provisions would apply to sympathy strikes where it was agreed that “a balance had to be struck between the right to engage in a meaningful sympathy strike and its function-

ality” To give effect to such balance, the three parties are to appoint lawyers to find a formula or mechanism within a week.

On the right to strike over unfair dismissals, business felt strongly that where a remedy for unfair dismissal was a drastic invasion of managerial prerogative, there could be no right to strike on the issue. Government’s concern was to reduce the level of strikes and where an effective alternative remedy was provided workers should not have the right to strike. Labour did not support this position

On picketing, it was agreed that a non-statutory code of conduct on the right to picket be drafted by Nedlac and that the conciliation commission play a greater and more proactive role

On workplace forums, it was agreed that the powers and functions include the following additional proposals for consultation: partial or total plant closures; export promotion; product-development plans; mergers and transfers of ownership in so far as they affect labour

Various outstanding matters are listed, including severance pay, retrenchment criteria, dismissal for misconduct and vicarious liability of union officials

Godsell waxes almost lyrical, though conceding that the parties have reservations “I think this Bill will emphatically make labour a full and equal partner in the economy. It’s going to create a situation where we have a legitimate, post-apartheid set of rules and institutions to play by”

Shilowa concedes that the new law will not end all strike action but says it will ensure rights and procedures which will re-

move strikes on “flimsy, made-up issues” and “discourage the need to start from the point of fighting”

Parsons says we must be realistic about what tripartism can achieve and not allow timetables to become more important than substance “Negotiation by fatigue is not conducive to good decision-making”

Nothing wiser than that was said during the entire process

## TRANSNET STRIKE

### Signs of sanity

FM 21/7/95

Though the Transnet strike lasted only a week, and seemed therefore to have been a victory for reason, it need never have happened. The unions were clearly mobilising for industrial action before Transnet had made its final offer.

The demonstration was expensive, especially at container ports where there was already congestion. Sacob’s Peggy Drodskie says it’s impossible to estimate the overall cost of disruption to public transport but the delay for container vessels alone is estimated at US\$1 000/hour/ship. At the peak of the strike, ships were delayed by between 36 and 150 hours. Add to this the short term knock-on effects of late or nondelivery and the long-term effects on SA’s reputation as a reliable exporter and the cost in the sector rises dramatically.

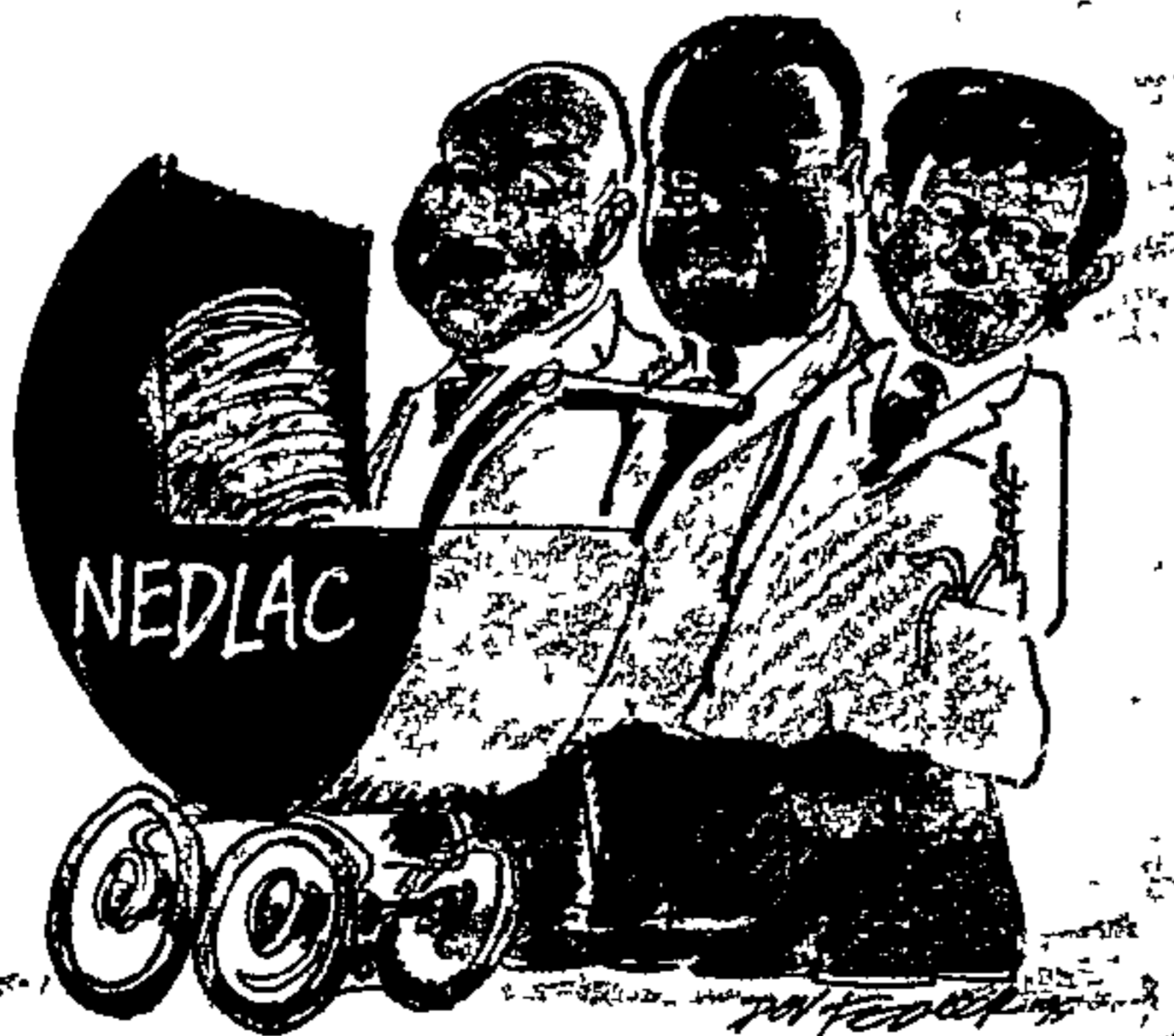
Drodskie stresses, however, that Sacob is delighted that the unions have settled, particularly as the signs were that the strike had the potential to last a lot longer

But, if the strike was a case of using a hammer to crack a nut, the settlement appears to have been reasonable. In terms of the agreement, workers at the lowest end of the scale will receive an increase of about 20% — bringing the minimum to R1 200/month in pensionable income plus R300/month nonpensionable pay. The previous minimum total was R1 227

Workers earning above R16 000/year will get a 10% across-the-board increase plus a sliding nonpensionable allowance of R130/month at the lower end, down to R75/month for higher earners.

There is also an agreement to hold more discussions on pensionable income in August. Basic annual leave increases by four days and a committee is to be established to discuss ways of reducing working hours but increasing productivity

According to Pat Stone of labour rela-



EBRAHIM PATEL

# Toeing the hard line

FM 21/7/95  
(166)

**Labour's convener** in Nedlac, Ebrahim Patel (32), is strictly hardline when it comes to worker rights. Even comrades in government's corner of the tripartite talks on the labour Bill refer to him as the fundamentalist — in the legal sense, that is.

The youthful deputy general secretary of SA Clothing & Textiles Workers' Union (Sactwu) clearly has a naive faith in the ability of the law — provided it's pro-union — to regulate industrial conflict and deliver harmony. And therein, some contend, lies his biggest miscalculation as Cosatu's would-be chief strategist: that an ANC government would simply kowtow to union demands and ignore business anxieties in framing a new Labour Relations Act.

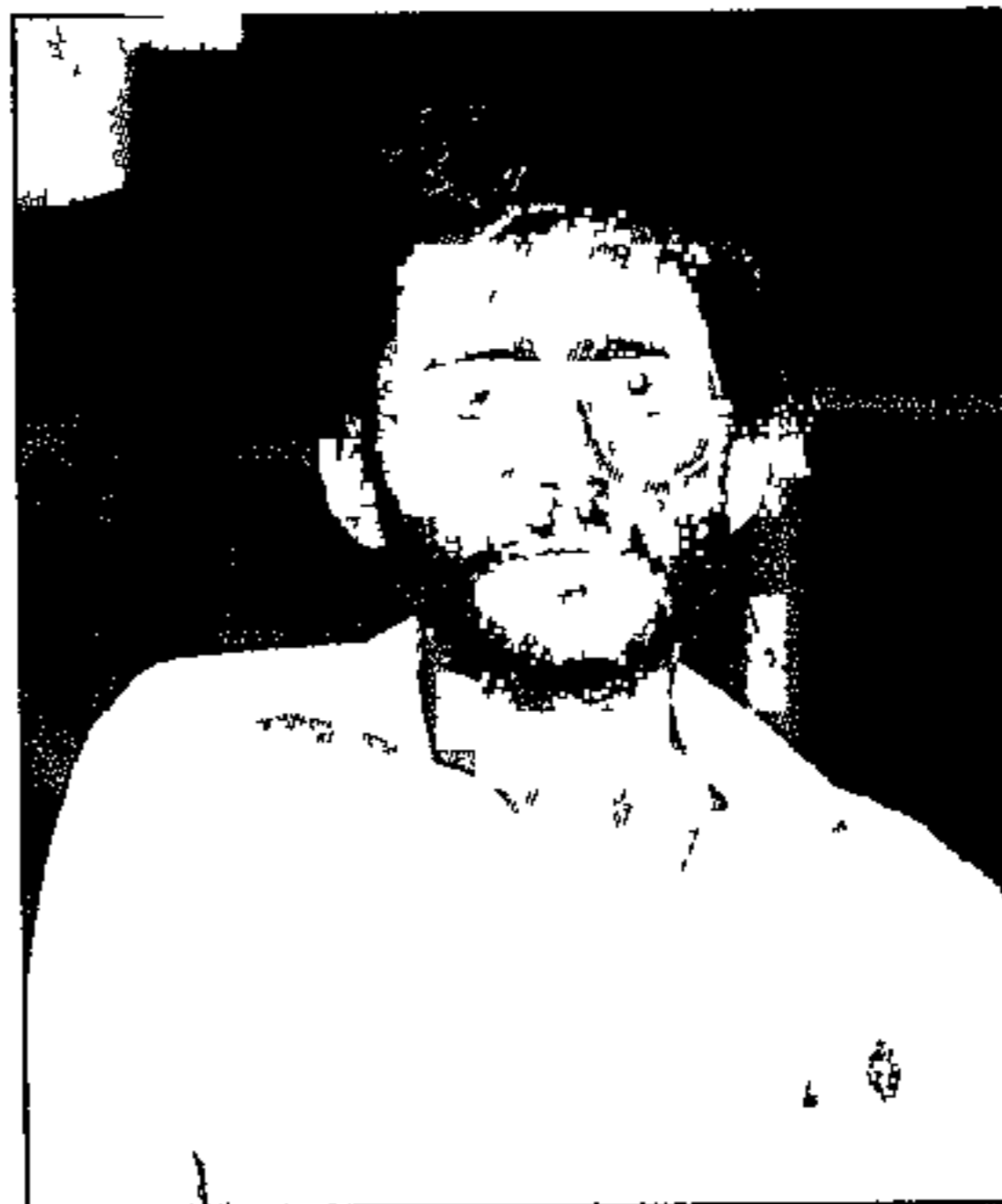
The story is told of how during one session of protracted talks on centralised bargaining, "EP," as he is fraternally known, seriously proposed that the composition of an industrial wages council be 50% union — with the rest drawn from government appointees and academics. Everyone was dumbstruck, until somebody popped the obvious question: "What about employers?"

This illustrates his approach. Unlike many who would tend to tailor their bargaining position by gradually pitching towards the centre, Patel's negotiating style appears to be to stick to his opening gambit

— backed by a sharp intellect and grasp of the issues second to none.

His hard line may lie behind Labour Minister Tito Mboweni's observation that labour and business, left on their own, would have haggled over the draft Bill till doomsday. It may also have been the reason for Mboweni's decision last week to set up a three-man committee of principals — including himself, Business SA's Bobby Godsell and Cosatu's Sam Shilowa — to speed up the search for consensus, duly wrought after talks through the night.

When the parties reached effective agreement, Patel was one of few who still looked completely unruffled. Romance aside, his indefatigable stance on legal certainty in the Bill (as opposed to dreamy notions of the "spirit" of tripartism) has a lot to be said for it. He is, after all, a unionist who will exploit to the hilt the openings left for unions to pursue centrally determined wages and



Patel sticks to his opening gambit

working conditions.

To his credit, Patel seems utterly committed to the union cause. His involvement dates from high school, where he ran a students' support committee for striking workers. After obtaining a BA at UWC he joined the labour research unit at UCT, where he started a union for university employees, becoming its first general secretary in 1985. He later joined and led the National Union of Textile Workers, forerunner of Sactwu, and played a strong role in the Na-

tional Economic Forum, Nedlac's predecessor. With regard to restructuring clothing and textile, Patel favours the gradual lifting of tariffs to protect jobs and local industry.

Yet he remains an enigma — which is not helped by his refusal to talk to the "reactionary" *FM* unless and until Cosatu takes a collective decision on this burning issue.

□ On Sunday, Patel was involved in a car accident, he's recovering in Groote Schuur. ■

## A SMALL DEAL BUT BIG WHEELS

**Barry Saxton**, well known in the service industry, recently played his own small part in ensuring SA's return to the global village. This was through the sale of his travel company, Gundelfingers, to US\$2.5bn-a-year, US-based Rosenbluth International for an undisclosed sum.

Saxton (52) is a contemporary of Safren and Kersaf chairman Buddy Hawton from the Rennies days. It was he who, in the early Eighties, with Tiger Wessels and others, launched Sun Couriers, now part of listed freight group United Service Technologies (Uniserv) — of which he was deputy chairman.

Gundelfingers, once part of Uniserv, has been owned by Saxton for the past few years. It is not a particularly big player — with a turnover of R60m and a market share of only about 1% in contrast to Rennies Travel's 8%-9% — but it clearly appealed to Rosenbluth



Part of the deal is that Saxton becomes vice-president of Rosenbluth International's global operations — and, he chuckles, "gets to live out of a suitcase for most of the year."

Rosenbluth's decision to forge a presence in SA was prompted by its corporate clients, many of which are multinationals, says Saxton.

"They are after the same travel management packages Rosenbluth offers in the US and through its network in 44 other countries. The alliance also provides Gundelfingers' SA clients with access to its worldwide travel services."

He adds that Rosenbluth, established a

century ago and with headquarters in Philadelphia, has been quick to respond to the worldwide trend towards maximising efficiency and minimising costs in planning travel expenses. After all, travel and entertainment account for the third largest cost in many international companies.

Saxton was born in England. In his early 20s, having left school early and worked in shipping, he set off on a round-the-world trip — only to run out of money in Durban. He joined Rennies in the early Sixties, when it was still a family business. The position took him to the Middle East for a few years and to the US, where he received training at Harvard Business School.

Saxton and his wife, Gill, have three daughters aged from 18-24. He is crazy about wild life but adds that golf and squash are also enthusiasms.



## LABOUR AND BUSINESS

# Devil in the detail

FM 21/7/95

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On the issue of replacement labour in lockouts, labour proposed its restriction, government “indicated its willingness to accept such limitation” and business opposed but this “would not detract from its support of the Bill and the agreement as a whole”

It was, however, agreed that an employer would be required to give seven calendar days’ notice of his intention to use replacement labour after a dispute had been referred to the conciliation commission, or bargaining council, or in terms of any collective agreement

Similar notice provisions would apply to sympathy strikes where it was agreed that “a balance had to be struck between the right to engage in a meaningful sympathy strike and its function-

ality” To give effect to such balance, the three parties are to appoint lawyers to find a formula or mechanism within a week

On the right to strike over unfair dismissals, business felt strongly that where a remedy for unfair dismissal was a drastic invasion of managerial prerogative, there could be no right to strike on the issue Government’s concern was to reduce the level of strikes and where an effective alternative remedy was provided workers should not have the right to strike Labour did not support this position

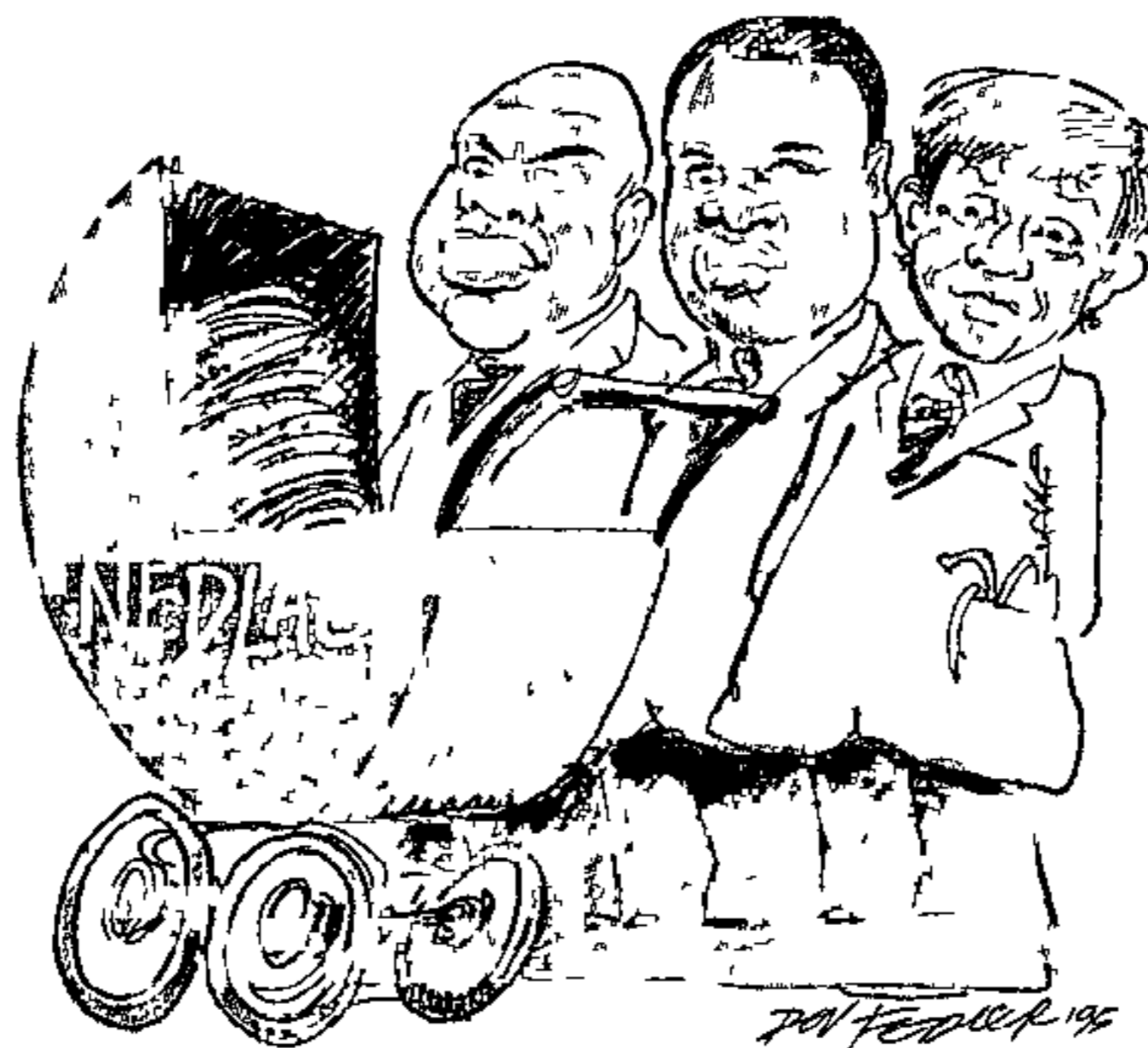
On picketing, it was agreed that a non-statutory code of conduct on the right to picket be drafted by Nedlac and that the conciliation commission play a greater and more proactive role

On workplace forums, it was agreed that the powers and functions include the following additional proposals for consultation partial or total plant closures, export promotion, product-development plans, mergers and transfers of ownership in so far as they affect labour

Various outstanding matters are listed, including severance pay, retrenchment criteria, dismissal for misconduct and vicarious liability of union officials

Godsell waxes almost lyrical, though conceding that the parties have reservations “I think this Bill will emphatically make labour a full and equal partner in the economy It’s going to create a situation where we have a legitimate, post-apartheid set of rules and institutions to play by”

Shilowa concedes that the new law will not end all strike action but says it will ensure rights and procedures which will re-



move strikes on “flimsy, made-up issues” and “discourage the need to start from the point of fighting”

Parsons says we must be realistic about what tripartism can achieve and not allow timetables to become more important than substance “Negotiation by fatigue is not conducive to good decision-making”

Nothing wiser than that was said during the entire process

## TRANSNET STRIKE

### Signs of sanity

FM 21/7/95

**Though the** Transnet strike lasted only a week, and seemed therefore to have been a victory for reason, it need never have happened The unions were clearly mobilising for industrial action before Transnet had made its final offer

The demonstration was expensive especially at container ports where there was already congestion Sacob’s Peggy Drodskie says it’s impossible to estimate the overall cost of disruption to public transport but the delay for container vessels alone is estimated at US\$1 000/hour/ship At the peak of the strike, ships were delayed by between 36 and 150 hours Add to this the short term knock-on effects of late or nondelivery and the long-term effects on SA’s reputation as a reliable exporter and the cost in the sector rises dramatically

Drodskie stresses, however, that Sacob is delighted that the unions have settled, particularly as the signs were that the strike had the potential to last a lot longer

But, if the strike was a case of using a hammer to crack a nut, the settlement appears to have been reasonable In terms of the agreement, workers at the lowest end of the scale will receive an increase of about 20% — bringing the minimum to R1 200/month in pensionable income plus R300/month nonpensionable pay The previous minimum total was R1 227

Workers earning above R16 000/year will get a 10% across-the-board increase plus a sliding nonpensionable allowance of R130/month at the lower end, down to R75/month for higher earners

There is also an agreement to hold more discussions on pensionable income in August Basic annual leave increases by four days and a committee is to be established to discuss ways of reducing working hours but increasing productivity

According to Pat Stone of labour rela-

product of political compromise that undermines principles of justice. As such, it stands a good chance of degenerating into a divisive political clash to be used against Nats, rather than a judicial forum in which to establish the truth about an excessively evil past and foster reconciliation on which to build a more prosperous future.

The NP's woes are compounded by its continuing inability to establish a meaningful role for itself in opposition and dissatisfaction in the caucus backbenches at what is perceived as an over-cosy relationship between Constitutional Development Minister Roelf Meyer and the ANC.

The relationship between all parties is also being aggravated by the pending local government elections, due on November 1 but which may be delayed due to boundary disputes in three provinces.

Most of the other 35 pieces of legislation approved during the session so far have dealt with technical changes to existing laws and resulted in very little political controversy.

But the rest of the year could be different. Among legislation due to be tabled before parliament again recesses at the end of September are the new Labour Relations Bill, currently being negotiated at Nedlac, a

Bill to set uniform academic standards at universities (which some universities have vowed to oppose), a series of far-reaching land reform measures, and a Bill that aims to give the public easier access to government information, but which could have the opposite effect (*Leaders* July 7).

At the same time, the Constitutional Assembly (the Senate and National Assembly sitting together) will continue debating aspects of its first draft of the new constitution, due to be published by the end of October. The first two weeks of August will be devoted to Constitutional Assembly business. ■

SAM SHILOWA

IN MY OPINION

## Taking fantasy too far

(166) FM 14/7/95



Sam Shilowa is general secretary of the Congress of SA Trade Unions (Cosatu)

In June 1988 Cosatu called a three-day stayaway in protest against the Labour Relations Act of that year, which had been promulgated at the instigation of employers led by Saccola, among others. We indicated then that we would oppose any legislation which was being imposed on us. This struggle ended only once the Labora Minute signed in 1990 had been implemented to reverse these draconian measures.

Another struggle by workers ensued in 1992 when Barend du Plessis refused to negotiate the introduction of Vat with major stakeholders.

The result was the formation of the National Economic Forum as a body which would allow business, labour and government to interact on socio-economic issues. The new government, in consultation with labour, introduced Nedlac as the successor to both the National Manpower Commission and the NEF. Any suggestion that Cosatu is trying to sideline Nedlac is ridiculous and should be rejected with the contempt it deserves.

Attempts have also been made to argue that we took to the streets in order to pressurise government. Nothing can be further from the truth. Our mass action was aimed at achieving the following objectives:

First, to send a clear message to employers to change their negotiations strategy and mandates and to force them to focus on issues tabled by labour.

Second, to inform the public and union membership of our positions as they are be-

ing negotiated. We have always maintained that no negotiations should take place over the heads of our members.

Since the start of negotiations, business and its henchmen, such as Ronnie Bethlehem and Tom Lodge, as well as the bourgeois press, have ridiculed our positions. However, they have failed to put across an alternative position which is as coherent as that of labour. Slogans such as economic growth, job creation and international competition have been used to justify business's attempt to run down labour standards and encourage fragmentation of the labour movement. In short, business is attempting to use the law to curb the growth of the trade union movement in SA.

No legislation is drafted in a vacuum. The Labour Relations Bill is no exception. Legislation is aimed at restoring rights denied to workers by successive years of apartheid, to undo the institutionalised racial divide of workers and unions on the shopfloor, to allow for stable collective bargaining structures which do not rely on the veto powers of the employers and to help build a strong and stable trade union movement as one of the pillars of civil society.

Above all, it is to restore the dignity of the working class which has been taken away by successive apartheid regimes at the instigation of big business.

Our mass action should also be placed in its proper context. It was not out of desperation by the new leadership, as is alleged. It is not a sign of weakness on our part, but part of a well planned and implementable strategy whose aim was to ensure that business negotiates in good faith.

Despite protests to the contrary, the strategy has paid off. The no-retreat, no-surrender approach of employers has been replaced with a willingness to explore all options. Those positions which were sacrosanct to business have become negotiable. After only two meetings of 10-a-side

(against eight meetings plus 32 hours in bilaterals) we have begun to see movement in business's approach to organisational rights and its compulsion to form structures centrally which would negotiate or regulate wages and working conditions.

We hope to make further progress this week on outstanding issues such as scab labour, lockouts, the duty to bargain and socio-economic protest action.

Taking all of the above into consideration it should be clear, even to rightwing economists, that their attacks on Cosatu, in particular, have nothing to do with the positions we have advanced, but with an agenda to weaken the trade union movement, to break the alliance and to portray us as a lunatic fringe hellbent on imposing socialism in SA.

We have never hidden our commitment to socialism as an economic system for SA. However, to project our demands as a command economy, causing unemployment, hunger and poverty is taking the fantasy and disdain for Cosatu too far. The present draft Bill is not yet law, yet we have high unemployment, poverty and a decaying economy. Who is to blame? The captains of industry together with the apartheid regime.

Our proposals and agenda are based on the RDP to which everybody claims to be committed.

Cosatu has no intention of back-tracking in the face of the barrage of blows directed at workers by rightwingers, motivated in their attack by a faulty ideology. We have tabled well-thought-out demands and proposals. We expect bona fide negotiations to take place.

Those who think that they can influence either Cosatu leadership or hope to break our alliance with the ANC or the SACP through this blackmailing are dreaming. We are committed to ensuring that our members benefit from the democracy they have fought for.

NEDLAC

# Golden triangle on trial

FM 7/7/95

This undemocratic, secretive forum should not be given too much power (166)



**Nedlac's executive council** was due to meet on Saturday. But the gathering of the 72 members, in the new council chamber at Auckland Park, has been postponed to July 17, because the major issue

on the agenda — the drafting of the new Labour Relations Act — remains unresolved, despite assurances

There are those who might be forgiven for thinking that Nedlac's task is precisely that resolution. And that, indeed, if it cannot resolve this issue, should it ever bother to meet again? After all, when labour took to the streets, it was an attempt to sideline Nedlac on a critical issue.

Nedlac (the National Economic, Development & Labour Council) is supposed to reconcile the interests of labour, business and government (the "golden triangle") into a consensus that will advance through compromise the interests of all three.

The *FM* has always been sceptical about Nedlac's ability to deliver. And we feared that, if it did reach consensus, the outcome would have inflationary implications, which would erode the sustainability of whatever economic growth was allowed to flow from its deliberations.

Some businessmen say Nedlac has expended energy and many man-hours going nowhere, often occupied more with process than matters of substance. And what should have been discussed rationally within the chamber was instead dealt with through disruptive rolling action in the streets.

Certainly, the speed with which labour fell back to mass action, last month, dismayed organised business. Some business organisations have debated whether Business SA should pull out of Nedlac.

David Brink, who represents organised business through Business SA, disputes that Nedlac has been sidelined. "There have been many hours of constructive negotiations within the Nedlac structure." He does not share the gloomy perspective. Nedlac, he says, "is alive and well and operating. The Labour Relations Act is being negotiated and debated constructively."

Raymond Parsons, director-general of the

SA Chamber of Business, says "Business is willing to give Nedlac its best shot. But perhaps we have been too ambitious in our expectations. Perhaps Nedlac should not be asked to formulate legislation. It should rather be seen as a forum in which the stakeholders present their views as a basis for consensus. When there are serious differences, it may be more productive if both sides simply make direct representations (outside Nedlac) to the relevant Minister — and the Minister hears them out and makes

Parsons, "doesn't create a shared vision. It flows from a shared vision."

Where tripartism has worked elsewhere there usually has been a strong consensus on economic objectives. In social democracies (such as Sweden) there has tended to be consensus on the need to create and sustain jobs, with the community bearing the cost of social services that reduced the need for individual self-sufficiency. In the East there has tended to be consensus on the need to create wealth for the individual

who, through his own ingenuity and prosperity, would be increasingly self-sufficient and able to look after himself.

Though the Swedish model was considered an unalloyed success, the events of recent years have shown that it has limitations. A case in point is the impact of centralised bargaining — an important element in Sweden's accord, on wage structures and the economy.

The argument in favour of centralised bargaining is that it mitigates unemployment. In a paper presented at an international conference, researchers Lei Delsen and Tom van Veen, from the universities of Nijmegen and Limburg in the Netherlands, explain "With decentralised bargaining, parties may assume that other sectors in the economy will take care of prevailing unemployment. They may

simply shift the unemployment problem onto the rest of the economy and ignore the effects of their actions on the job opportunities for others."

Centralised bargaining, the argument goes, puts a brake on wage demands. In the event, it did not. Delsen and Van Veen point out "For centralised bargaining to work well, wages must be set by the sector exposed to international competition and then the rest of the economy must step in line. What happened in Sweden was that public-sector jobs expanded (to over 35% of the work force) and the public-sector unions became too powerful, shifting wage leadership partly to this sheltered sector. In this environment, centralised bargaining becomes flawed."

The growth of the public sector and the influence of wage increases on prices had macro-economic consequences. Hans-Goran Myrdal, of the Swedish Employers Confederation, made the point in a paper compiled in 1991.



**Cosatu's Sam Shilowa and Business SA's Bobby Godsell**  
*how representative are they?*

his own decision. This will avoid the endless delays which could occur when consensus cannot be achieved."

This may fall short of the original concept of government by consensus but it could be more practical in the long run. "We will always eventually reach a point where government must govern," says Parsons, "and take the consequences if the decisions are wrong."

Nedlac executive director Jayendra Naidoo, however, does not consider Nedlac's role has been undermined. "It would be naive to expect this institution to mediate all contact between the stakeholders and government. In any negotiations there are discussions on the table and interactions off the table."

The problem may simply relate to the logistics of the moment. But some businessmen, economists and politicians do have doubts about the feasibility of a social accord, given SA's political environment and its conflicting ideologies. "Tripartism," says

"High inflation and steeply progressive taxes mean that a smaller part of nominal income was retained by the individual Swedish GNP in real terms has increased by 40% over the past 20 years. But all of this increase has been absorbed by ever increasing taxes and by the public sector which increased from 44% to 64% of GDP. In terms of increasing real private income there has been nothing to share for two decades."

In 1993 Sweden's budget deficit was nearly 13% of GDP and outstanding government debt was 82% of GDP, says Standard Bank's Nico Cypionka. "Now the deficit is about 10% of GDP and the stock of debt 90%."

Inevitably, in an accord, the organisations involved create a closed shop. The existence of a body dedicated to achieving consensus makes it difficult, sometimes impossible, for dissenting voices within both the business and labour constituencies to make their views known and their influence felt.

Though government does not have to act on the advice of Nedlac, it is a statutory advisory body in which government is represented. The assumption is that government will not easily go against Nedlac's recommendations.

Yet Nedlac is not an elected body and its proceedings are not open to public scrutiny. It is far from being either a democratic, a broadly representative or an open chamber. It represents policy formation by stealth.

The flaws of an accord, both in principle and practice, are obvious. Despite this and despite the frustration of the past few months, there appears still to be commitment from organised business.

Nedlac is the successor to the National Manpower Commission and the National Economic Forum and, effectively, to the now defunct Economic Advisory Council.

The concept of an accord grew out of the forum, formally launched in October 1992, on the initiative of business and labour. "It flowed from the Laboria minute," says former JCI economist Ronnie Bethlehem, "drawn up by Saccola, a body established by labour and business to resolve problems, particularly in the mining industry."

At the time, when the government of the day was considered illegitimate, it provided a sounding board for the views of the extra-parliamentary opposition and a channel of communication be-

tween the private sector and government. It was seen as the best option in a conflict-ridden society. It succeeded, perhaps, because of the informality and the desire of participants to solve problems. But it is not clear that the same spirit prevails at Nedlac.

Like the National Economic Forum be-

be placed before parliament.

Labour consultants Andrew Levy & Associates' Pat Stone also identifies over-hasty preparation as an important cause of the present dissension. "Not enough time was taken in the early stages to make sure there was an understanding of the process."

Stone believes there is a need for an interface between the various parties and government.

"The last thing we want is a return to the old days, when government didn't give business and labour the chance to try to reach consensus. No-one can say at this stage that it has failed. It's better to acknowledge it is going to be difficult than to just walk away from it."

Steel & Engineering Industries Federation's Michael McDonald says "We have gone through a phase of distrust, just as we did in the forum." The negotiating process in the forum, he says, started to work when people started listening to each other and trying to find ways to accommodate each other's needs. "It's a teething process we have to get through."

If Nedlac is to continue in its present role as main adviser to government, the issue of transparency will have to be addressed. Naidoo says he has recommended that meetings of the chambers should be opened up to press and public — but that Nedlac should reserve the right to have certain sessions in private. "There are times when the negotiators have to explore possibilities without prejudicing their positions."

Naidoo argues that, in all negotiations, deals are struck behind the scenes. "If all chamber meetings are opened up, the real action will still take place in private."

Nedlac will have to demonstrate quickly whether it is able to play a more constructive role than it has over the past few months. Says Parsons "If there is the will to make Nedlac work, its chances of success are greater."

Labour taking to the streets seems to suggest it doesn't have faith in Nedlac. In the face of that, the attitude of business is likely to become increasingly ambivalent.

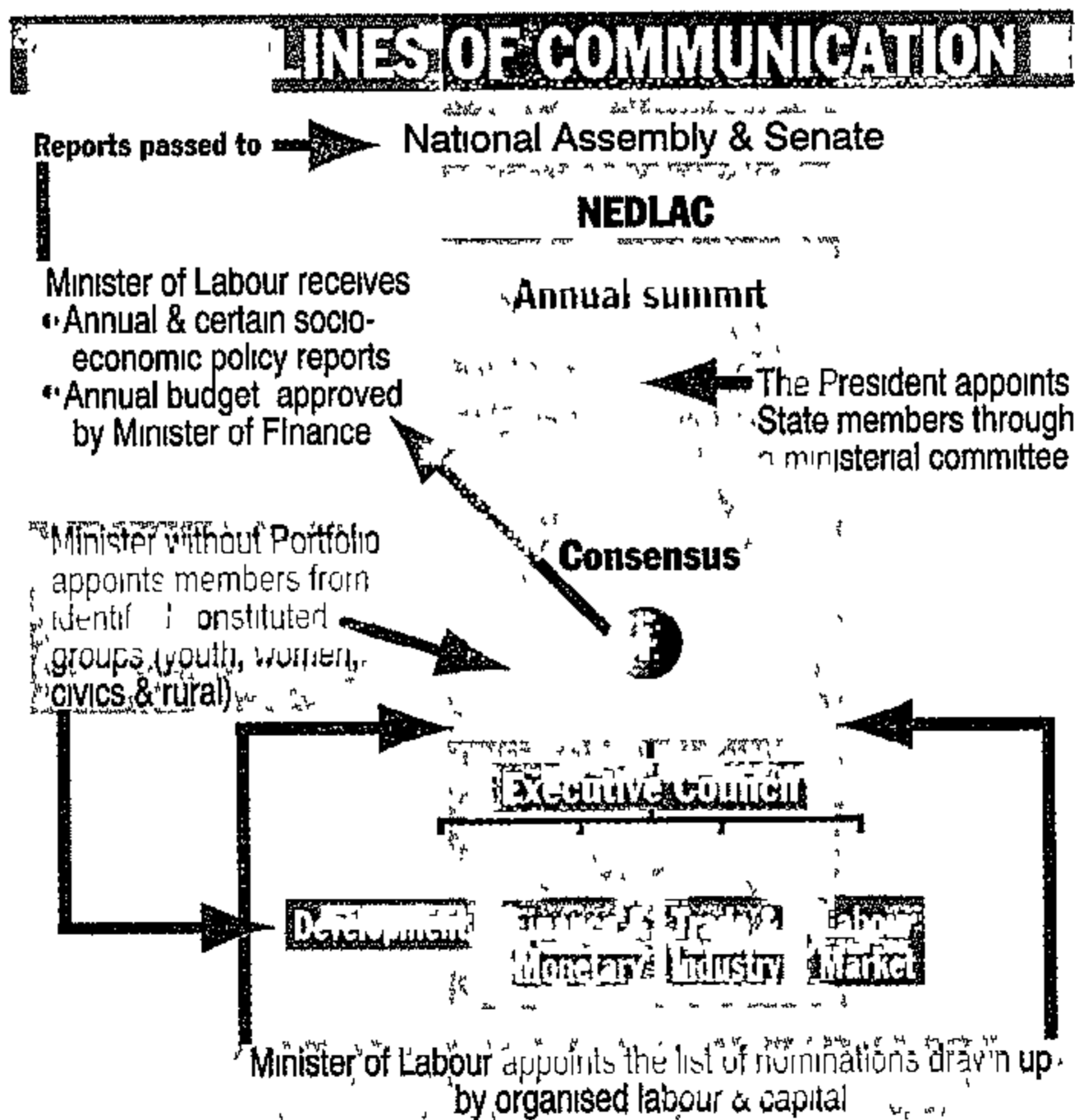
The FM would prefer to see a parliamentary committee established to take the place of Nedlac, so that transparency and open government is assured.

Nedlac may be a useful forum. But it should not presume to be a substitute for an elected parliament, or a device to inhibit the clearing mechanism of the labour market. ■



Nedlac's Jayendra Naidoo and Minister Tito Mboweni  
*a sense of determined optimism*

fore it, Nedlac is providing a useful learning opportunity for both sides, says Cypionka, who is a Nedlac member. He suggests it should play a more integral part in formulating legislation. "Government should involve it in the initial preparation of a draft Bill. As it is, a draft is presented within a few weeks of the date it is due to



SOURCE: THE INDUSTRIAL DEMOCRACY REVIEW (ABRIDGED)

# Labour Bill talks 'in a shambles'

196

ST 9/7/95 (E)

LABOUR Minister Tito Mboveni was putting on a brave face this week but insiders say that behind the scenes negotiations on the Labour Relations Bill were a shambles.

The disarray culminated on Friday with Cosatu boss Sam Shilowa, one of the three-man "committee of principals", keeping Mr Mboveni and Business South Africa's Bobby Godsell waiting for an hour.

Confusion reigned from mid-week, one negotiator says, when labour did not return as agreed to participate in two of three working groups set up by the committee to forge an agreement on new labour law.

Ebrahim Patel, labour's chief negotiator, returned from a caucus on Wednesday to inform a working group that the lack of new proposals on the core issues had led labour to decide to revert to their principals to

By K EWIN DAVIE

seek new mandates. "It was clear labour didn't want to discuss any of the meaty issues," a negotiator said.

Two of the three groups did not meet after Wednesday while one has tentatively agreed to meet again on Monday night.

While the working groups were meant to provide detailed reports to a Friday meeting of the committee of principals, most groups chalked up little progress this week.

One group had seven items of business, yet had discussed only two relatively uncontroversial matters before labour negotiators withdrew. Cosatu spokesmen did not return

calls to Business Times, Fedson van der Walt says Federal negotiators decided they had to go back to the set-aside executive.

"We are still negotiating, but things are at a very sensitive stage," Labour Ministry spokesman Sharmeen Singh said "there may be difficulties here and there".

Nedlac's Jayendrah Naidoo says it was a mixed week. One group had shown good progress while another "had not got off the ground".

"But there was good progress today at the principals' meeting on some of the big issues."

A three-paragraph statement was issued after the meeting, saying the process was on track. The government will submit proposals on outstanding issues tomorrow ahead of a 10-a-side Nedlac kosberaad on Tuesday.

Mboweni sets up new committee

(166) (167)

# Hopes rise for deal on labour law

MD 4/17/95

Renee Grawitzky

GOVERNMENT, labour and business representatives emerged from their second National Economic, Development and Labour Council (Nedlac) meeting yesterday talking of a renewed commitment to ensure the enactment of the labour relations Bill this year.

Labour Minister Tito Mboweni announced a new timetable and the establishment of new structures to speed up the process to reach agreement on the core issues in dispute.

Mboweni said he was confident the process had regained its momentum and there was a readiness and capacity on the part of the parties to settle.

The parties were not prepared to elaborate on what had transpired during the two-day meeting.

This included the responses by labour and business to government's proposals tabled on centralised bargaining, workplace forums and agency/closed shop.

No detail was given about whether government had tabled any proposals with regard to scab or replacement labour. Prior to the meeting, Mboweni indicated that resolution of this issue would be crucial to agreement on a final package.

Cosatu general secretary Sam Shilowa said after the meeting. "Taking into account the exchanges and explorations, it makes all the parties confident that with the political will existing among ourselves we will achieve progress."

Business SA negotiator Bobby Godsell said the discussions had not yet been concluded, but said progress was being made.

Mboweni said the new process would entail the establishment of a principal committee consisting of himself, Shilowa and Godsell, while Nedlac executive director Jayendra Naidoo would be brought in from time to time.

This committee would oversee the successful functioning and operation of three working groups required to consider a wide range of issues, yet to be finalised. The working groups would refer issues they were unable to resolve back to the principal committee.

The principal committee would consider issues such as centralised bargaining and possibly the question of scab labour.

The three working groups, the composition of which had not yet been finalised, would consider the following:

- Union authorised strikes, ballots, and defensive lock-outs;
- Organisational rights and the disclosure of information in the proposed workplace forums, and
- Dismissals and the disclosure of information with regard to retrenchments.

Mboweni said that the working groups would meet tomorrow and report back to the principal committee, which would meet on Friday.

He said he hoped all issues could be resolved by mid-July.

However, he pointed out that "it would be naive to believe we will score 100%".

Mboweni also announced that the ministerial task team commissioned to draft the negotiating document on the Labour Relations Act would be reconvened to commence drafting areas "where there is enough room to draft".

# Still no consensus on the draft labour Act

Renee Grawitzky

(166) (182)

THE three working groups established to speed up consensus on issues in dispute around the draft Labour Relations Act did not complete discussion on all agenda items, but a report is still expected to be presented to the principal committee tomorrow.

The principal committee comprising Cosatu general secretary Sam Shilowa, Business SA Bobby Godsell and Labour Minister Tito Mboweni would consider any issues which were not resolved in the working groups.

Two of the three working groups finished early and did not complete discussions as Fedsal general secretary Dannhauser van der Merwe in group one had to leave early to attend the federation's executive committee meeting to finalise its position on some substantive issues in the negotiations.

Cosatu is holding its executive committee meeting today to finalise its position and Nactu meets tomorrow.

The first working group comprised government's Les Kettlebas, Business SA Adrian du Plessis and Rob Perott and labour's Cunningham Ngcukana, Van der Merwe and Kgalema Motlanthe. Union authorisation of strikes, strike ballots, picketing, defensive lock-outs and sympathy strikes formed some of the agenda items. Discussion appeared to have taken place around union authorisation of lawful strikes and issues around strike ballots.

Working group two consisted of government's Dave Lewis, Steve Lenahan and Graham Damant and labour's Ebrahim Patel and Ben van der Walt. Organisational rights, workplace forums and disclosure of information formed part of the discussion.

Working group three included government's Jessie Maluleke and Papi Moloto, business's Barry Shipman, Dave Carsons, Pak le Roux and a Fedsal representative from labour. Issues under discussion included dismissals, incapacity due to ill health and the commission for conciliation, mediation and arbitration.

## Only three issues still in dispute

# Parties reach accord on Labour Bill

Renee Grawitzky

LABOUR, business and government representatives announced yesterday they had reached agreement on all except three of the core issues in dispute in the draft Labour Relations Bill

There was agreement on the critical issue of centralised bargaining which could occur only by mutual agreement and not on a compulsory basis as originally demanded by labour

Settlement was also reached on the closed shop issue, strike ballots, agriculture as a "non-essential" service for the purpose of industrial action, disclosure of information, organisational rights and socio-economic strikes.

Issues where agreement has not yet been reached include picketing during strikes, lock-outs and the use of temporary replacement labour during strikes

These issues have been referred to a technical committee made up of government special adviser Halton Cheadle, labour's Ebrahim Patel and Business SA's Bobby Godsell. They will try to resolve them by Monday when a final report will be considered by the National Economic, Development and Labour Council's (Nedlac's) executive council

No reference was made to the status of workplace forums, but it is understood that these will also be considered by the technical committee

Labour Minister Tito Mboweni said the process represented a first for the post-apartheid SA where the social partners were able to reach agreement on fundamental issues of difficulty

Cosatu general secretary Sam Shilowa said the new legislation would represent a "quantum leap for workers and for the management of industrial relations"

He said the combined initiative of Cosatu, the National Council of Trade Unions and the Federation of South African Labour Unions marked a step towards the establishment of a single trade union federation in SA

Godsell said the deal struck the right balance between growth and equity, and between establishing labour rights while facilitating an economic capacity to compete in the world

Nedlac director Jayendra Naidoo told a news conference the agreement on collective bargaining was roughly in line with Mboweni's recent compromise proposal. Where no bargaining council existed in an industry, either management or labour could apply for the establishment of a statutory council to consider issues such as social welfare funds and training

By mutual agreement, such a council could negotiate industrial policy questions, as well as wages and conditions of employment. It provided for the establishment of statutory councils which initially would not be able to consider wages and conditions of employment

Labour won an agreement that closed shops should be permitted, subject to regular ballots testing workers' views on the arrangement

Participants in socioeconomic strikes would be protected from dismissal — subject to certain tests and procedural re-

Continued on Page 2

## Labour Bill

Continued from Page 1

quirements. Details were not spelt out.

Business SA won agreement that strikes should be preceded by a strike ballot, although their conduct would not affect the lawfulness of a strike.

It was agreed that organisational rights would be based on "sufficient representi-

vity" Disputes between management and labour on this question would be adjudicated by the proposed commission on mediation and arbitration

The parties indicated that the final positions adopted were being drafted and more detail would be available after the Nedlac executive council meeting on Monday.

● See Pages 3 and 5



# 'Labour may drop social clause'

John Dladlu BD 14/7/85

THE labour constituency at the National Economic, Development and Labour Council might eventually back down on its proposal to link trade to social clauses, Nedlac trade sources said last night

Labour wanted SA trade partners to agree to a ban on child labour and all forms of discrimination, uphold rights to join unions, to strike and to collective bargaining

According to the proposal tabled at Nedlac's trade and industry chamber, SA should refuse to sign trade accords with countries refusing to uphold these social clauses, both in bilateral and multilateral accords

A business source at Nedlac said although labour representatives had not officially backed down, a new spirit of pragmatism had emerged at yesterday's meeting of the chamber

"It appears that it (labour) has

realised what is practically possible. Labour listened to other parties in the chamber on the issue"

Business felt that insisting on the inclusion of social clauses in bilateral trade accords could amount to new forms of trade protectionism after tariff reduction practised by the developing world. Instead, these principles, already enshrined in the interim constitution, should be pursued vigorously in multilateral trade forums such as the World Trade Organisation, the source said

A possible compromise might be to insist on the inclusion of social clauses in preferential accords. An example was the system of the generalised scheme of preferences, which dropped tariffs for developing countries. However, the source cautioned that such a practice, if it became official policy, could open a floodgate of requests from countries requesting

preferential accords with SA

Four countries, Malaysia, Thailand, the Philippines and Cuba, have refused to enter into trade accords with SA due to the insistence that these agreements include social clauses

Negotiators from labour, government and business also approved a proposal for the creation of an investment promotion agency, although business felt that such a structure should be non-statutory in nature to avoid prescriptiveness

However, business would not commit itself to funding such a structure

In terms of proposals prepared by SRI International, the investment promotion agency should be jointly funded by government and business.

Government asked for more time to study proposals prepared by the Industrial Development Corporation on suitable GATT-friendly supply-side measures

# Labour negotiators now in injury time'

Henoo Grawitzky

MM 7/7/95

**DURBAN** — The prolonged labour legislation negotiating process had created a sense of uncertainty inside and outside the country, Labour Minister Tito Mboweni said last night.

The protracted process had caused uncertainty abroad over what kind of labour relations system the country would adopt, he said at the opening of the eighth annual labour law conference in Durban.

At some point the country would need to create a level of certainty.

"We have run out of time. We are in injury time now."

There were broad areas of consensus but also many areas of disagreement.

However, it would be naive to expect that agreement would be reached on all issues, he said.

Mboweni outlined three possible scenarios. The first two — delaying the enactment of a new Bill until next year or abandoning redrafting a new Bill — he rejected. He did not comment on the third scenario, in which parties would submit a draft Bill that included areas of agreement as well as areas in which agreement was not reached.

If this happened, it would be with the proviso that the Bill could later be amended.

He cautioned that the cost and the benefits of this option would have to be weighed up carefully against one another.

In recent weeks the National Economic, Development and Labour Council (Nedlac) had been criticised as a waste of time. This was incorrect, he said. "Nedlac still offers important institutional mechanisms to build social consensus."

Nedlac's principal committee meets today to consider reports compiled on progress made by its working groups this week.

Mboweni asked how a government devised new labour legislation in a highly charged atmosphere where government had an alliance with the largest trade union federation.

Major differences were unavoidable as the parties were separate and independent. However, these differences would not break the alliance, he said.

Prof William Brown of Cambridge University, speaking on bargaining at industry level and pressure to decentralise, said SA's nurturing of centralised bargaining was not necessarily taking the country in a wrong direction.

It was necessary to create a flexible system to allow for consensual relationships. To ensure economic growth and democracy it was necessary to put down "deep roots" for collective bargaining, he said.

# Cape Town service rated 'poor'

Ingrid Salgado

MM 7/7/95

**SHORTCOMINGS** in Cape Town's service performance during the rugby World Cup have indicated the city would have to improve its infrastructure and service delivery if it was serious about its 2004 Olympic Games bid, a Wits Business School survey says.

Many of the 800 local and international respondents to the survey expressed dissatisfaction with a "total lack" of public transport, especially in Cape Town and Johannesburg, and more than 60% of foreign participants believed service back home was better than Cape Town's.

Service throughout the country was rated excellent by 21% of all respondents, 58% thought it fair or unexceptional and 21% believed it to be "downright bad".

The medium and bad ratings were "too large for comfort" and could do SA a lot of harm, researcher Sid Cohn said. SA did better than expected but not well enough to

believe world class service, he said.

Visitors gave fast food outlets and airport facilities bad ratings but SA fared well in its foreign exchange, airline, car hire, hotel, restaurant and cellular-phone facilities.

Its rugby stadiums scored top points and were rated the best in the world by international visitors.

Johannesburg came in first among SA's largest cities — 16% of respondents believed service to be better at home and 48% felt it was the same. Cape Town lagged behind the national average, in which 46% felt service back home was better and 22% thought it worse. Only 13% felt service was better in Cape Town.

But foreigners had expected "Third World service" and had been pleasantly surprised, the survey said.

Cohn said service levels were inconsistent. "When service was good it was very good but when the service slipped it was very bad."

# Labour gathering told court can still play role

(166) (122)  
BD 10/7/95

Renee Grawitzky

THE views expressed at the eighth annual labour law conference in Durban last week indicated that the Industrial Court still had a role to play despite being sidelined by the draft labour relations Bill.

The legislation favours a move away from the court, which was a key focus of the conference, to conciliation, mediation and arbitration as the most effective mechanisms of dispute resolution.

Wits University Centre for Applied Legal Studies director Dennis Davis said the draft Bill reflected a profound distrust of the law and was predicated on this assumption.

He said with the limited resources and facilities made available to the court it had developed a wealth of jurisprudence.

KwaZulu-Natal Supreme Court judge Keith McCall said the area of dispute resolution exposed one of the greatest difficulties in previous legislation.

He said the new SA presented parties with a unique opportunity of rectifying these deficiencies.

While welcoming the proposed move away from litigation, he warned it was insufficient to legislate to this end.

In addition, adequate human and financial resources were necessary to ensure the efficient resolution of disputes.

Estimates of the cost of establishing the Bill's proposed conciliation, mediation and arbitration commission ranged from R70m to R100m.

A similar agency in the UK costs the government about £22m a year, according to Advisory, Conciliation and Arbitration director Tony Shepherd.

In defence of the court, many delegates said the industrial and labour courts had been effective in moulding SA labour relations over the years.

Kenyan Labour Court head Saed Kockar cautioned delegates "not to forget we are part of Africa".

In Kenya, the court had a unique role in making awards on financial issues, including wage disputes.

For this purpose, a secretariat was attached to the court.

## Officials will pay full rent

Business Day Reporter  
BD 10/7/95

EASTERN Transvaal officials would be paying market-related rentals for government housing following a report commissioned by the legislature which had determined the actual market value of all properties, spokesman Oupa Pilane said yesterday.

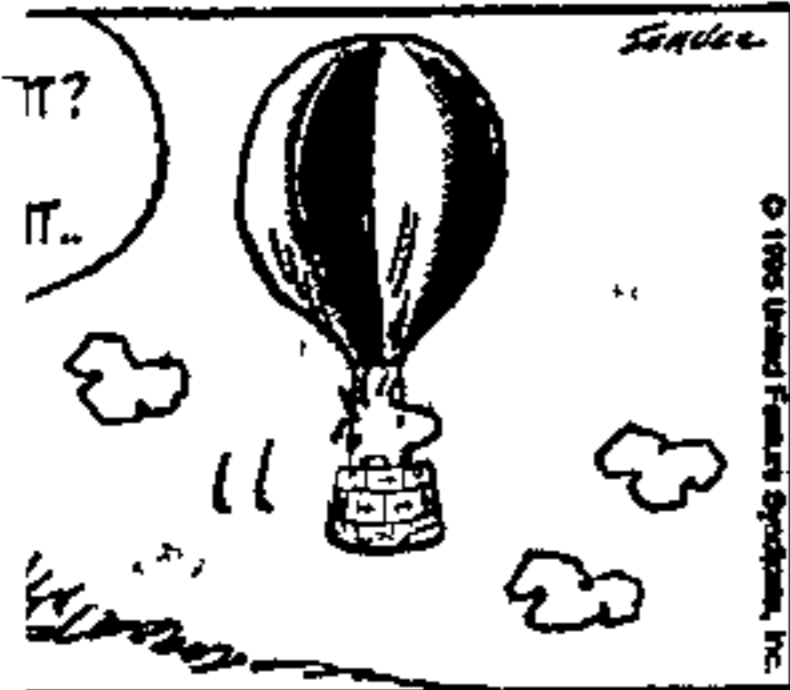
Reacting to a Sunday newspaper report that officials — including premier Mathews Phosa — were paying rentals of between R100 and R150 a month for houses valued at close to R1m, Pilane said instructions had been given to rectify the situation.

He said Phosa had rejected an offer of a luxurious house in Nelspruit and had instead chosen to live in a farm house within "a community of farm workers".

Phosa had renovated the house at a cost of R700 000 for which he had raised a bond on which he paid installments of about R10 000 a month.

Allegations that officials Jacques Modipane and Johannes Ka Shabangu had used more than R1m from a R19m provincial housing budget to renovate their rented homes without seeking prior treasury approval were also dismissed.

## Charles Schulz



## Mandela Shell House claim is part of police probe — Fivaz

Ingrid Salgado

# Differences but Nedlac goes ahead

stay 18/7/95  
(166)

■ BY JUSTICE MALALA  
LABOUR REPORTER

Representatives of business, labour and government have agreed that the draft Labour Relations Bill should be passed in spite of remaining differences on three critical issues

The National Economic, Development and Labour Council's (Nedlac) executive council agreed yesterday to recommend to the Cabinet that the draft Bill be adopted subject to revisions on contentious issues

A Bill will be submitted to the Cabinet on July 22 before going to Parliament

The parties are still deadlocked on employers' right to use temporary replacement or scab labour during lockouts and the notice period when it comes to using such labour; the tightening of the Bill's provisions regarding picketing; and the agendas and dissolution of workplace forums.

The parties indicated that they were close to agreement on two of these issues. The exception is replacement labour. Labour wants the right to hire replacement labour during lockout restricted in law, while business is opposed to this.

The parties emphasised yesterday that the negotiations process leading to the agreements on the Bill had been fruitful and the agreements far outweighed the disagreements.

Congress of SA Trade Unions general secretary Sam Shilowa, speaking on behalf of labour, said the fact that there were still reservations on all sides on the three issues did not mean that there was opposition to the clauses in the Bill as agreed upon.

"There have been far more agreements than disagreements and the Bill, as a package, meets the criteria that we set ourselves at the beginning of this process," he said.

The meeting yesterday was attended by Labour Minister Tito Mboweni.

He said a committee of himself, Shilowa and Business SA deputy president Bobby Godsell would continue to work on the outstanding issues while the parliamentary process was going on to ensure that as much agreement as possible was reached

# LRA stumbling blocks beginning to crumble

(166) ~~(162)~~ SPAN 4/7/95

■ BY THABO LESHILO AND  
BRUCE CAMERON

Major stumbling blocks - including compulsory centralised bargaining - appear to be settled and new dispute resolution structures have been created to resolve outstanding issues by July 17 to clear the way for adoption of the disputed Labour Relations Bill

Negotiating teams, representing the Government, labour and business, declined to reveal the full extent of progress at a media conference in Johannesburg yesterday after a further round of late-night talks.

But Tito Mboweni, the Minister of Labour, said "I am smiling There are wonderful and encouraging signs We are

## **WE ARE building a new labour relations system for the 21st century, says Labour Minister Tito Mboweni**

confident that the process has regained potent momentum and we will be able to make progress"

Indications are Mboweni's compromise position of two weeks ago, which includes the rejection of compulsory centralised bargaining, has been accepted

At the media conference, many of the questions were sidestepped by the spokespeople of the different groups, who

appear intent on presenting a final win-win settlement package rather than a blow-by-blow progress report

A new structure of committees and deadlines has been established

Mboweni said a "principals" committee of himself, Cosatu General Secretary Sam Shilowa and Business South Africa deputy president Bobby Godsell, had been formed to oversee the last negotiating lap

### **Working groups**

Three working groups, which will meet on Wednesday, have been appointed with instructions to report back by Friday

On that day the principals will consider the reports of the working groups

They in turn will report to a plenary session of the National Economic Development and Labour Council (Nedlac) on July 11

On July 14 the secretariat of Nedlac will make available a report on the plenary session to the Nedlac executive committee, which will meet on July 17

Mboweni hopes most issues will have been resolved by then

"It would be naive to think we can score 100% on each issue. If we can score 99,9% it will be a major breakthrough"

He has recalled his legislation drafting team to start redrafting sections where agreement has already been reached.

"We are building a new labour relations system for the 21st century"

## ACCORD close on three remaining disputes — scab labour, picketing and lock-outs

■ BY JUSTICE MALALA  
LABOUR REPORTER

The Government's bid to put in place a stable and investor-friendly labour market is back on track after 30 hours of talks between labour, business and Government culminated in agreement on key aspects of new labour laws.

Leaders of the three stakeholders agreed yesterday that their deal marked the beginning of a new era in labour relations.

The agreement was reached in a series of National Economic, Development and Labour Council (Nedlac) meetings in Johannesburg over the past three days. This marathon negotiating session followed two months of intense negotiating on the draft Labour Relations Act released by Labour Minister Tito Mboweni in February.

Mboweni, who confessed to having slept for only four hours in the past three days, said: "A couple of months ago no one would have believed that labour and business could agree on centralised bargaining, for example. But this has been a very important process and it has scored a first on many important and different issues."

He said the finer details of the agreement, which have now been forwarded to the drafting team, will be put before Nedlac's executive committee on Monday and, after approval, will be forwarded to Cabinet's special meeting on July 26.

After Cabinet's decision the draft Act will be presented to Parliament on August 3 for debate and adoption this year.

A Johannesburg press conference was told yesterday that the parties had agreed on the thorny issue of centralised bargaining, closed shops, strike ballots, agriculture as a non-essential service; the establishment of bargaining councils, disclosure of information, organisational rights and socio-economic strikes (aimed for example at putting pressure on the Government over policy matters).

But the crucial issues of "temporary replacement labour" or scab labour, the right to picket and the right to lock-out have still not been resolved.

Labour leader Sam Shilowa, however, said "agreement was imminent" on these issues,

► To Page 3

## Labour deal is imminent

◀ From Page 1

which have been referred to a technical committee for resolution before Monday.

Government negotiators were led by Mboweni, business's by Business SA president Andre Brink and labour's by the general-secretaries of the three major union federations in the country.

Brink said the process leading up to yesterday's agreement was like giving birth to a roll of barbed wire, but had been worth it.

In the two months that talks have taken place, labour embarked on mass action and the two parties' positions seemed irreconcilable.

"This agreement is a watershed for the tri-par-

tite process in SA. One hopes in the future it will be less gruelling as we get used to it," Brink said.

A labour negotiator said. "We have managed to secure a great level of protection on strike ballots, socio-economic strikes and organisational rights. The talks around scab labour looks quite promising for us and we truly believe that to a great extent we have done well for workers. If you compare our victories in these negotiations with laws in other countries, you will see that we come out looking quite good," he said.

Shilowa said: "The issues we have agreed to here will represent a quantum leap into the future for workers."

30 hours of talks result in agreement on key issues

# BRAVE NEW LABOUR

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# It's not too late to heed this warning

Star 7/19/95  
166

**STERN criticism of the draft Labour Relations Bill has come from what many South Africans would perceive to be an unexpected source, writes Graham Giles**

The present draft Labour Relations Bill has evoked considerable interest and comment because of the serious consequences for this country if a sound and enduring employment and industrial relations system is not established at this critical stage

Severe criticism of the Bill has come from what some may perceive to be an unexpected source Professor Martin Brassey, who is also an advocate, and attorney John Brand have been in the forefront of the struggle for the recognition of the rights of workers and trade unions They were among the earliest contributors to the Industrial Law Journal (published by Jutas) which first appeared in 1980

In the latest issue of Employment Law, they regard the Bill as conceptually flawed Earlier, in the same publication, they criticised the process of drafting a Bill as a negotiating document through Nedlac and warned of the dangers that lay ahead

Countries adopt and develop different models to regulate employment and industrial relations depending on a number of factors, including the country's stage of economic and political development. For example in 1991 New Zealand scrapped a 100-year-old system which en-

couraged unions and compulsory arbitration and effectively deregulated its system by reducing the status of trade unions to that of voluntary associations and favoured individual contracts of employment The State of Victoria in Australia is moving in the same direction.

In South Africa there is a particular need to reduce the exceptionally high rate of unemployment by creating new job opportunities and to stimulate growth and competitiveness and attract local and foreign investment. South Africa is moving in the direction of a consensual relationship between management and labour, but Brassey and Brand point out that the parties must have a measure of confidence in each other This can only come about voluntarily.

They criticise the drafters of the Bill for failing to appreciate the distinction between integrative problem-solving and collective bargaining They are critical of the proposed "workplace forum" and suggest "it will become yet another bargaining forum whose

proceedings are characterised by aggressive distributive bargaining in the plant itself"

They point out that majority trade unions will have the statutory power to create the workplace forum as the effective bargaining agent and thereby force the employer to negotiate over a wide range of topics In their words "Going far beyond what the courts currently demand, the drafters give this agent the power to veto or retard the implementation of certain (as yet unspecified) managerial decisions This is compulsory bargaining in full force And if the unions only recognised it as such, they would welcome it with open arms."

Brassey and Brand discuss the question of centralised bargaining, and suggest it is really a non-issue because industry-level bargaining has existed since the mid-20s and most of the major players favour the extension of that system.

In their opinion the drafters have failed to provide an adequate solution to dispute resolution and they regard this aspect of the Bill as unworkable and one of its foremost failings

"Though intended, by encouraging co-operation, to enhance productivity and generate higher wages, it can, if too restrictive, hamper the mobility of labour and capital, stifle entrepreneurial initiative and discourage investment. Finally, it can threaten fundamental rights to liberty, equality and property

These rights go beyond what even the most enlightened employers currently concede In the future, they might find them more palatable But accepting them voluntarily is one thing, imposing them by law quite another. For thousands of employers the Bill represents a far-reaching invasion of their liberty, property and privacy"

Very few, if any, other South African practitioners have had as much "hands-on" experience of employment and industrial relations as Martin Brassey and John Brand Their concluding remarks in the article deserve particular attention.

The sentiments expressed also come from responsible citizens who have remained in this country and fought hard for more than 15 years in adverse circumstances for the recognition of the rights of trade unions and workers

"This Bill goes further, far further, than any other labour dispensation of which we are aware of which would doubtless argue, with some justification, that desperate times demand desperate remedies But these are altogether too desperate. They may work for a while, but as they gradually collapse, the results will become increasingly parous

"Employers will discover that they are at the mercy of unions that opportunistically exploit the powers conferred on them for their own self-interest and individual workers will wonder what happened to their rights of job security Serious industrial conflict will be the result, with consequences for the economy that are hard to over-estimate"

It is not too late to do what they suggested in the first place and follow the usual and acceptable procedures for introducing or amending important legislation The Minister of Labour should be asked to take certain steps, urgently

Halt the "negotiations" at Nedlac

Establish a representative expert commission of inquiry

Instruct the commission to obtain information and opinions from a wide range of experts, examine all the issues properly and make recommendations to him.

Formulate a proper response and allow all interested persons to comment and then only create an affordable and workable employment and industrial relations system that is capable of achieving the necessary objectives and meeting the real needs of the majority of the people

# Scabbing now do-or-die issue in the Nedlac debate

(166)

SPAN 10/7/95

BY THABO LESHILO

Given its critical importance to the power of both employers and trade unions during strikes, it comes as no surprise that the issue of scab or replacement labour is now the most important issue separating organised labour and business on the Labour Relations Bill in Nedlac.

Cosatu assistant secretary-general Zwelanzima Vavi said "Scab labour is the real do-or-die issue for unions. To us, it is a very emotional issue and a direct threat to any worker."

"It effectively weakens the power of workers against that of employers, who already derive immense power from the fact that they own the factories, have a right to employ or dismiss workers, and make technological decisions."

"If there is no settlement on the scab labour issue, we will not be part of any deal on the new LRA."

## Violence

According to Mahlomola Skhosana, assistant secretary-general of the National Council of Trade Unions, allowing scab labour would greatly increase the potential for violence on the shopfloor.

Andrew Sparks, a researcher at labour consultan-

cy Andrew Levy and Associates, said alternative labour was crucial to companies because of its diluting effect on strikes.

"It allows the company to continue production and withstand the impact of strikes for a much longer time."

However, Sparks denied that scab labour could break the power of trade unions.

"I think it is overstating the case. Ever since the beginning of trade unionism, employers have been able to get alternative labour."

"In fact, the poor quality of the work done by replacement labour is a very strong incentive for the employer to end the strike," he said.

George Araujo, a partner at law firm Webber Wentzel Bouwens, said outlawing temporary labour would artificially skew the power balance in favour of strikers and was contrary to the principle of collective bargaining.

Said Araujo: "The idea of a strike is to force the employer to give in to a demand by the strikers who are withdrawing their services."

"The minute the employer is also deprived of the services of temporary staff, it artificially increases the power of the striking workers, whereas central bargaining is a mechanism

to enable the parties to conclude agreements based on their true strengths and weaknesses."

He added: "Traditionally, unions are strong when there is high employment and a shortage of skills."

"If employees withdraw their labour, the employers cannot find the skills elsewhere - that is a perfectly legitimate way that unions are able to get better conditions of employment for their members."

## Replace

"On the other hand, in times of high unemployment, the employer is normally able to replace strikers more easily."

"Therefore, the unions find it much more difficult to increase the price of labour."

Araujo argued that the fear of violence during strikes was no reason why scab labour should not be allowed. "One needs to address issues which are unacceptable."

"If one were to say that everything which has the potential for violence or harm must be done away with, then it could mean that we would do away with protest marches or strikes because there is often the potential for violence in each of them. It is inappropriate to deal with issues in that simplistic manner."



# Give workers dignity they deserve, pleads Shilowa

By ESTHER WAUGH  
POLITICAL CORRESPONDENT

When Cosatu general-secretary Sam Shilowa had the ear of President Nelson Mandela this week, his message was "Give the workers the dignity they deserve"

"That's really the issue. So that's my line with the President," he said. Shilowa met Mandela on Wednesday to brief him on Cosatu's position on the controversial Labour Relations Bill, but said he would not ask Mandela to intervene in the deadlock between labour, business and government.

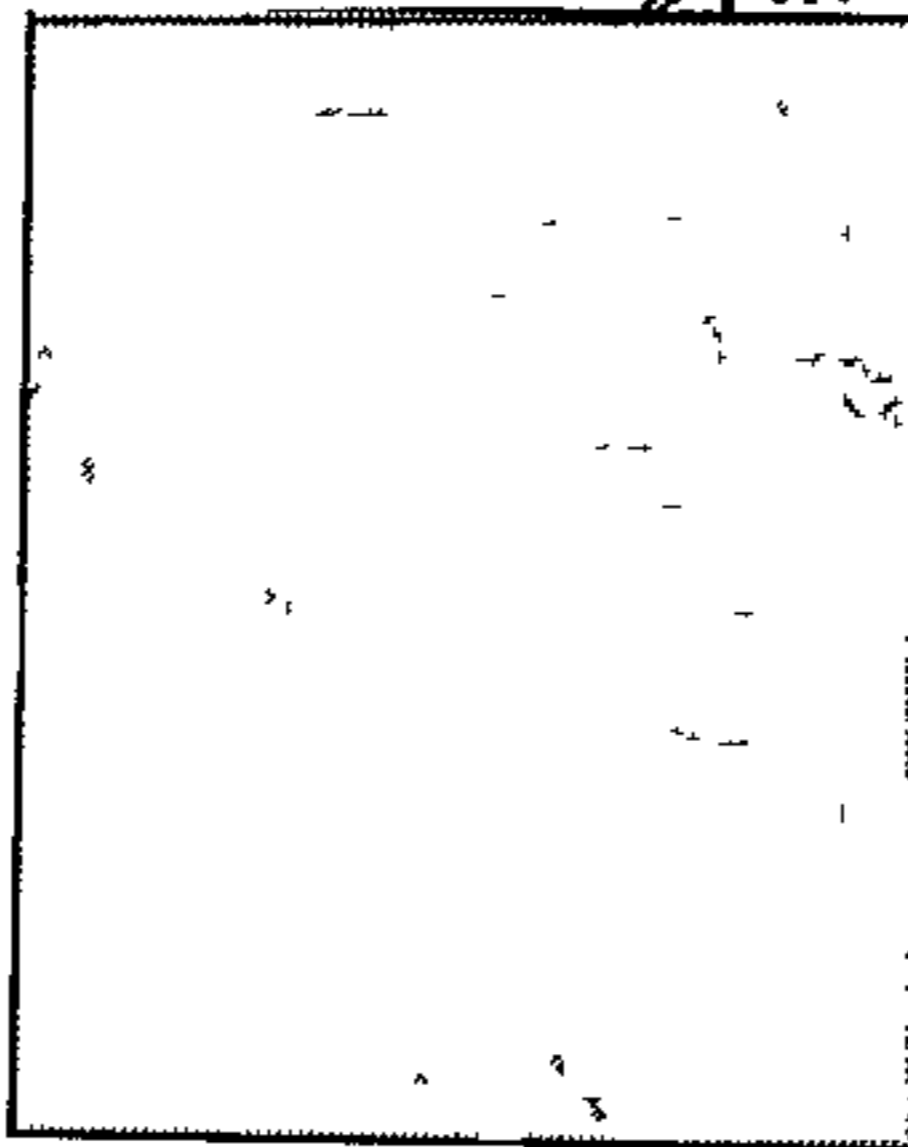
"As far as I'm concerned, Tito (Mboweni, the Labour Minister) is capable of intervening (in the negotiations. Bringing Madiba into the situation will mean that we have no confidence in ourselves — that is, those of us who are involved in Nedlac (the National Economic, Development and Labour Council) "

In essence, the briefing had been designed to give the President a feel for the issues involved. In an interview with the Saturday Star before the meeting, Shilowa detailed the issues.

## Categories

Shilowa said unions were prepared to be flexible in accepting that maximum wage levels could be negotiated at a plant or company level while minimum wages should be negotiated at a centralised level.

The movement accepted the creation of different categories



**A WORD IN THE EAR:** Sam Shilowa told Mandela the basic issue is one of human dignity

in, for example, the retail sector, but minimum wages for these should be agreed upon. This would, however, not mean that "OK Bazaars and Woolworths" workers would be earning the same salaries.

"The real debate between us and employers is not about voluntarism and flexibility. It is about whether issues related to redistribution will be dealt with as well."

Shilowa said business was prepared to have compulsory negotiations at a centralised level on the industrial policy, training, dispute resolution and pensions and medical aid benefits.

"But, it is when we say that issues related to wages, collective bargaining and conditions of employment should be part of that process, that they begin to

say. No, no voluntarism and flexibility'

"This is the one issue I'm going to outline to Madiba. I will say it is an issue of productivity, production and wealth creation on one hand, and redistribution on the other. It is ideological differences."

Also high on his agenda was the issue of scab labour. He was to use the example of Germany, which has centralised bargaining, stable unions and a vibrant economy. Although scab labour was not prohibited by law in Germany, scab labour was not used during strikes.

Referring to last year's strikes at Pick 'n Pay and in the motor industry, Shilowa said the Pick 'n Pay strikes, which used scab labour, were characterised by police involvement, tension and lock-outs of workers. The motor industry, which did not use scab labour, was able to settle its differences with the workers.

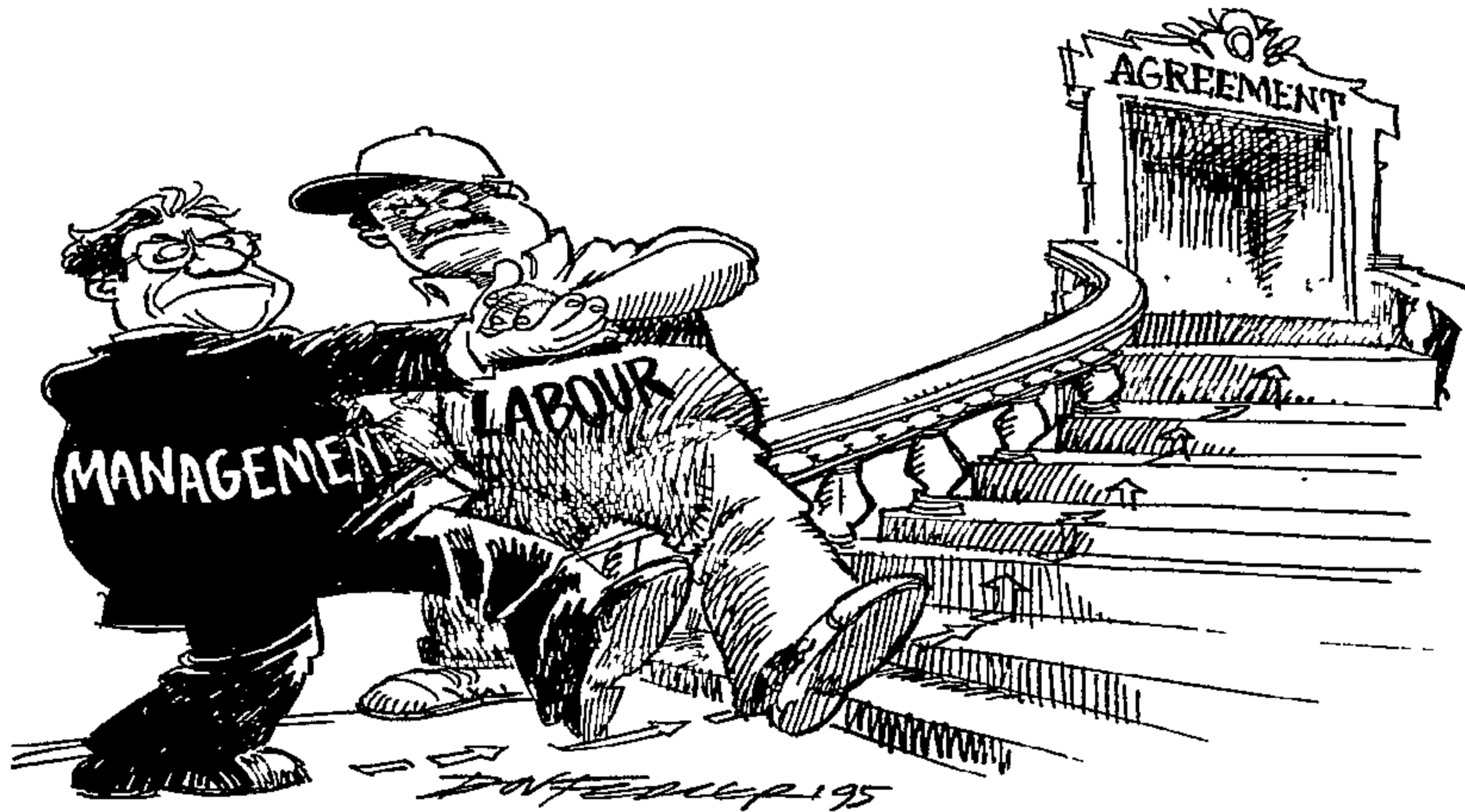
## Defensive

Another issue to have been raised during the briefing was that of lock-outs of workers by employers.

"I will be saying to Madiba that employers should have lock-outs as a defensive mechanism and not as an offensive one."

Shilowa said he would point out that Cosatu was in alliance with the ANC.

A new round of negotiations between labour, Government and business starts tomorrow.



## Will the ANC hyena outsmart the jackal?

ET(MR) 7/7/95 (166) (16)

**T**ito Mboweni, the labour minister, uses allegory to depict the tortuous path he is trying to negotiate towards a new labour-management paradigm: The hyena is pursuing the elusive jackal. The hyena finally corners his quarry, only to find the jackal propping up a rock ledge with a pole. The jackal persuades the hyena to help him hold the pole — saying this is the only way to save both of them from being crushed by the falling rock. The hyena holds the pole with the jackal. Then the jackal says the pole will not hold and he must find another. He trots off into the bush, leaving the hyena holding the pole.

Some months later, the hyena — still holding the pole — wonders, "Where is that jackal and how can he leave me stranded like this?" The hyena gingerly loosens the pole. The rock does not fall, it is perfectly solid.

As Mboweni reveals with a grin, the hyena in this tale is the ANC, personified by the minister himself, and the jackal is, interchangeably, organised business and organised labour.

Business and labour have

### COLUMN ONE



BY JIM SMITH

*Nedlac has been given a baptism of fire by the dispute between business and labour*

indeed managed to get Mboweni to hold the pole and to attract the lightning at the centre of what has become the main political electrical storm of the year.

There are two good reasons why this storm has become so noisy. The first is the sheer scope of the task, which is no less than the transformation of the way in which organised business and the trade union movement relate to each other.

For business, these changes include a major increase in the degree of disclosure of financial information to employees, more consultation between management and unions on the way the enter-

prise is run; and joint decision-making with employees on some issues such as affirmative action.

For labour, the legislation calls for acceptance that non-union employees also form part of the workplace community and need to be included in consultative mechanism. The closed shop is also likely to be a casualty. Further, labour will probably have to accept the absence of a ban on scab or replacement labour during strikes.

Finally, both sides will need to come to terms with a middle-ground method for dealing with each other at industry level.

Managers will learn to take part in industry forums on issues such

as training and employee benefits.

Labour, in turn, will have to accept that its political alliance with the ANC does not translate into automatic acceptance by the government of a law that would compel businesses to bargain centrally.

The level at which bargaining should take place is best left to the players to bargain themselves. They should use the conventional bargaining tools of persuasion and shopfloor power to determine not only what issues are to be bargained but also to agree on the level of bargaining and the membership of the bargaining units.

The second good reason for the explosive nature of the labour relations bill debate is that it is the first bout for the National Economic Development and Labour Council.

As the council is destined to become central forum for South Africa's socio economic problems it is healthy that it has started its life by grappling this complex issue.

Mboweni, the hyena, is now jawboning the parties toward a comprehensive agreement. Fortunately, the jaws of the hyena are particularly fierce.

DEAL-MAKER . . . Jayendra Naidoo is confident Nedlac will succeed

Picture: RUVAN BOSHOFF

## Baptism of fire as the heavyweights clash

By CAROL PATON

JAYENDRA NAIDOO is looking remarkably calm and relaxed — which, given that he has only a week in which to deliver agreement on a crucial piece of labour legislation, is surprising

Mr Naidoo, the executive director of the National Economic Development and Labour Council (Nedlac), is under severe pressure to forge an agreement between business, labour and the government on the Labour Relations Bill.

Agreement must be reached by July 17 if the Bill is to be passed by Parliament this year

After three months of negotiations and late-night hotel room caucuses, Nedlac's credibility is on the line

Some of the criticisms are that Nedlac lacks the ability to broker a social partnership between business and labour; that it failed to sufficiently facilitate negotiations, and that there is no transparency in decision-making.

The Labour Relations Bill was Nedlac's first big task. Mr Naidoo, a former trade unionist, a skilled negotiator and one of the ar-

chitects of the National Peace Accord, was to have been the deal-maker

"It's been one hell of a fiery baptism," he says, describing the Bill as "the biggest issue since the political negotiations"

He says it would have been easier if Nedlac had started with a "softer issue" than a Bill that will shape the working lives of all South Africans

When Nedlac was launched in February, it was not anticipated that negotiations dealing with labour legislation would be so bitter.

After Cosatu's half-day strike on June 19 and threats by business to pull out, it appeared that the ability of business and labour to form a social partnership had been overestimated. It also seemed that Nedlac couldn't provide the framework for a common approach.

The adversarial relationship between business and labour took Nedlac by surprise, says Mr Naidoo. But this doesn't mean that in South Africa such a partnership is impossible. "It was unexpected and underestimated but with hindsight, understandable.

"We are in South Africa — a deeply divided South

Africa with an enormous legacy of conflict. To expect that all differences would be resolved is unrealistic"

Mr Naidoo is a master of process. He believes that many of the problems Nedlac experienced in negotiating the Bill can be solved by redesigning the negotiations process

He suggests that more attention be paid to joint problem-solving methods and that there be an earlier identification of problem areas and ways to resolve them

He also identifies the need for the Nedlac secretariat to play a greater facilitating role.

"My role in Nedlac was described as the deal-maker," he says. "But with the labour Bill I've had less space to play the role of the facilitator than I wanted. Partly this was because the Bill was already on the table. It was also because Nedlac was a new institution and was still finding its feet"

Backing up the need for better facilitation was one observer's comment: "When you put eight heavyweights into one room, you need to find them a mother"

When negotiations reached the final countdown this week, Nedlac changed tack, establishing three working groups and a committee of principals to tackle outstanding issues. In a break with practice, committees were chaired by the Nedlac secretariat

Responding to the criticism of the lack of transparency, Mr Naidoo says that while he foresees the possibility that some sessions will be opened to the public, he insists on the need for privacy when it comes to deal-making

"We have to find a balance between the moments where the parties are exploring that which is tentative, in order to take back joint recommendations to their members, and the points which are open"

As the minutes pass in what he describes at the "countdown to midnight", Mr Naidoo remains confident that Nedlac will find its feet. "As long as we remain alive to the issues, don't become complacent and learn as we go along"

# Labour and business on path to peace

By CAROL PATON

THE boardroom war between business and labour over the new Labour Relations Bill was almost over, with agreement in sight on all the "big issues", Labour Minister Tito Mboweni said this weekend.

But there was still no indication whether the parties would reach full agreement or whether it would be left to the minister to make recommendations for legislation to the cabinet on issues on which there was disagreement.

ST 9/7/95  
The three parties, which have been meeting in the National Economic and Development Labour Council (Nedlac) must reach agreement by July 17 if the legislation is to be passed by parliament this year.

Mr Mboweni said the latest round of talks had "narrowed the scope of the areas of disagreement".

A joint statement by the principals committee, composed of Cosatu general secretary Sam Shilowa, Business SA's Bobby Godsell, Mr Mboweni and Nedlac executive director Jayendra Naidoo, said the

(132) (166)  
parties were committed to meeting the deadline.

All outstanding issues have been referred to the principals' committee which aims to tie up all major areas by Tuesday.

Despite the tension between labour and business during last week's talks, Mr Mboweni was optimistic. The ministry put forward new proposals, which appear to have bridged the concerns of labour and business, and provided for a law "where everyone will come out winners".

● See Page 4

# Scabs get no time off in labour debate

ST 2/7/95

By KEVIN DAVIE

THE issue of scab labour — whether employers can hire workers to replace strikers — is likely to be the next big issue in negotiations on new labour law.

Labour Minister Tito Mboweni says this issue is giving him "sleepless nights" (166) (166)

He says only two countries prohibit the hiring of scab labour. Most do not put prohibitions on scab labour into the law and employers and trade unions conclude agreements on how to manage the issue.

The draft Labour Relations Bill is silent on the question of scab labour — also known as temporary replacement labour — allowing parties to draw up their own agreements, but the Cosatu-led union alliance has said it wants scab labour outlawed.

The parties meet today for the first time since Mr Mboweni tabled proposals last week to break the deadlock over issues such as Cosatu's demands for compulsory centralised bargaining.

Neither business nor labour have disclosed their responses to Mr Mboweni's proposals, but Mr Mboweni has won Cabinet approval for a timetable which will see a Labour Relations Bill being debated in Parliament on August 14.

Government officials in-

involved in negotiations are confident that sufficient consensus will be reached between the parties for the Bill to be sent to Parliament in August.

A union delegation led by Cosatu's Sam Shilowa had breakfast with President Nelson Mandela on Thursday. Mr Mboweni says most of the meeting, which Mr Mandela had to leave early, was devoted to non-union discussions.

Cosatu's Neil Coleman says Mr Mandela attended the meeting as president of the ANC. "It was an alliance meeting to give us a chance to explain our position to our allies."

Mr Coleman says Cosatu has also briefed ANC MPs who have positions on Parliament's standing committee on labour, and two provincial premiers.

He says there is no reason to be optimistic or pessimistic ahead of today's meeting. Much will depend on what the parties, including government, tables for discussion.

Mr Mboweni says his department has processed 2 000 pages of submissions including organisations representing small business, on the proposed law.

He says the needs of small business "have to be accommodated"

# Nedlac focus on 'charged' issues

John Dladu

60 13/9/95  
NEGOTIATORS from business, government, labour and community organisations are meeting today in the four specialist chambers of the National Economic, Development and Labour Council (Nedlac) ahead of a crucial meeting of the executive council on Monday

Nedlac sources expect the spotlight to fall on the trade and industry and the labour market chambers, which are dealing with what one business source termed "highly charged issues" — an apparent reference to the running wrangle between business and labour over the draft Labour Relations Bill.

According to Nedlac documents, today's meeting of the labour market chamber may see the tabling of a report on the draft Bill on labour relations law.

The chamber's programme also includes discussions of International Labour Organisation conventions, National Training Board, public holidays and health and safety

Government and business representatives will table their responses on the controversial labour proposal

to link SA trade to social clauses at the trade and industry chamber.

Labour wants SA trade partners to agree to a ban on child labour and all forms of discrimination.

The partners should also respect the right to join unions, strike and use collective bargaining

According to Nedlac, business has already formulated its proposals. However, it was not clear yesterday whether government would table its response today

While business generally felt that pushing for the compulsory inclusion of these clauses in trade accords might amount to new forms of trade protectionism after tariff reductions — an unlikely alliance between business and labour around social clauses might emerge

Four countries — Malaysia, the Philippines, Cuba and Thailand — have refused to sign trade accords with SA because of the insistence on including social clauses.

A business source said government appeared to be divided on the subject of social clauses because of its historical alliance with labour

"Some (within government) feel morally bound to push for these

principles to be included in bilateral trade accords," he said

The business constituency is expected to suggest amendments to the proposed establishment of a new investment promotion agency "Business wants the existing infrastructure to be retained, although some reshaping might be needed"

Business, it is understood, felt the Industrial Development and Investment Centre — a sub-directorate of the trade and industry department — should be retained, but be made a quasi-government agency with representatives from the private sector.

This is one of the areas of agreement that Nedlac sources feel will be tabled for rubber-stamping at next Monday's meeting of the executive council

Another central item on the chamber's agenda is government's presentation of a discussion document on long-awaited supply-side measures.

The public finance and monetary policy chamber is expected to discuss SA's exchange rate and the country's foreign exchange controls which are said to continue to haunt prospective investors

## 'Make or break' talks on labour Bill

Rense Grawitzky

(166 ~~192~~) 50 12/7/95  
LABOUR, business and government representatives began negotiations last night in what all parties acknowledged was a "make or break" meeting on new labour legislation.

The labour market chamber of the National Economic, Development and Labour Council (Nedlac) met in what has been dubbed the final scheduled meeting to meet the deadlines set for submission of new legislation to Parliament next month.

The core issues which led to deadlock at the end of May are the focus of discussions. Contentious issues are centralised bargaining, workplace forums and disclosure of information, strikes and lock-outs, secondary strikes and protest action and organisational rights.

Prior to the meeting, Labour Minister Tito Mboweni said despite a number of outstanding issues he was hopeful the parties would reach consensus and submit a report to Nedlac's executive council on Monday. This would form the basis for drafting a Bill.

Business SA spokesman Adrian du Plessis said: "There are some tough issues to be dealt with in the closing stages of these negotiations. We hope we can settle the core concepts."

Cosatu assistant general secretary Zwelenzima Vavi said "this is the real deadline and is a do or die meeting"

● See Page 3

# Transparency is not just a matter of convenience

(132) (166) BD 14/7/95  
 Renee Grawitzky

IN THIS era of supposed openness and transparency, negotiations around new labour legislation in the National Economic Development and Labour Council (Nedlac) have provided food for thought. In essence, the talks have been shrouded in secrecy except when media or public attention has suited one or other of the parties.

When Nedlac was launched in February the intention was that discussion and processes within the four chambers would be accessible to the various constituencies and the public. This was, not least, because participation in similar institutions such as the National Economic Forum had caused problems for both labour and business in terms of obtaining mandates and interaction with their membership — because those members felt excluded from the process.

These good intentions have come to little. The parties to the labour chamber tabled their initial responses to the draft negotiating document on the Labour Relations Act on May 4. The media, instead of being briefed on the opening positions tabled and on what had transpired, were treated to a round of innocuous statements.

The next day labour presented its position to the media while business "leaked" its position.

It was unclear whether this was business's official position. Government was not at all forthcoming in presenting its initial position.

This auspicious start set the tone. The media, realising that they were not going to be privy to discussions taking place within Nedlac, began to rely on their own speculation.

Thereafter, Nedlac officials called an informal discussion with a few journalists. They indicated they were not, in principle, averse to the labour chamber (or any other) proceedings being

opened. However, the parties to Nedlac evidently feel less comfortable about this idea. In effect, it is the parties within the labour chamber which have prevented Nedlac from ensuring that interested parties are kept up to speed on developments.

At the recent labour law conference in Durban, Wits Centre for Applied Legal Studies director Dennis Davis indicated that Nedlac, in effect, operated like a "super-Parliament" as the constitution provided that it had to be consulted before any labour legislation could be tabled in Parliament. Advocate Martin Brassey pointed out that deliberations in Parliament were open to public scrutiny, so why should Nedlac be closed? He said it was acceptable that party caucus meetings be closed.

It would be naive to expect all forms of interaction between the parties to be open to the public. In delicate and sensitive negotiations where the stakes are high, a certain amount of leeway should be given to the parties during certain periods — for example, when parties are trying to find common ground and they pursue certain options without obtaining mandates from their constituencies.

This excuse has, however, been used throughout the process in an attempt to keep information from the media and the public, hampering efforts at informed reporting.

Perhaps as important as open Nedlac sessions would be regular and informative information briefings.

For the parties to Nedlac, however, glimpses of transparency have been reserved for those times when a particular party wants some leverage over its opponent. In the weeks and months to come, the public will need to be educated on the "new face of labour legislation". Government, labour and business will have to use the media to achieve this. Will this be a convenient time to become transparent?



# Labour negotiators now in injury time'

Renee Grawitzky

**DURBAN** — The prolonged labour legislation negotiating process had created a sense of uncertainty inside and outside the country, Labour Minister Tito Mboweni said last night.

The protracted process had caused uncertainty abroad over what kind of labour relations system the country would adopt, he said at the opening of the eighth annual labour law conference in Durban.

At some point the country would need to create a level of certainty.

"We have run out of time. We are in injury time now."

There were broad areas of consensus but also many areas of disagreement.

However, it would be naive to expect that agreement would be reached on all issues, he said.

Mboweni outlined three possible scenarios. The first two — delaying the enactment of a new Bill until next year or abandoning redrafting a new Bill — he rejected. He did not comment on the third scenario, in which parties would submit a draft Bill that included areas of agreement as well as areas in which agreement was not reached.

If this happened, it would be with the proviso that the Bill could later be amended.

He cautioned that the cost and the benefits of this option would have to be weighed up carefully against one another.

In recent weeks the National Economic, Development and Labour Council (Nedlac) had been criticised as a waste of time. This was incorrect, he said. "Nedlac still offers important institutional mechanisms to build social consensus."

Nedlac's principal committee meets today to consider reports compiled on progress made by its working groups this week.

Mboweni asked how a government devised new labour legislation in a highly charged atmosphere where government had an alliance with the largest trade union federation.

Major differences were unavoidable as the parties were separate and independent. However, these differences would not break the alliance, he said.

Prof William Brown of Cambridge University, speaking on bargaining at industry level and pressure to decentralise, said SA's nurturing of centralised bargaining was not necessarily taking the country in a wrong direction.

It was necessary to create a flexible system to allow for consensual relationships. To ensure economic growth and democracy it was necessary to put down "deep roots" for collective bargaining, he said.



## Sexwale to help Fassie

Vusi Khoza

SINGER Brenda Fassie, who has admitted to being addicted to drugs, will spend the next six months in a rehabilitation clinic following advice from Gauteng premier Tokyo Sexwale and singer Chicco Twala, who responded to her plea for help.

Sexwale said yesterday he had returned from a holiday in Cape Town to attend President Nelson Mandela's 77th birthday and finalise arrangements for Fassie's treatment.

Sexwale and Twala also plan to set up a helpline to assist all drug addicts. This follows the death of Fassie's friend and housemate Patricia Sihlahla who died from a drug overdose.

Fassie said this would be her second visit to a rehabilitation centre. Fassie admitted to still being on drugs, but said she hoped the rehabilitation would help her "discover" herself.

She challenged everyone to "check on me" and asked her followers to "pardon me" I have disappointed you enough," she said.

Twala said Fassie would put her career on hold until next year. Twala, who is paying for the rehabilitation, refused to name the clinic or reveal how much the treatment would cost.

Referring to Fassie, Sexwale said "we can't let this diamond wither away".

## Business and unions 'must make choices'

Renee Grawitzky

THE agreement between labour and business on the draft Labour Relations Bill was the most important achievement and it represented everything which the union movement had strived for in the past, Minister without Portfolio Jay Naidoo said yesterday.

At the fourth Them and Us worker and management conference organised by IR Network, Naidoo said that in order for the RDP to succeed, all constituencies including labour and business had to make certain choices.

Labour had to decide whether "we meet the needs only of workers in the formal sector" while business, if it wanted to become competitive in world markets, would have to consider investing more heavily in training and education.

Delivery on the RDP necessitated the "collective responsibility of government through the process of the National Economic Development and Labour Council (Nedlac) to make this successful", Naidoo said.

He said the job of the RDP office was to create a strategic framework for government. It was not his responsibility to deliver on the RDP.

National Union of Metalworkers of SA (Numsa) general secretary Enoch Godongwana said the intention of labour during the negotiation process around the draft Bill was to try to bring business closer to labour's position which was to the left of the Bill.

He said it was difficult to ascertain whether the final agreement was to the right or left of the Bill.

Transport and General Workers' Union general secretary Randall Howard said regardless of the infighting and the process around the negotiation of the draft Bill, the parties had arrived at a new industrial relations framework.

He said the Bill "allows more for a voluntary system of labour relations to allow both parties to conduct labour relations more effectively".

Howard said the basis had been laid and how it was implemented was dependent on labour and business.

Government, he said, was attempting to ensure that a balanced approach was adopted in dealing with the social partners.

The Bill also endorsed majoritarianism and it was important for employers to accept that it was in their interests to deal with strong industrial unions.

**F** SOME politicians are known for twisting words, Labour Minister Tito Mboweni has shown that they can twist arms too. Mboweni's intervention to win a deal on the Labour Relations Bill may be as important politically as it is economically.

Like his fellow ministers, Mboweni faced a dilemma common to all in government, but particularly acute here. This government is the first in our history to enjoy a mandate from the citizenry. Not only does it have a licence to govern, voters expect it to do just that by pushing through the programme of change it promised.

But it also knows (and needs to continue knowing) that it can do little without the consent of those powerful organised interests which immense influence in the world outside government offices and it must, therefore, negotiate with them.

Its problem is not only that white interests remain strong enough to damage government programmes if ignored; within the ANC's camp, there is a host of organised interests which demand a say in government decisions which affect them.

**T**hese conflicting pressures have led some ministries apparently to abandon governing lest thus offend someone important. They are not helped by the knowledge that they are denounced by opinion-makers for lacking firmness (when they do not do what the speaker wants them to do) as much as for showing firmness (when they do not give the speaker a veto over what they do).

In Mboweni's sphere, these problems are most obvious, since he has to steer policy through the country's two most powerful private interests, business and labour.

There are few if any market economies in which government can ignore the "big two". This is why the new government has, like many others faced with the same problem,

# Mboweni knows when to cajole and when to be firm

By Steven Friedman

established a forum designed to secure business and labour agreement for policy and law — the National Economic Development and Labour Council (Nedlac).

At first glance, Nedlac's formation seems to confirm that the pressure to govern will have to take second place to keeping the powerful interests on board. While some opinion-makers suggest that Nedlac is a great idea because including private interests in decisions deepens democracy, and that strong leadership by elected politicians is essential, they tend to forget that the one weakens the other: the more power the two big private Nedlac parties have, the more will the hands of the elected government be tied.

This is why, as the Labour Bill talks produced a stalemate between labour and business, Mboweni seemed to be faced with the same dilemma as his Cabinet colleagues. If he had held back on his Bill until the other parties had sorted out their differences, he would have been seen not to be governing. Indeed, since he believes his Bill to be crucial to economic prospects, he would arguably have been abdicat-

ing his duty to voters

But if he had rammed it through over the private interests' heads, the Bill probably would not have been worth passing since there is little point in imposing new rules on the economy if those governed by them refuse to abide by them. However, Mboweni may have shown it is possible to govern and to secure the agreement of those who must live with government decisions.

**H**is method, of course, was to hold a gun to the two parties' heads, to use the (implied) threat that he would go ahead without them to press them into settling. In the process, he has reminded business and labour that Nedlac's decision-making chambers have a third party, elected government, which has the power to influence negotiations since it alone can pass laws.

In a sense, his ministry had signalled this at the outset of the Labour Bill process: it had, after all, drafted the Bill on its own before presenting it to the other two parties. But he has also acknowledged

that government decisions may have little effect unless they enjoy the support of the other parties

Those who suggest, therefore, that Mboweni's pressure tactics have weakened three-sided bargaining between government, business and labour miss the point. In reality they have strengthened it, by showing that the table has three sides — all indispensable.

The argument about whether government needs to consult more or govern more has not been settled. Certainly, those who complain that Mboweni's department drafted the Bill on its own, or that it pressed the others into agreeing, forget that elected governments are entitled to enact their programmes.

But that does not always mean that they get their strategy right. We do not yet know how firm business or labour's consent to the Bill really is. If either begins rebelling against the rules, we may find that the minister rushed an agreement which might have had a better chance of working if he had been prepared to wait for the other two to hammer out a deal with which those they represent could live.

Even if that happens, however, Mboweni may be justified in arguing that the costs of having to patch up the Bill in a year's time are less than those of waiting at least a year to start labour law reform.

It is also worth remembering that Mboweni represents only one arm of government, the executive. The legislature, Parliament, is also supposed, through its committee system, to play a vigorous role in a democracy. If Parliament's labour committee decides it does not like parts of the deal the minister hammered out, the tension between the private interests' powers and those of the elected authority will reappear. Thus, of course, applies not only to this deal but to any others cut at Nedlac.

It will, therefore, be some time before we know whether the need to include private interests in decisions can be balanced with Parliament's need to wield power over law-making. But if that does happen, Mboweni's ministry, having shown a taste for governing as well as bargaining, will be obliged to work just as hard to bring Parliament on board as it has to take labour and business along.

**N**one of this necessarily means that Mboweni's tactics can be cloned by other government ministers. Labour and business may be our most powerful interests, but they are also the ones most able to cut deals under pressure: they have had 20 years to work out that they have to live with each other. So the Mboweni method is not a sure-fire winner in conflicts between students and university administrators, medical companies and health pressure groups and the like.

But the minister has shown some of his colleagues that the choice between governing and negotiating is not as stark as it seems.

□ Friedman is Centre for Policy Studies director.

## Labour acquires rights 'equal to the world'

Renee Grawitzky

(122) (166)  
21/7/95  
THE National Economic Development and Labour Council (Nedlac) had stood and survived its first test with compromises having been reached on key areas of the Labour Relations Amendment Bill and in areas where differences were wide, Business SA spokesman Adrian du Plessis said.

Speaking at a joint Afrikaanse Handels-instituut and International Labour Organisation seminar this week, he said labour had emerged with rights and entitlements equal to any labour movement in the world while not denying business their's.

Du Plessis said business needed to get back to business in a new era of industrial relations and address the broader economic issues.

On the question of tripartism, Du Plessis said it was not a process of collective bargaining and the social partners within a tripartite structure should not import a system of collective bargaining into their behaviour or the agenda.

He said ultimately government should govern, but it would do this better with advice from its social partners.

Seifsa's executive director Brian Angus said the agreement to establish statutory councils would result in increased pressure being placed on employers by unions in sectors where industrial councils did not exist to bargain at a centralised level.

He said consideration would have to be the provision of exemptions when considering the type of centralised bargaining system. Angus said he supported the draft Bill's proposal that the granting of exemptions be considered by an independent body. He said exemptions should be dealt with in a fair and equitable manner.

Vice-chairman of the IMSSA Board of Trustees Felicity Steadman said in contemplating whether to embark on centralised bargaining at industry or company level, it was not always necessary to make a choice on a specific level.

She suggested an approach which could accommodate benefits of both national and plant level bargaining.

# Labour law move on ex-homelands

BD. 28/7/95

(16b)

**Renee Grawitzky**

THE harmonisation of labour laws — extending the Labour Relations Act (LRA), the Basic Conditions of Employment Act and the Wage Act to the former homelands — was discussed by the labour market chamber of the National Economic Development and Labour Council (Nedlac) yesterday.

According to a government report-back, regulations giving effect to this extension have been drafted and should be promulgated shortly.

The Commencement of Integration of Labour Laws Act, No 49 of 1994, published on December 2 1994, provided for the extension of all SA labour legislation to homelands.

However, regulations providing only for the extension of the Unemployment Insurance Act and the Workmen's Compensation Act have been promulgated, with some delay experienced in the drafting of regulations giving effect to the extension of the LRA, Basic Conditions of Employment Act and Wage Act.

According to union sources, since the reincorporation of the homelands, unions have been unable to extend existing industrial council agreements to these regions.

The committee of principals established within the negotiation process to reach consensus on the draft Labour Relations Bill — it consists of Cosatu general secretary Sam Shilowa, business's Bobby Godsell and Labour Minister Tito Mboweni — meets today to continue finalising outstanding issues.

John Dladu reports that Nedlac's government representatives had again asked their business and labour partners for more time to finalise a discussion document on appropriate

supply-side measures, Nedlac programme manager Debra Marsden said last night.

In terms of the new timetable, government would now unveil the long-awaited document — being drawn up with the help of the Industrial Development Corporation — at the next meeting of the trade and industry chamber planned for August 10.

Marsden said the document, covering human resources development, investment incentives, training and technology enhancement by firms, would become a central feature of the chamber.

Because of the detailed nature of the document and its sensitivity among partners, the paper was expected to take more than a single chamber meeting to discuss, to allow negotiators more time to study the proposals and formulate responses.

Government has said that alternative supply-side measures would be financed, among others, through savings made from the controversial general export incentive scheme, which was to be ended in 1997.

Government has failed to respond to the labour proposals aimed at linking trade to social clauses. Labour asked SA trade partners to agree on a ban on child labour and all forms of discrimination as well as to uphold workers' rights to join unions and to go on strike.

Marsden said government was still working on its "consolidated response" which could be tabled at the next chamber meeting.

Regarding studies on economic sectors to assess the competitiveness of the SA economy, negotiators agreed that the chamber and its sub-committee known as the Japanese Grant fund would determine future studies to be carried out.

# Bill on table by next month

Renee Grawitzky

*(166) (187) BD 18/9/95*

**REDRAFTED** Labour Relations Bill will be tabled in Parliament next month although several outstanding issues have not been resolved. Labour, government and business have expressing reservations about the outstanding issues.

The report on the negotiation process which outlined areas of agreement and disagreement on the draft Bill within the National Economic Development and Labour Council (Nedlac) labour market chamber was approved by Nedlac's executive council yesterday.

At a media briefing the parties remained tight-lipped on the final stage of the negotiations and the status of the unresolved issues. The parties would not dis-

close whether they would use the parliamentary committees to press their positions on the unresolved issues.

Cosatu general secretary Sam Shilowa and Business SA's Bobby Godsell said the draft Bill "enjoyed full support from the social partners".

This view was expressed despite differences of opinion on the limitation of replacement labour during lock-outs, the use of replacement labour during strikes and the right to strike over unfair dismissals. These differences could either be left to Cabinet or the committee of principals — Labour Minister Tito Mboweni, Godsell and Shilowa — to resolve.

Labour proposed the restriction on the

Continued on Page 2

## Nedlac *(182) (166) BD 18/7/95*

Continued from Page 1

use of replacement labour during lock-outs while business did not support this but indicated it would not prevent agreement being reached. Government indicated its willingness to accept this limitation.

Shilowa said labour had reservations about the use replacement labour during a strike. Provision is made for such use provided an employer gives seven days' notice to the commission for conciliation, mediation and arbitration or the relevant bargaining council. Business and government opposed labour's call for a right to strike over unfair dismissals. The draft Bill ensures dismissals will be subject to third party arbitration.

Shilowa said reservations from both sides "will not stop the process". He said "we will use whatever channels" to reconcile these differences and "we will manage the parliamentary process".

Nedlac executive director Jayendra Naidoo said Nedlac as an institution had been strengthened by the resolution on the Bill and the parties were ready for social partnership.

Mboweni said the drafting team would incorporate the agreements reached.

Of the issues referred to the technical committee, agreement was reached on picketing, sympathy strikes and workplace forums. Workplace forums would not be union-based but accredited trade union representatives would participate in forum meetings. The forum would be called by a representative trade union and could be dissolved at the union's request provided a majority of workers voted for this.

Issues for consultation would include the partial or total closure of a business, mergers and transfers, job grading, education and training, workplace reorganisation and criteria for merit increases or discretionary bonuses.

Joint decision-making issues would include the formulation of disciplinary procedures as well as rules relating to non-performance of employees, changes in the rules of pension funds and the appointments to boards of such funds.

Sympathy strikes would be permitted provided a balance was found between the "right to engage in a meaningful sympathy strike and its functionality".

At the same time unions would have to comply with the same procedure of giving notice as an employer who wished to use replacement labour.

# Nedlac reviews its chambers

John Dlodlu

(ibl)

*[Handwritten signature]*

*ED 17/7/95*  
Nedlac was on Friday busy drafting a report to be tabled at today's meeting

The trade and industry chamber had agreed on a framework for the promotion of inward investment, including the creation of an investment promotion agency, and this would be submitted to the council for consideration, Marsden said

However, further work on the thorny subject of policy instruments, including fiscal incentives, to be used to buoy investment still had to be done

The proposal for an investment promotion agency was based on proposals drafted by SRI International, an international firm of consultants

The development chamber, which started its work later than its sister chambers, had recommended that government and Nedlac co-manage both the municipal infrastructural development project as well as the Masakhane campaign, she said

Today's meeting would also consider Nedlac's proposals prepared by the public finance and monetary policy chamber — one of the less talked about chambers in Nedlac — on the budgetary process

THE executive council of the National Economic, Development and Labour Council today holds its second and most crucial meeting since its inception last February

In terms of Nedlac's founding documents, the executive — which is charged with defining broad mandates for Nedlac's structures — meets at least quarterly

Nedlac programme manager Debra Marsden said the meeting would discuss reports on the work of various chambers and review their programmes

"Importantly, the meeting will consider agreements reached by the chambers to date. We don't have a myriad of agreements, but there has been progress"

The meeting, initially scheduled for July 7, was postponed to allow parties at the labour market chamber to thrash out a deal on the disputed aspects of the Labour Relations Bill

Agreement on the critical issue of centralised bargaining, strike ballots, disclosure of information and organisational rights was reached last Thursday, and





## Talks resume to break deadlock on labour Act

(166) ARL 3/7/95  
The Argus Correspondent

JOHANNESBURG. — Government, business and labour leaders resumed talks to break the deadlock in negotiations on the draft Labour Relations Act confident that progress that would ensure the passing of the Act through parliament this year would be made.

Both organised business and labour federations have been studying Labour Minister Tito Mboweni's deadlock-breaking proposals presented to them two weeks ago and although the parties had made no formal responses, Mr Mboweni said that week indications were that they were moving to a solution on the centralised bargaining issue.

The parties were to table responses to Mr Mboweni's proposals on centralised bargaining, closed shop agreements and workplace forums at a "bosberaad" at a secret Gauteng venue which was expected to continue today.

The bosberaad was to consider further proposals by Mr Mboweni on the thorny issue of the replacement of striking workers by temporary workers.

"A solution to this is clearly very important to ensure stability and peace during lawful strikes," he said.

National Economic, Development and Labour Council spokesman Lomin Saayman said the meetings might continue tomorrow.

# Sam Shilowa in talks to unite business and labour

The Argus Correspondent (166) (182)

PORT ELIZABETH — Cosatu general secretary Sam Shilowa met Port Elizabeth businessmen and industrialists to discuss the establishment of a firm relationship between business and labour to rebuild the country's economy.

Mr Shilowa, who arrived in Port Elizabeth on Monday for a four-day visit to brief workers on negotiations on the draft Labour Relations Bill, said his meeting with members of the Port Elizabeth Regional Chamber of Commerce and Industry (Percci) would primarily be used to "hear each other's views"

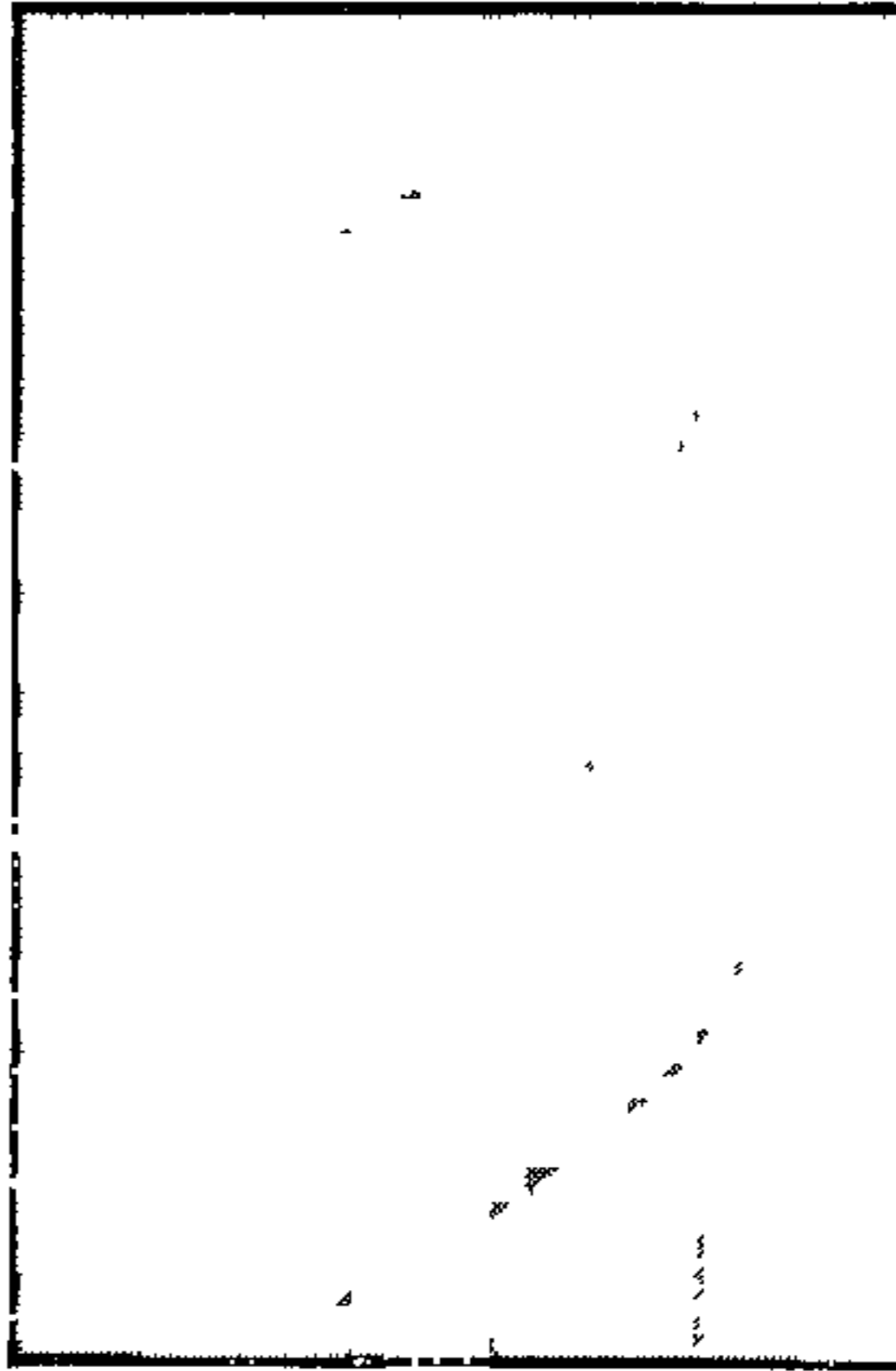
Speaking shortly before the meeting in North End yesterday, Mr Shilowa said: "One of the areas of co-operation with employers that we need to find a common approach on are issues on which we, as labour, take a confrontational approach

"We will also look at what business and labour should do to rebuild the economy, and the role of both employer and labour.

"Another issue is the misnomer that productivity as a national policy should be the only thing that we should push for, and that there is no room for what I call re-distributive issues. ARG 12/7/95

"My view is that you cannot separate these two," Mr Shilowa said

During his stay in Port Elizabeth, Mr Shilowa said in addition to briefing workers on the draft Labour Relations Bill, he would seek to reinforce the union federation's relationship with the African National Congress and its alliances, es-



Sam Shilowa

pecially in relation to the Masakhane campaign.

He said: "We, as Cosatu, need to ensure that the Masakhane campaign is well understood by all and people generally realise that both the government and the community have a role to play of delivering"

On the current negotiations at Nedlac on the Labour Relations Bill, he said although progress had been made, he would not like to comment until after the meeting in Johannesburg

Mr Shilowa's itinerary until tomorrow includes several visits to factories and other workplaces.

# Business, labour 'making progress'

ARG 4/7/95  
JOHANNESBURG — Business and labour leaders say they have made progress in talks on new labour relations laws, but no settlement is imminent on centralised bargaining, scab labour or strikes.

The largest labour and employer groups met at a Johannesburg hotel on Sunday and talked into the early hours of yesterday in an effort to reach consensus on key issues blocking agreement on labour laws due to be presented to parliament

"We are exploring the issues. Where we are now is that we understand where the other side is coming from and wherein lies the meeting point. We're inching towards a settlement even if it is slow," Cosatu general secretary Sam Shilowa told a news conference

"Taking into account the exchanges we have had, it makes all parties confident that with the political will we have, it is possible for us to find one another. Even though it looks like we are

(166) (122)  
moving very slowly, that slowness will bear fruit"

Business South Africa co-ordinator Bobby Godsell told the news briefing his delegation had found the weekend talks useful

"The discussions aren't concluded yet but I think we are making progress. We are committed to getting a new (Labour Relations) Bill this year"

Mr Godsell said the talks had unified white and black business leaders

"We are absolutely unified in our sense of the policy issues and our sense of strategy (in the labour negotiations). I think we have a unity which is a pleasing by-product of this process"

Labour Minister Tito Mboweni told the briefing that the social partners of business and labour had agreed to establish a "committee of principals" — himself, Mr Godsell and Mr Shilowa — to oversee a negotiated agreement and to form three working groups to thrash out a deal

"We are introducing a new system which will seek to quicken a process so that we can meet our deadline," Mr Mboweni said

The working groups would meet tomorrow and report to the principals' group by Friday

A plenary meeting of government, business and labour would meet on July 11 to accept a report from the principals and in turn present its own report to the secretariat of the National Economic Development and Labour Council (Nedlac) by July 14

Nedlac's executive would then examine the report on July 17. "This is in order to give the process sufficient time to proceed," Mr Mboweni said

"We hope there will be no outstanding issues on July 17 that will delay the passage of the Bill (through parliament)

"But I think we would be naive if we expected 100 percent. If we score 99,9 percent, that would be a major breakthrough," he said — Reuter

# Labour Bill still in for sticky ride

ARG 29/7/95

(b6)

Business Editor

CELEBRATIONS over an agreement between business and labour on the draft Labour Relations Bill may have been premature. The bill could still be in for a sticky ride before it becomes law, according to Johan Baard, human resources director at the Cape Chamber of Commerce and Industry.

A Department of Labour task team is working round the clock to redraft the controversial Labour Relations Bill, due to be debated by the Cabinet early next month.

Mr Baard, who has represented the Chamber on the SA Council of Business labour committee, said sticking points for business included the question of "scab labour", protection for workers against dismissal, joint decision-making in workplace forums, and disclosure.

The last two issues would be a crucial test of whether or not South African legislation could "make Wall Street smile".

The existing draft bill would allow workplace forums to debate a range of issues from re-tooling, investment, relocation, to career paths, training. But, said Mr Baard, the legislation was silent on how the agenda was to be drawn up and on

whether there had to be joint decision-making or just consultation.

"Decisions in business have to be taken fast. What if management can't afford to delay for consultation on some issues?"

"And what if a joint decision has to be taken and the parties disagree?"

"We're supposed to refer the issue to the Commission for Conciliation, Mediation and Arbitration and then to arbitration if necessary. So the tough ones will go to arbitration for crucial decisions. We'll have an economy managed through arbitration, by arbitrators who don't need to live with the consequences of their decisions."

Mr Baard said business would like the parties to the forums to structure their own agendas.

On disclosure, he admitted that Europe and the United States had tougher legislation than South Africa — so foreign investors were not likely to be frightened off by changes in the South African law.

"But capital and labour in these countries have shared values. In South Africa, the trade unions — and some parts of business — as a rule have a more narrow, short term, self-serving outlook. We need to change mindsets before we change the legislation on disclosure."

"We need to develop a com-

mon vocabulary"

Other sticky issues included.

■ Employers' rights to use replacement or "scab" labour, where, said Mr Baard, "the debate seems to be going against business",

■ The level of protection against dismissal for striking workers; and

■ Definitions of representativity.

He said Minister of Labour Tito Mboweni "can take lots of credit" for the progress made but on some issues business and labour were still "miles apart".

What was hailed earlier this month as a "breakthrough" was not really an agreement, he said, in the sense that neither the business nor the union representatives at the negotiations had mandates to sign an accord.

The new draft will be referred to a committee consisting of Mr Mboweni, Cosatu's Sam Shilowa and Business South Africa's Bobby Godsell, before being discussed by the Cabinet.

It is due to be debated in parliament next month.

Decisions will also have to be taken on labour relations in the public service and on whether the police should be subject to the new law.

■ Cosatu spokespersons could not be reached for comment yesterday.

# Agreement on draft labour act

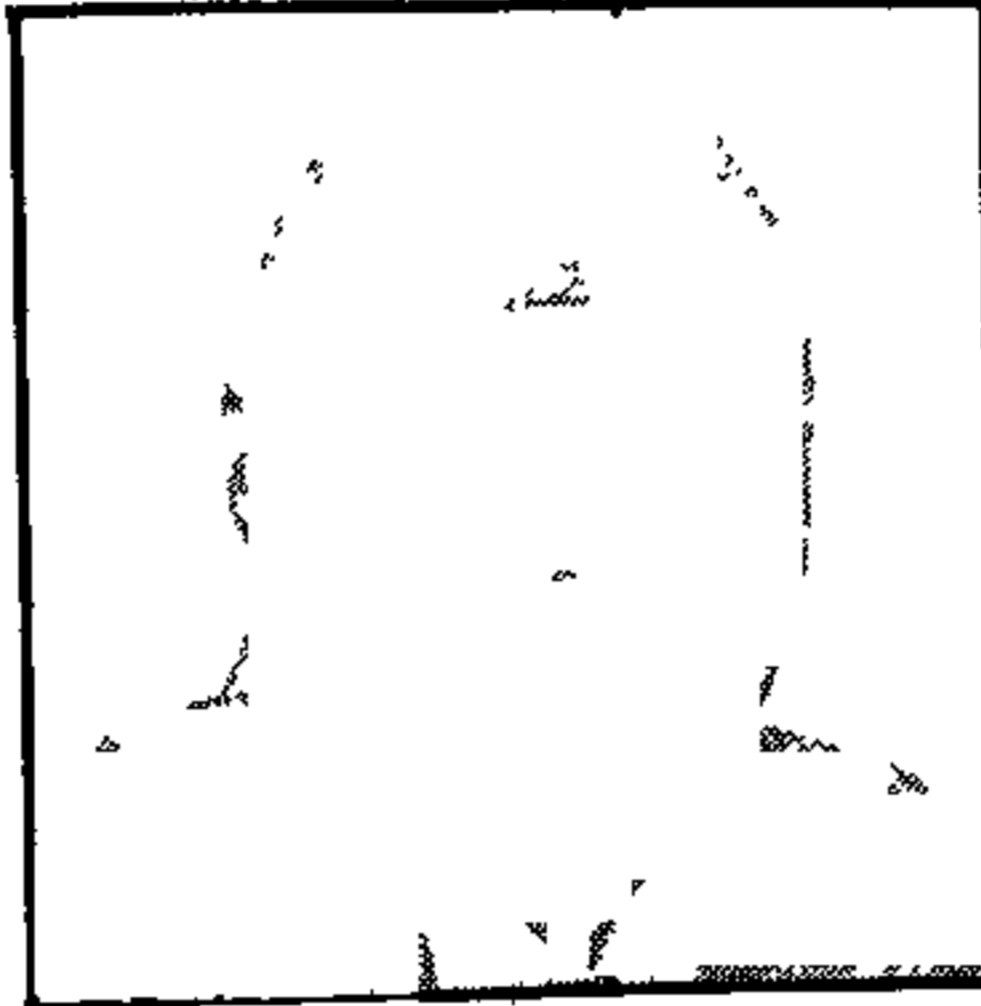
(166) (18/7/95)  
 The Argus Correspondent

JOHANNESBURG — Business, labour and government agreed that the draft Labour Relations Bill should become law in spite of differences on three critical issues

The National Economic, Development and Labour Council's (Nedlac) executive council agreed yesterday to recommend to cabinet that the draft bill be adopted subject to revisions on contentious issues

The bill will now be submitted to cabinet on July 22 before going to parliament

The parties are still deadlocked on employers' right to use scab labour during lockouts and the notice period when it comes to using such labour, the tightening of the bill's provisions regarding picketing, and the agenda and dissolution of workplace forums.



Sam Shilowa

The parties indicated they were close to agreement, except on scab labour. Labour wants restrictions on the right to hire replacement labour

The parties yesterday emphasised that negotiations had been fruitful and said agreements far outweighed the disagreements

Congress of SA Trade Unions general secretary Sam Shilowa — speaking on behalf of labour — said the fact that there were still reservations on all sides on the three issues did not mean there was opposition to agreed clauses in the bill

"The bill, as a package meets the criteria that we set ourselves at the beginning of this process," he said

The meeting yesterday, attended by Labour Minister Tito Mboweni, brings to an end the bill's passage through the body, which was supposed to ensure there was agreement on it before it was put before cabinet and parliament.

Mr Mboweni said a committee of himself, Mr Shilowa and Business SA deputy president Bobby Godsell would continue to work on the outstanding issues.

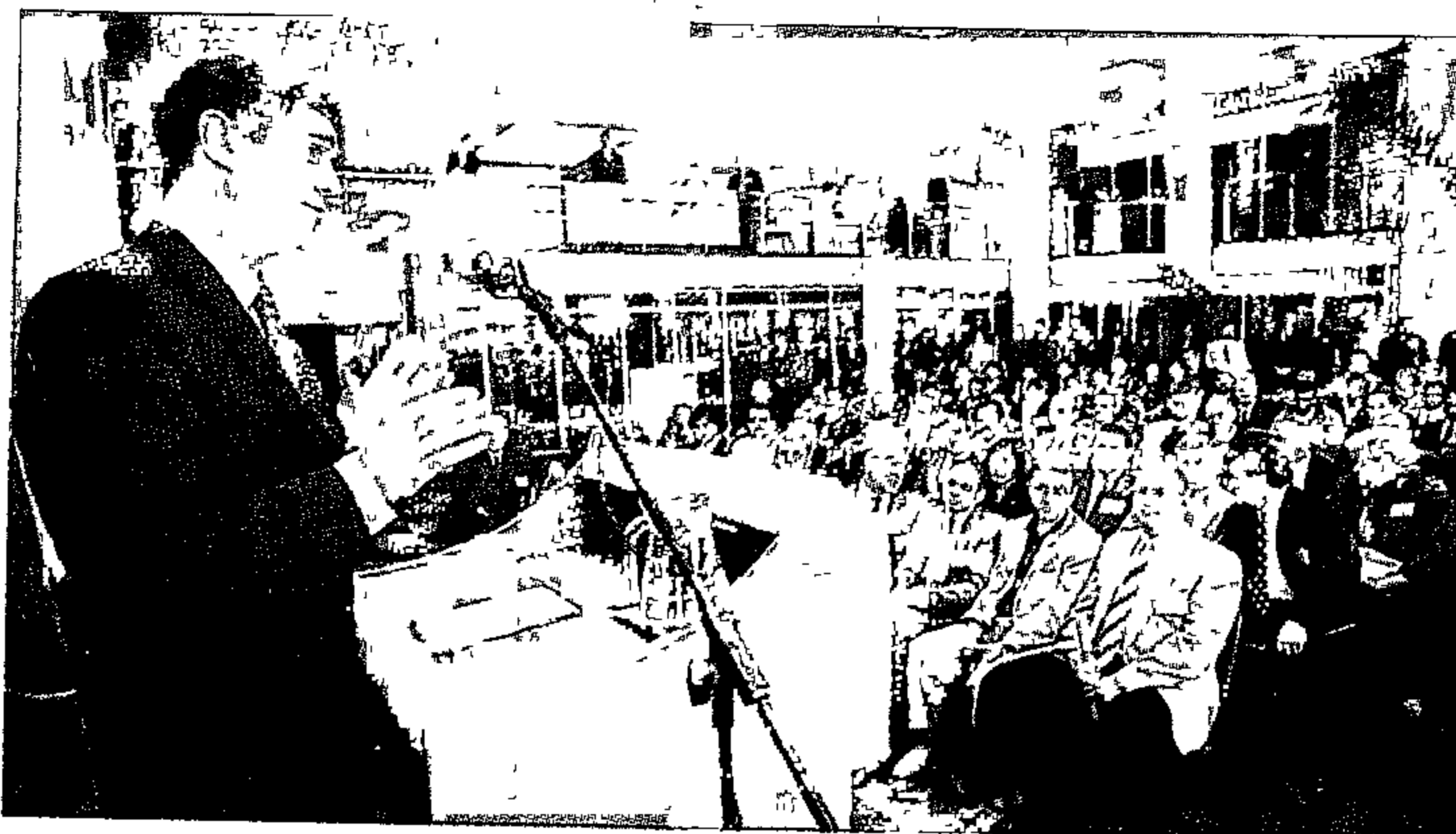
## Labour negotiations hit new obstacle

Negotiations between the trade union movement and organised business have stalled, apparently because of divisions within Cosatu, sources close to the talks said last night

Meetings between the parties went ahead Wednesday morning as scheduled, but labour delegates left the closed-door venue without warning at lunchtime, leaving only chief Cosatu negotiator Ebrahim Patel to explain labour's position, sources said. Sam Shilowa, the Cosatu general secretary, had apparently not been fully mandated to reach agreement on the new negotiating framework derived from talks involving Tito Mboweni, the labour minister, earlier this week.

A meeting of the principals from government, labour and business was still scheduled to take place today. Cosatu's negotiating team met yesterday to consider its position on the outstanding issues, which include replacement labour and centralised bargaining. — Bruce Cameron

CT(MR)7/7/95 (166)



**MEETING EXPECTATIONS** Roelf Meyer, the minister for constitutional development, gives the opening address at the Rebuild South Africa conference in Kempton Park

PHOTO JOHN WOODROOF

## Make labour deal now, says Motlana

By THABO LESHILO

STAFF WRITER

Prominent businessman, Nthato Motlana, yesterday made an impassioned plea to the parties at Nedlac to immediately strike a deal on the disputed labour relations bill in order to encourage foreign investment in the country.

Speaking at the Rebuild South Africa conference at the World Trade Centre in Kempton Park, he

CT (MR) 5/7/95  
appealed to all stakeholders in the economy to show a greater dedication to education and training, an improved work ethic, and discipline in the workplace

Dennis Fulton, from the department of trade and industry, said the country was well on the way to normal economic conditions

He said South Africa's return to the global economy had hugely increased effective demand for local goods and services

Opening the conference, Roelf Meyer, the minister of provincial affairs and constitutional development, said South Africa would have to meet its people's expectations for socio-economic development in order to safeguard its new democracy

The business opportunities and exhibition conference comprises a tourism forum and a small and medium enterprise development conference. It ends on Friday



# Negotiating council passes first major test

SHOP FLOOR



*As a forum for arbitration, Nedlac has proved it can take the pressures from all sides*

By KARL VON HOLDT

of parliament, especially of the labour portfolio committee. Given the breadth of issues Nedlac has a mandate to consider, the same thing may happen regarding the Budget; for example Nedlac will be encroaching on the terrain of parliament's finance committee.

While the power of employers and the government is located in control of structures and finance, the power of labour is based on its capacity to mobilise. Such action does not mean negotiations are over, it means labour is taking negotiation seriously.

**N**egotiation of the draft Labour Relations Bill has been the first major test for the National Economic Development and Labour Council (Nedlac). Although set up as an advisory body to reach consensus between the social partners, Nedlac's role in law making and in government remained unclear. These relations could only be defined as the social partners negotiated and tested possibilities.

Threatened to seek redress through influencing parliament Employers, faced with mass action, threatened to walk out of Nedlac.

This brings us to a second observation: the negotiators were not equal partners. The government set the terms of the debate. Employers and labour were essentially responding to government proposals.

When they proved unable to negotiate over their responses, Tito Mboweni and his advisors intervened to drive employers and labour to agreement. It is highly unlikely that any agreement could have been reached without this kind of government intervention. This may well set a pattern for issues Nedlac debates in future.

Third, it is significant that Nedlac could not reach agreement on everything. Unresolved issues will go to Cabinet and be debated in parliament. Nedlac's success, then, does not depend on it reaching total consensus. Parliament remains the final arbiter.

The success of Nedlac does mean it has usurped to a considerable degree the powers of parliament, especially of the labour portfolio committee. Given the breadth of issues Nedlac has a mandate to consider, the same thing may happen regarding the Budget; for example Nedlac will be encroaching on the terrain of parliament's finance committee.

This is what made the labour negotiations so important for shaping the future of Nedlac. The law goes to the heart of power relations between employers and labour.

Nedlac has come out of the negotiations remarkably strong. It has proved its ability to contain a high level of conflict and reach a resolution satisfactory to all parties.

In jockeying for position, both Cosatu and the employers questioned Nedlac's potential. Cosatu, faced with employer intransigence,

Threatened to seek redress through influencing parliament. Employers, faced with mass action, threatened to walk out of Nedlac.

What about the role of mass action? Labour's recourse to mass marches and partial stayaways was presented in much of the media as undermining negotiations. Yet, the mass participation in these actions constituted an overwhelming mandate for change from tens of thousands of workers whose working lives are governed by the labour laws.

Mass action also helped mobilise support for labour's views within the ANC, and strengthened the hand of union negotiators.

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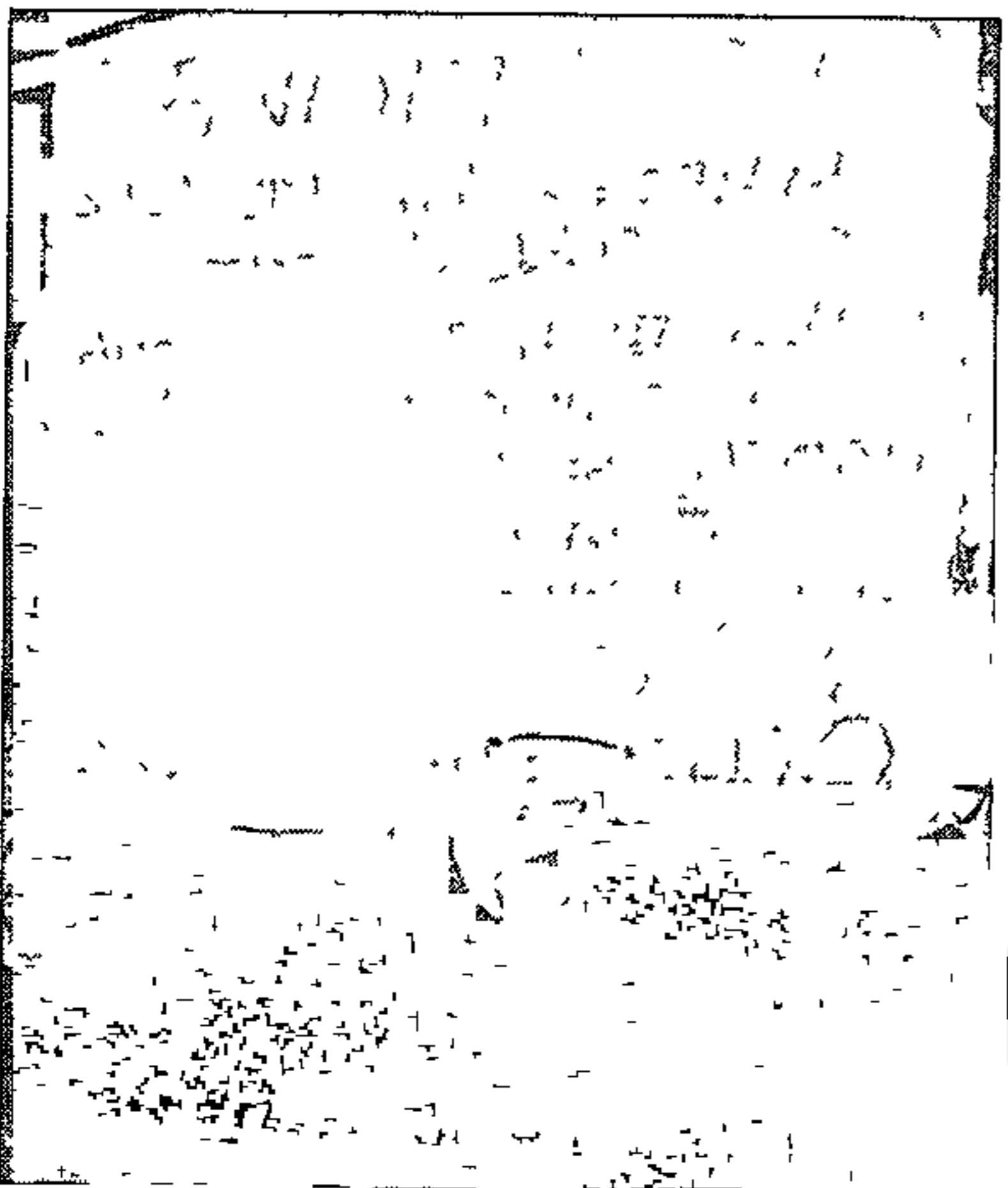
It is questionable however, whether labour will be able to sustain such a high level of involvement in Nedlac.

Nedlac is a creation of Cosatu. It was formed through the amalgamation of the National Economic Forum, established as a result of the federation's anti-VAT campaign, and the National Manpower Commission, revitalised by Cosatu after the success of its campaign to reform labour law.

In this way labour has made an important contribution to the economic and democratic life of our country.

The writer is consulting editor at SA Labour Bulletin.

PHOTO: WILLIAM MATIYA



**DIRECT APPEAL** The government is reminded of who put it into power.

# Leakey expects death bid

CT 10/7/95

(163)

LONDON: Conservationist turned politician Dr Richard Leakey says his battle against corruption in Kenya could cost him his life

"There are indications that some people will probably make an attempt on my life," he told the Sunday Telegraph here

Kenyan authorities have proposed sweeping changes in laws on the formation of political parties that could kill off Safina, a new party of which Mr Leakey is secretary-general.

"Since I made my announcement, my telephone has been tapped constantly and I am followed by government operatives in civilian clothes," he said.

Safina applied for registration last month. It is led by human rights lawyer Mr Muturi Kigano

Dr Leakey, 50, told the paper Kenya was sinking into corruption. "Our platform is to try to put some integrity into government, to put back what was once there — a culture of accountability and service to the public

"I do not want to be president

## Moi 'uses hit-squads'

PARIS: Kenya's regime has been using hit-squads to get rid of its opponents, a former secret agent has claimed here.

Mr Valentine Uhuru Kodipo, 33, who said he was a former operative, claimed that among other missions, he had "helped to prepare the assassination" of a British woman, Miss Julia Ward, in the Masai Mara in 1988. He did not give the motive.

He has written a book that throws "startling light on the existence of a secret government militia that carries out the Kenyan regime's orders

The Indian Ocean Newsletter, which has seen the manuscript, said Mr Kodipo was a member from 1983 to 1991 of a secret service unit operating on orders from Minister of State Mr Nicholas Biwott in President Daniel arap Moi's office — AFP

or even a member of parliament."

Meanwhile, Kenya's most prominent dissident, former legislator Mr Koigi wa Wamwere, has disclosed that he is a founding member of Safina and has urged all political leaders to press for a repeal of colonial-era laws. He says the laws are used to punish critics of the government

In a statement read yesterday by lawyer Mr Mirugi Kariuki, he said the laws gave the government sweeping powers of arrest based on often-vague statutes.

Mr Wamwere is in custody and is on trial for allegedly taking part in an armed raid on a police station in 1993. He has denied the charge. — Sapa-Reuter-AFP

# Labour bill debate near resolution

By THABO LESIMO  
AND BRUCE CAMERON

Major stumbling blocks — including compulsory centralised bargaining — appear to have been crossed and new dispute resolution structures have been created to resolve outstanding issues by July 17, which will clear the way for the adoption of the disputed Labour Relations Bill.

Negotiating teams, representing government, labour and business, declined to reveal the full extent of progress yesterday after a further round of late-night talks.

But Thabo Mboweni, the labour minister, said "I am smiling. There are wonderful and encouraging signs. We are confident that the process has regained potent momentum and we will be able to make progress."

Indications are Mboweni's compromise position of two weeks ago, which includes the rejection of compulsory centralised bargaining, has been accepted.

At the media conference, many

of the questions were sidestepped by the spokesmen of the different groups, who appeared intent on presenting a final win-win settlement package rather than a blow-by-blow progress report.

Mboweni said a "principals" committee of himself, Sam Shilowa, Cosatu's general secretary, and Bobby Godsell, Business South Africa's deputy president, had been formed to oversee the last negotiating lap.

Three working groups, which will meet on July 5, have been appointed with instructions to report back by July 7.

On July 7 the principals will consider the reports of the working groups and they in turn will report to a plenary session of the National Economic Development and Labour Council on July 11.

On July 14 the council's secretariat will make available a report on the plenary session to the council's executive committee, which will meet on July 17.

Mboweni said "It would be naive to think we can score 100 per-

CT(MR) 4/7/95  
(166)



**MEN AT WORK** Labour legislation negotiators report progress at a media conference. From left: Sam Shilowa, the secretary general of Cosatu, Jayendra Naidoo, the chief executive of Nedlac, Thabo Mboweni, the labour minister, and Bobby Godsell, the deputy president of Business South Africa. PHOTO: JOHN WOODCOCK

cent on each issue. If we can score 99.9 percent it will be a major breakthrough."

He has recalled his legislation drafting team to start redrafting sections where agreement has already been reached.

The three working groups are

working group one, which will deal with issues such as strikes, lock outs and strike ballots, working group two, which will deal with organisation rights issues, including deduction of union subscriptions, company disclosure of information, work place forums

and time off for union officials, and working group three, which will deal with issues such as dismissals, retrenchments and alternatives to job losses.

Mboweni said the major issues, such as compulsory centralised bargaining, would be dealt with by

the committee of principals. Shilowa said "From the exchanges it was clear we can find one another to ensure we drive the process home. The country does not want details of the differences but wants to know whether we are inching towards a settlement."

# Business and labour set for showdown over scab labour

CT (MR) 10/7/95 (132) (166)

BY THABO LESHILO

STAFF WRITER

Given its critical importance to employers and trade unions during strikes, it comes as no surprise that the issue of scab or replacement labour is now the most important issue separating organised labour and business on the labour relations bill in the National Economic Development and Labour Council. Zwelinzima Vavi, Cosatu's assistant general secretary, said "Scab labour is the real do or die issue for unions. To us, it is a very emotional issue and a direct threat to any worker."

"It effectively weakens the power of workers against that of employers, who already derive immense power from the fact that they own the factories, have a right to employ or dismiss workers and make technological decisions."

"If there is no settlement on the scab labour issue, we will not be part of any deal on the new labour relations act."

Mahlomola Skhosana, the assistant general secretary of the National Council of Trade Unions, said allowing scab labour would greatly increase the potential for violence on the shopfloor.

Andrew Sparks, a researcher at labour consultancy Andrew Levy and Associates, said alternative labour was crucial to companies due to its diluting effect on strikes.

"It allows the company to continue production and withstand the impact of strikes for a much longer time."

However, Sparks denied that scab labour could break the power of trade unions. "I think it is overstating the case. Ever since the beginning of trade unionism, employers have been able to get alternative labour."

## Incentive

"In fact, the poor quality of the work done by replacement labour is a very strong incentive for the employer to end the strike."

George Araujo, a partner at law firm Webber Wentzel Bowens, said outlawing temporary labour would artificially skew the power balance in favour of strikers and was contrary to the principle of collective bargaining.

Araujo said "The idea of a strike is to force the employer to give in to a demand by the strikers withdrawing their services."

"The minute the employer is

also deprived of the services of temporary staff, it artificially increases the power of the strikers whereas central bargaining enables the parties to conclude agreements based on their true strengths and weaknesses," he said.

"Traditionally, unions are strong when there is high employment and a shortage of skills. If employers withdraw their labour, the employers cannot find the skills elsewhere — that is a perfectly legitimate way that unions are able to get better conditions of employment for their members."

"On the other hand, in times of high unemployment, the employer is normally able to replace the strikers more easily. Therefore, the unions find it much more difficult to increase the price of labour."

Araujo argued that the fear of violence during strikes was no reason why scab labour should not be allowed. "One needs to address issues which are unacceptable."

"If one were to say that everything which has the potential for violence or harm must be done away with, then it could mean that we would do away with protest marches or strikes because there is often the potential for violence in each of them."

# Business, unions in deal on labour law

JOHANNESBURG. Business and labour said yesterday they had reached an agreement on key aspects of new labour laws contained in the draft labour relations bill

Business, labour and government representatives told a news conference they had agreed on centralised bargaining, closed shops and socio-economic strikes

The agreement must be approved by the National Economic Development and Labour Council's executive

Agreement must still be reached on picketing rights, scab labour and employers' recourse to lock-outs

● See Page 15

~~122~~ (166) CT 14/7/95

# Labour bill may go straight to Parliament

CT 7/7/75

(166)

DURBAN: The Labour Relations Bill could go straight to Parliament to bypass a deadlock in the National Economic Development and Labour Council, Labour Minister Mr Tito Mboweni told a labour conference here yesterday.

"One scenario is that we will submit the draft bill with all ele-

ments where there is agreement, fully intact," he said.

"It is a scenario I don't particularly like, but it may be unavoidable. We have to govern the country — we can't wait forever."

The deadlock between employers and workers' organisations had created uncertainty within South

Africa and abroad.

If the deadlock continued the government would consider submitting the bill to Parliament, hoping for agreement between the negotiating parties afterwards.

South Africans should not expect full agreement between business and labour.

Mr Mboweni said the Labour Ministry might have to intervene and use "the tools at its disposal" to facilitate agreement.

Business and labour organisations recently reached stalemate in talks on a new labour relations bill, mainly over the issue of centralised bargaining. — Sapa

# Labour bill D-Day this week

(166) (192) (PR) CT 5/7/95

BY BRUCE CAMERON

Friday is crunch day for the disputed Labour Relations Bill, when organised labour is due to give its final view on the key issue of compulsory or voluntary centralised bargaining

With both government and

organised business now determined that centralised bargaining cannot be enforced through legislation, Cosatu has apparently reviewed its demand

The other major outstanding issue is "scab labour" Cosatu seeks its prohibition, which business continues to refuse

30

BO 23/6/95

# Bill ignores key social and economic players

(166)

SOMEWHAT like the Maginot line of pre-Second World War France, the draft Labour Relations Bill and the National Economic Development and Labour Council (Nedlac) were instruments designed to absorb acute conflict and act as institutional fortifications against the mutually aggressive instincts of labour and capital. Yet, despite the fanfare which heralded the launch of Nedlac on 18 February, its defences have been breached.

The government of national unity's strategy of corporatism, sculpted around the so-called "golden triangle" of big business, big unions and big government, stands exposed with a gaping hole in its flank.

Labour Minister Tito Mboweni, while certainly one of the more thoughtful and engaging ministers in Cabinet, made an elementary mistake of process: instead of commencing with an open-ended commission of inquiry, representative of both the major stakeholders and headed by a cross-section of experts, the minister began, fatally, the other way around.

He placed a draft Bill on the Nedlac table and only then called for comment and negotiation. Instead of the legislation resulting from a fully participative, transparent and informed diagnosis, the Bill anticipated the very process it should have commenced with.

This helter-skelter process has locked the adversarial parties involved into positions which are rapidly becoming entrenched. The brandishing of union and business muscle power we are now witnessing is grim testimony of this fact.

Far worse, in terms of any medium to long term viability for a new labour relations regime, is the exclusion from Nedlac — and, seemingly from the minds of the drafters of the legislation — of key economic and social actors, such as representatives of small unions, consumers and, crucially, small and micro enterprises, and also the large number of unemployed.

Even within the camps of those theoretically represented at Nedlac there is dissension. I have already received, for example, representations from elements within both business and labour who disagree with the stances on the legislation adopted by Business SA and by Cosatu respectively.

The myth that either business or

## TONY LEON

labour is a globular monolith capable of speaking with a single voice resonant of an identity of interests on the major issues of the day, should be dispelled. Just as there is no single voice of "the people" in politics, there can be no unanimity of opinion or issue in a deeply divided and, hopefully, economically competitive society.

The characteristics of democracy and an open economy fly in the face of the minimum conditions required for corporatism.

Aside from these fundamental flaws in the design of the process, the postures adopted by organised labour and business are, in certain respects, curious.

Cosatu is on the streets, once again, demanding compulsory centralised bargaining. Yet the overall reach of the Bill is so biased in favour of organised labour — with compulsory co-determination in the form of workplace forums, the legalisation of secondary picketing and socio-economic strikes to highlight but three issues — that the absence of a formal duty to bargain is in many instances superfluous.

In reality, however, the onerous provisions in the Bill relating to the disclosure of information by management (the abuse of which by unions being penalised with the equivalent of a "parking fine"), the nature and timing of the incidence of the duty to consult and the range of issues on which consultation must take place amounts to nothing but a duty to bargain.

Under this guise, the enforced surrender of management prerogatives and the encroachment of unions into the furthest reaches of hitherto entrepreneurial decision-making, accomplishes worker control through legislation in a more decisive fashion than even the boldest union initiatives and strikes ever accomplished in the past. Organised business should feel strongly about these issues — yet have thus far retained a public silence on this introduction of socialism through the back door.

The other side of the economic spectrum, small business, whose voice has yet to be heard anywhere in the debate, is appalled that industrial councils live on in the new Bill, in the guise of bargaining councils. They contend that the Bill

fails, in a real sense, to recognise the difference in cost structures between small and big business.

The worst aspect of the old regime — the extension of bargaining councils to non-parties — is perpetuated in the draft Bill, although subject to more effective safeguards than in the past.

It is necessary here to state a further self-evident truth: It is a bland lie, and one which nearly destroyed Britain's economy in the 1970s, that there should be a special link between the democratic government and the unions. This is based on a misconception which is equally damaging to both sides.

President Nelson Mandela's appearance at Cosatu's mass action demonstration suggests that there is no necessary power struggle between big unions and other interests which his government was elected to represent — including small business, the 4-million unemployed, non-unionised workers and consumers.

While the ANC's nudge and wink towards Cosatu has everything to do with the November municipal elections, it does nothing to advance the reconstruction and development programme, create economic growth and unleash the entrepreneurial spirit SA desperately requires.

This is not intended as an anti-union point. If Cosatu did nothing which threatened the position of other interests, by affecting profits or taking a larger slice of national wealth for its members, it would be failing those who paid their membership fees. But let us at least see Cosatu's posture for what it is — a last gasp attempt to influence government before the ANC is obliged to make a fateful choice between the further advantaging of the small labour aristocracy of the Cosatu membership of 1.2 million (3% of the population) or the widening of opportunity and employment for the great mass of our people.

The draft Labour Relations Bill, and the process chosen for its adoption, mocks the ANC election promise of "a better life for all".

Government can only redeem itself — and any hope of a new labour relation regime — by acknowledging the problems and failure thrown up by the deadlock at Nedlac and starting afresh.

□ Leon is DP leader and member of Parliament's portfolio committee on labour.



LABOUR LEGISLATION - 1995

AUGUST - DECEMBER

# Unseemly rush to pass Labour Bill

(166) Wm 25-31/8/95

Marion Edmunds

**L**ABOUR Minister Tito Mboweni lobbied all political players this week — from National Party leader FW de Klerk to the African Christian Democratic Party — in a bid to save the Labour Relations Bill from unravelling in Parliament.

The round of meetings with political parties came in the wake of a decision by the Parliamentary Labour Portfolio Committee to hold public hearings and invite submissions on the Bill before it went to Parliament this session.

As the Cabinet has not yet approved the Bill in its entirety and it is still a secret document, the holding of public hearings would delay the passage of the Bill so much that it would be unlikely to get through Parliament before the recess.

The decision of the Labour Committee, headed by former Congress of South African Trade Unions leader Godfrey Oliphant, appears to have come as a surprise to Mboweni. It was made at a briefing on the Bill in Parliament on Tuesday.

The media were allowed to attend the briefing, but not to have sight of the document under discussion. Sources in the ministry say it was unfortunate that the committee meeting was open to the media.

This is despite the fact that the new South African Parliament prides itself on openness and transparency in the discussion of draft legislation.

The desire for transparency has been tested by the sense of urgency in the Labour Ministry to get the Bill through Parliament before the end of the year.

All parties in the National Economic Development and Labour Council (Nedlac) who participated in the negotiations around the Bill are keen to see it in place and implemented by the next round of wage negotiations, so that the new structures envisaged in the Bill could be tested.

Mboweni has avoided putting pressure on the Labour Committee to back down on the suggestions of public hearings, but he has lobbied all the leaders of the political parties in the committee, to try to prevent the Bill from stalling. Sources in the ministry say it could be disastrous if the Parliamentarians started to pick away at the package deal in the Labour Relations Act and thereby reopen the agreements sealed between business, labour and government in Nedlac.

available and (b) what were the reasons given by such district surgeons for their resignations,

(2) whether these resignations have detrimentally affected the communities concerned, if so, in what respects,

(3) whether she is contemplating any steps in respect of the resignations of district surgeons, if not, why not, if so, what steps?

N1160E

The MINISTER FOR HEALTH (*Written reply subsequently furnished*)

	1994	1995
(1) (a) KwaZulu-Natal	5	5
Mpumalanga	1	2
Free State	13	13
Western Cape	6	12
Northern Cape	0	11
North West	0	0
Gauteng	0	5
Eastern Cape	0	6
Northern Prov	0	0

(b) — Insufficient : operation

— Transfer to atomic centres for specialisation

— Emigrated

— Relocation and personal reasons

(2) The communities have not been detrimentally affected as replacements could be appointed immediately

(3) The system of district surgeon is currently under review as in some provinces they still practice apartheid in their waiting rooms. The private patients (who are often white) are kept a decent waiting room while the state patients (who are often black) are kept in another, often dilapidated room. This system is being reviewed by several provinces

#### Sale of arms to Cuba

\*21 Dr B L GELDENHUYIS asked the Minister of Foreign Affairs †

Whether Cuba is on the list of countries to which South Africa does not sell arms, if not, what is the position in this regard, if so, why? N1162E

The DEPUTY MINISTER OF FOREIGN AFFAIRS Mr Speaker, this is a strange way to make me earn my living

The answer to the question is

Dr W A ODEENDAAL Mr Speaker, may I draw your attention to the fact that Question 19 has not been answered

The DEPUTY SPEAKER Dr Odendaal, the Minister of Labour indicated that we could not deal with either Question 14 or Question 19. They both have to stand over. They are both addressed to the Minister for Health. He is the acting Minister for Health and he asks the House to allow those two questions to stand over

Dr W A ODEENDAAL Mr Speaker, will that also go for Question 22 then?

The DEPUTY SPEAKER We will come to that as soon as we have disposed of the Cuban question

The DEPUTY MINISTER OF FOREIGN AFFAIRS I wish to refer the hon member to the recent press statement made by Minister Kader Asmal regarding the Government's new arms trade and transfer policy

A primary goal of the policy is to establish South Africa as a responsible producer, processor and trader of defence-related products and advanced technologies. The policy provides for a ministerial controlling committee—the National Conventional Arms Control Committee (NCACC)—which will consider and process applications in terms of internationally recognised principles and guidelines. The system will consist of multi-tier organisational structure with an independent inspectorate with parliamentary checks and balances. Decisions will be based on product classification in accordance with the sensitivity of the equipment to be traded

In terms of this policy, use will not be made of a country classification system as in the past. Each transaction will therefore be considered in accordance with a set of principles which have been adopted. These principles are based on the United Nations Charter, International Law and other recognised international arms control systems. It primarily relates to economic, ethi-

cal, political, military and security considerations which accompany arms transfers

Upon receipt, an application for arms to be exported to Cuba will be considered in the same manner as applications received from other countries. It is therefore not possible to pre-empt a decision until an application has in fact been received and considered

Dr B L GELDENHUYIS Mr Speaker, that is a very long answer to a short question. Is the hon Deputy Minister in fact implying that the existing list on which the name of Cuba appears as a country to which South Africa does not sell weapons is now invalid?

The DEPUTY MINISTER OF FOREIGN AFFAIRS Mr Speaker I wish to inform my colleague that that existing list which was produced in November is very outdated. A statement by Minister Kader Asmal has put into perspective what I have been trying to say with regard to a whole new system of dealing with arms sales and purchases

\*22 Dr W A ODEENDAAL—Health † [Question standing over]

The MINISTER OF LABOUR Mr Speaker, the Minister for Health is out of the country and has requested that his question also stand over

An HON MEMBER Why?

The MINISTER OF LABOUR That member wants to know why she is out of the country. Does he not read the newspapers?

†Dr W A ODEENDAAL Mr Speaker, this is totally unacceptable. It is the last Wednesday of this parliamentary session on which questions are to be answered. There are some extremely important questions on health on this Question Paper. Hundreds of doctors are resigning from the employ of state hospitals, nurses are striking on a large scale, the school feeding scheme is falling apart and the Minister for Health is on holiday out of the country. [Interjections]

I think this Minister's reaction is absolutely unacceptable. While the nurses have an important case to put forward, the Minister is not here to attend to the matter. When questions are put to her, they are simply ignored by the Acting Minister for Health

†The DEPUTY SPEAKER Order! The hon member made the allegation that the hon Minister for Health is on holiday. To my

knowledge that is not so. The hon Minister is not on holiday. [Interjections]

The hon member has suggested that the Minister is away on vacation while we are busy with this particularly important week of the parliamentary session, and that the questions are not being dealt with. He feels it is very unsatisfactory

The MINISTER OF LABOUR Mr Speaker, I would really like to take strong exception to the hon member's reference to the Minister for Health as being on holiday. If the hon member does not understand that the Minister for Health is leading a very important South African delegation to a very important conference in Beijing, and he thinks that leading a delegation in Beijing is the same as going on holiday, there is something wrong with the capacity of this member to understand recent developments in our society. It may perhaps explain his own approach to gender questions, which he may indeed need to explain to this House. [Interjections]

The DEPUTY SPEAKER Order! I do not wish to prolong this discussion

†Dr W A ODEENDAAL Mr Speaker

†The DEPUTY SPEAKER Order! Do you have a new point of order?

†Dr W A ODEENDAAL Mr Speaker I have a follow-up question

†The DEPUTY SPEAKER Order! There was no reply to the question, and it will therefore be impossible to ask a follow-up question

†Dr W A ODEENDAAL Mr Speaker I would like to address you briefly. According to the Minister I have just made an extremely sexist statement here, because I belittle the importance of the women's meeting in Beijing

†The DEPUTY SPEAKER Order! That matter is not at issue here now, and it can be discussed further outside the Chamber. [Interjections]

#### Draft Labour Relations Bill: approval by Cabinet

\*25 Mr K M ANDREW asked the Minister of Labour

(1) Whether the Labour Relations Bill was approved by the Cabinet prior to its submission to the Minister, if not, why not, if so

Handwritten signature: Hans 21/9/95

- (2) whether all parties represented in the Government of National Unity approved the (a) contents of the draft Bill and (b) consultation and negotiation procedures that were followed prior to its introduction in Parliament, if not, why not, if so, what are the relevant details?

N1166E

The MINISTER OF LABOUR Mr Speaker, perhaps the hon member Mr Andrew would like to withdraw his question at this stage, because it is a bit dated it deals with whether the draft Labour Relations Bill was approved by the Cabinet prior to its submission to Nedlac if not why not, if so, whatever, and so on I do not know whether he wants to answer this question I need to know

Mr K M ANDREW Mr Speaker, I would like to have the answer, please

The DEPUTY SPEAKER (inter): The hon member would like the answer, please

The MINISTER OF LABOUR Mr Speaker, I should have known

- (1) The Cabinet approved that the Draft Negotiating Document in the form of a Draft Labour Relations Bill be submitted to NEDLAC, the Public Service Bargaining Council and the Education Labour Relations Council Cabinet was kept fully informed of developments and progress during the NEDLAC negotiations, process between Government, organised business and labour

A Cabinet mandate was obtained where necessary on certain issues as they arose during the negotiations

- (2) (a) Falls away in light of the response above
- (b) The consultation and negotiation procedure for the Bill prior to it being introduced in Parliament was approved by the Cabinet The NEDLAC Act, 1994 requires that all proposed labour legislation relating to labour market policy be submitted to NEDLAC before it is implemented or introduced in Parliament

#### Trading problems in former Transkei

\*30 Mr M J ELLIS asked the Minister of Foreign Affairs

- (1) Whether he or his Department has been approached by a certain company, the name of which has been furnished to his Department for the purpose of his reply, in regard to previous trading problems in the former Transkei, if so, what is the nature of these problems.

- (2) whether his Department is prepared to act on behalf of the said company in order to resolve the problems, if not, why not, if so, what form of action will be taken,

- (3) whether he will make a statement on the matter?

N1171E

The DEPUTY MINISTER OF FOREIGN AFFAIRS

(Reply laid upon the Table with leave of House)

- (1) The Department was approached by a certain company in regard to trading problems in the former Transkei The nature of their problem was briefly thus

Between 1987 and 1988, the company marketed sorghum beer brewed in Ndal, in the nine northern districts of Transkei In 1988, the Transkei Government prohibited the marketing of all foreign-produced sorghum beer in Transkei for a period of six years This action by Transkei was in contravention of a Customs Union Agreement between Transkei and South Africa, in terms of which the free movement of domestic products between the two countries was encouraged That agreement did not, however, provide for powers to compel either South Africa or Transkei to abide by its provisions, or for mechanisms to resolve disagreements, or for arrangements for the payment of compensation to either South Africa or Transkei in the event of one of them suffering damages as a result of the other failing to meet its obligations in terms of the agreement

The company concerned responded by filing a law-suit against the Transkei Government in the Transkei Supreme Court However, owing to a lack of funds, the company could not continue with the court case

The company then embarked on a sustained campaign of appeals to the South

African Government to assist them in furthering their claim against the Transkei Government for re-instatement of their right to market sorghum beer and especially for payment of compensation for their alleged losses Their appeals took on several forms

- (a) They appealed for direct financial assistance in the form of bridging finance until their business operations could be resumed There is, however, no moral or legal obligation on the South African Government to assist any private sector company that experiences problems in marketing their products in foreign countries, including assistance regarding litigation they may be involved in, or indeed to provide any logistical or financial assistance or compensation in such cases In addition no funds are budgeted for this purpose

The Ombudsman and the Department of Trade and Industry confirmed this established principle The problems experienced by the company were considered to fall within the ambit of normal risks associated with commercial activities pursued in a foreign country

- (b) They appealed to the South African Government for financial compensation This appeal was turned down in writing, for the reasons enumerated above

- (c) They requested that the South African Government intercede on their behalf with the Transkei Government in view of the fact that the Customs Union Agreement has been transgressed by the Transkei Government when it imposed the ban on imported sorghum beer

- (2) Since it is an internationally accepted practice for governments to intercede on behalf of their subjects if they have suffered injury because of the wrongful actions of a foreign government and since the South African Government believed that the applicable provisions of the Customs Union Agreement had been violated, the Department of Foreign Affairs made a

number of approaches over several years to the Transkei Government to respond favourably to the appeal of the company for reinstatement of the right to market South African-brewed sorghum beer in Transkei and/or for financial compensation

The sustained efforts of the Department of Foreign Affairs to resolve this matter, at a very high cost in terms of man-hours, took the form of numerous representations, diplomatic notes, telephone calls and meetings The Department of Trade and Industry also played an important part in this matter

- (3) The Departments of Foreign Affairs and Trade and Industry went far beyond what could reasonably be expected of them in their attempts to ensure that the provisions of the Customs Union Agreement and international law were adhered to, by employing all the diplomatic, legal and other remedies that were available to them This was unfortunately to no avail However, once a government has exhausted all the means at its disposal to assist its subjects under such circumstances, it cannot be held responsible for having failed in its efforts, nor can it be expected to provide financial compensation to such parties Should the company wish to pursue this matter any further, it should do so through the normal legal channels

#### Assault/intimidation of Richard Leakey: protest from SA

\*33 Mr A J LEON asked the Minister of Foreign Affairs

Whether a commissioner or any designated representative of the Minister has taken any action and/or protested to the Kenyan government in regard to the recent assault and intimidation of opposition politician Richard Leakey and his supporters, if not, why not, if so, what are the relevant details?

N1174E

The DEPUTY MINISTER OF FOREIGN AFFAIRS

The Department of Foreign Affairs does not condone violence as a means of expressing political dissent The hallmark of any democracy is tolerance, freedom of speech and

LABOUR LAW

**Tito's blitz**

(166)  
fm 1/9/95

**Labour Minister** Tito Mboweni this week backed his faith in arbitration with the launch of National Settlement Week — a scheme aimed at wiping out a huge chunk of the 6 500 labour disputes awaiting resolution by the Industrial Court.

Based on an international idea — Queensland, Australia, for example resolved 80% of such disputes during its

settlement week — the scheme will have Independent Mediation Services of SA (Imssa) and Industrial Court judges, on a rota basis, meet at a single venue offering free arbitration or conciliation. However, legal costs accruing to users of the services are for their own account.

Arbitrators will present their legally binding decisions within 21 days, while conciliation hearings should provide instant solutions to disputes.

While the concept of the private mediation service of Imssa assisting the Industrial Court in reducing the backlog may smack of gimmickry, there's more to it. Labour consultant Pat Stone of Andrew Levy & Associates, says it is positive in the sense that it draws attention to the draft Labour Relations Bill's procedures on unfair dismissal. These move away from legalism towards the promotion of mediation and arbitration to resolve such disputes as quickly and efficiently as possible either through the new Commission on Conciliation, Mediation and Arbitration or through private agreement.

National Settlement Week will run in Durban from October 2 to 6, Port Elizabeth and Cape Town from November 6 to 10 and Pretoria from November 13 to 25.

Mboweni says the week will assist in the swift resolution of industrial relations disputes where previously long, frustrating delays — often culminating in illegal strikes — and huge backlogs have developed for those waiting for Industrial Court hearings. It is, he says, only fair to both employers and employees that such disputes are resolved as quickly as possible.

The benefits of the process will, he adds, include time and cost savings.

Stone estimates that people can wait for between six and nine months for an Industrial Court hearing.

Clearly, the settlement week, being voluntary, will not affect those insistent on going through the legal process because they want their pound of flesh, or those who gain by delaying settlement for as long as possible. But, as Stone says, it will provide a catalyst for settlement and could make a dent in the backlog of outstanding cases. ■

# Labour Relations Bill 'a victory for SA's workers'

BD 5/9/95

(166)

Renee Grawitzky

THE outcome of negotiations on the draft Labour Relations Bill supported unionists' view that it had focused on labour and government proposals rather than those presented by employers

This view was expressed by SA Labour Bulletin consulting editor Karl von Holdt in a report on the agreement, "Worker victory or miserable compromise", published in the latest edition of the journal. Von Holdt said the Bill was among the world's most progressive labour laws and even went beyond rights won by workers in European and Scandinavian social democracies.

Unions had made substantial progress towards centralised bargaining through statutory councils, the closed shop and workplace forums, although issues for

consultation and joint decision making seemed limited. Unions had lost their fight for union-based forums, the right to strike over unfair dismissals and a ban on scab labour

Business had made "significant but small gains" on limits to information disclosures, defining more narrowly sympathy strikes and pre-strike ballots

Von Holdt said business had lost the "right to remove socioeconomic and sympathy strikers from the Bill" and to dismiss strikers in the case of "irreparable harm"

Business, he said, had claimed that the agreement, although not problematic, was not the Bill it would have written.

Labour, being cautious, said it had won some big victories and given nothing away.

However, shop stewards in the Gauteng region had attacked the

agreement as a "miserable compromise" and accused Cosatu leaders of using them as "cannon fodder" This stance was adopted despite the fact that the draft Bill was "remarkably labour-friendly", Von Holdt said

The stance adopted by the region was attributable to mass action campaigns being launched around "blunt and simplistic demands". The base had been unable to recognise victory.

"The campaign of mass action mobilised around labour's demands has therefore generated into anger with the leadership for compromising, and led to an attack on the ANC and the alliance"

Negotiations on the Bill had brought to the fore the relationship between labour and the ANC, with workers wrongfully blaming the ANC of "refusing to protect their rights".

Labour Relations Bill 1995 | Review of

# Unions not happy with labour Bill

Trade unions say there are eight issues that need to be dealt with

By Abdul Milazi  
Labour Reporter

**T**HE LABOUR RELATIONS BILL which is to be published by Labour Minister Tito Mboweni in Cape Town today is still beset by problems. There are eight issues which have to be resolved.

National Council of Trade Unions general secretary Mr Cunningham Ngcukana says no fundamental changes have been made to the Bill.

He said, however, that labour was happy with the amendments made to the multi-union agency shops and closed shop clause.

The eight outstanding issues are the use of scab labour by employers, sympathy strikes, no strike on individual dismissal, code of good practice, retrenchment and paid time off.

The draft Bill provides for minimum payment equal to a one weeks' wages for every completed year of service for retrenched workers. The unions want one month payment for every six months completed service.

"This clause means workers who have not completed a year with a company will not be paid when they are

retrenched. We believe this is unfair," said Ngcukana.

On the code of good practice as it stands, workers may be dismissed for theft, no matter how petty, while the issue of scab labour still favours employers, Ngcukana said.

Tomorrow the Parliamentary Standing Committee on Labour will review written submissions by business and labour. On Thursday it will hear further oral submissions before the Bill is submitted to the Senate.

Unlike many bills, the Labour Bill will first be sent to the Senate, which will make necessary amendments, before it goes to the National Assembly.

When it was published in February, the Bill came under attack from trade unions who felt it did not cater well for workers whom it was supposed to help.

Business and labour also locked horns over the issue of centralised bargaining, which led to industrial action by unions and counter action by business.

An agreement was later reached that centralised bargaining would be allowed at industry level. It is these amendments that go before Parliament.

# Labour 'outsiders' set to speak out on Bill

BD 6/9/95 (166)

**Renee Grawitzky**

CAPE TOWN — Organisations claiming to represent the interests of small business and other bodies not party to National Economic, Development and Labour Council (Nedlac) deliberations are expected to make submissions on the draft Labour Bill to the parliamentary standing committee on labour relations today.

Among the organisations are the Sunnyside Group, the Small Builders' Association, the Farm and Rural Labour Rights Advocacy and Business SA (BSA) members the Johannesburg Chamber of Commerce and Industry and the Afrikaanse Handelsinstituut.

The SA Agricultural Union — also an affiliate of BSA, which was party to the negotiations — was also scheduled to make a representation. Despite presentations by a number of BSA members, BSA spokesman Adrian du Plessis

said "BSA has forged consensus in business and we have resolved to see this through Parliament in this session."

Cosatu general secretary Sam Shilowa said the draft Bill incorporated changes made as a result of public submissions. There was no such thing as a super democracy where everyone agreed — "the parties must be guided by the users of the Bill."

NP labour spokesman Leon Wessels said. "We do not want to prejudice the process. We want to ensure that . . . the standing committee (does) justice to the Bill."

DP leader Tony Leon said the fundamental failure of the process, "compelled by the clock that ticks" had not provided sufficient time to consider the effect of the Bill on the economy as a whole.

Committee chairman Godfrey Oliphant said. "Small parties need to be accommodated but they cannot hold the process to ransom."



## Labour bill 'will cut jobs, force up crime'

CLIVE SAWYER, Political Correspondent

(166)  
APG 6/9/95  
PUBLIC hearings on the Labour Relations Bill opened today with a scathing attack by a University of Cape Town economist, who said the bill would slash jobs and force up crime

Parliament is under pressure from Labour Minister Tito Mboweni to pass the bill — which confers on workers the right to strike — by the end of the current session

Giving evidence at the start of two days of hearings, economist Hugh High said the bill benefited big trade unions at the expense of everyone else

Young black men would be most hard hit as high wage bills forced employers to cut their labour force

So confident was he of his predictions, Professor High said, that he would bet an MP's salary that his dire forecast would come true

The bill would lead to crime and an increase in inflation. It would also promote rigidity in labour markets and dampen economic growth

Professor High said the bill allowed trade union leaders, in violation of union constitutions, to call members out on strike

It provided no sanction for union leaders who led workers on strike without a mandate.

Professor High said the legalisation of secondary strikes was tantamount to making extortion lawful. A secondary strike is when a union targets a third party in a dispute with an employer

# Labour Bill tries to be fair to all

(166) sowetan 6/9/95  
Bill protects workers rights but  
must not violate constitution

**T**HE controversial Labour Relations Bill could face at least one constitutional court challenge. A provision allowing closed-shop agreements is expected to draw flak from those who say it violates a constitutional right not to join a union.

Closed-shop agreements will be allowed only on condition that prospective employees are not expected to join a union before they can be employed. Two-thirds of the employees will also have to approve such an agreement.

"We've tried to constitutionalise closed shops," said labour ministry adviser Halton Cheadle while conceding that the provisions were expected to be challenged in the constitutional court.

## Freedom of association

If the constitutional court upholds a claim that closed shops contradict freedom of association, it will have to decide whether they are allowable in terms of the constitution's "limitation clause".

This allows the limitation of rights where this is justifiable in a free, open and democratic society.

The bill, which Labour Minister Tito Mboweni wants passed by parliament during the current session, which ends next week, was unveiled to the media yesterday.

The latest draft of the Bill is in line with agreements hammered out by the National Economic Development and Labour Council.

Another contentious issue, that of sectoral bargaining, was defended by

Professor Cheadle as unlikely to harm small business.

The advantage of sectoral-level bargaining was the reduction of cost to the parties.

The Bill did not create centralised bargaining as it was practised in Scandinavian countries, Cheadle said.

## Right of access

Another significant change which Nedlac negotiations brought to the original draft of the bill was a set of organisational rights for trade unions. These guarantee trade union office-bearers right of access to an employer's premises to recruit members or to serve their interests.

A representative trade union will be entitled to hold meetings with employees outside working hours on an employer's premises.

## Right to vote

Members of a representative trade union will be entitled to vote on an employer's premises in a union ballot. These rights will be subject to conditions reasonable to safeguard life or property or prevent undue disruption of work, the Bill says.

Employers will have to disclose to the trade union all information it needs to perform its functions.

Exceptions to this will be information that is legally privileged, private personal information of an employee, information that could cause substantial harm to an employee or employer and disclosure which would violate a court order. — Sowetan Correspondent

# New Labour Relations Bill is sure to get through, say its drafters

star 6/9/97 (166)

■ BY PATRICK BULGER

Cape Town - Parliament today begins two intense days of public hearings on the Labour Relations Bill, and its drafters are confident it will be passed next week.

A number of trade unions and business organisations gave notice yesterday that they intended giving evidence before the portfolio committee on labour on the Bill which envisages a wholesale reshaping of the labour market.

The Bill proposes a shift from the pattern of labour relations of the past to a new co-operative system.

Although delays are not ex-

pected, aspects of the Bill might face a challenge in the Constitutional Court, according to Halton Cheadle who is Labour Minister Tito Mboweni's legal adviser.

Cheadle said that in a Bill as complex as the Labour Relations Bill, one could expect many aspects to be challenged in the Constitutional Court.

Cheadle told a media briefing when the Bill was made available yesterday that there could be a challenge to the its provision for "closed shops". This section, in effect, placed a limitation on the constitutional right to freedom of association. The Bill attempts to bring South African labour law in

line with the constitution and international law. It attempts to promote collective bargaining and to remove rigidities from the labour market.

It seeks to balance the demands of international competitiveness and the protection of the fundamental rights of workers.

The Bill was first published in February this year and is the product of extensive negotiation at Nedlac and in the Cabinet. When it reached Parliament two weeks ago, Labour Minister Tito Mboweni urged members of the portfolio committee on labour not to undo the delicate balance forged in hours of negotiation.

# Economist criticises Labour Bill

(166) Sowetan 7/9/95

## Political Reporter

THE proposed Labour Bill will "get at" young black males and lead to an increase in crime and inflation, an economist of the University Cape Town told a parliamentary committee

Professor Hugh High was giving evidence yesterday at a public hearing on the proposed new Labour Bill which was organised by the committee of labour

The controversial Bill is expected to be passed before the end of the current parliamentary session

Painting a gloomy picture of the Bill, High said big unions stood to benefit because they had been guaranteed almost an unfettered right to strike at the "expense of everyone else"

High wanted to know what would happen to "union leaders who called a strike without getting a proper mandate from their constituencies"

He also said the Bill would encourage rigidity in labour markets and decrease the crucial important economic growth

Overseas investors from countries such as the United States and Taiwan had warned that South Africa's high wages had rendered it uncompetitive. To make matters worse, the country's productivity rate was extremely poor

# Sacob out of public labour bill hearings

CT(M) 7/9/95 (166)

FROM REUTER

The South African Chamber of Business (Sacob) had decided not to take part in the public hearings on the Labour Relations Bill, director-general Raymond Parsons said this week.

In a letter to the parliamentary labour committee, Parsons said Sacob had taken part in the negotiations on the draft legislation in the National Economic Development and Labour Council (Nedlac) and did not believe it was necessary to appear at the hearings on September 6 and 7.

Parsons said Sacob was fully aware of the need for the speedy passing of the bill and preferred to draw committee members' attention to certain issues in writing, and without trying to delay the passage of the legislation.

## Concern

Some analysts saw the decision as cause for further concern among MPs, who have already expressed fears that Nedlac could effectively sidestep the parliamentary process by negotiating hard-and-fast legislation that MPs would be unable to change or debate with the relevant parties. Parsons warned that there was a real danger that parliament and its standing committees would be "subverted" by Nedlac.

"At present, it is difficult to assess where tripartism ends and parliament begins in respect of gov-

erning the country," Parsons said.

In his letter to the committee, Parsons said that labour legislation should "not be seen in isolation from the general economic environment and, in particular, South Africa's need to increase productivity and become internationally competitive".

To ensure growth and create jobs, the business environment should be geared towards developing entrepreneurs and attracting foreign investment.

This called for a flexible labour market and Parsons said Sacob would closely monitor the new labour relations act and recommend amendments if necessary.

"Clearly, the legislation cannot regulate every detail of industrial relations and much depends on the interpretation of concepts and precedents set by the commission for conciliation, mediation and arbitration," he said.

Guidelines should be developed for the commission and, to ensure that it worked effectively, the funding and staffing of the commission should be given priority attention.

Last month, the National African Federated Chamber of Commerce and Industry (Nafcoc) rejected Parsons as a replacement to Bobby Godsell to head the business caucus in Nedlac.

Parsons was appointed by Business South Africa (BSA) to replace Godsell, but Nafcoc said that BSA's failure to consult it was undemocratic.

# Token changes to draft Bill likely

BD 8/9/95 (166)

**Renee Grawitzky**

CAPE TOWN — To appease various interest groups the parliamentary labour relations standing committee is likely to propose minor, token amendments to the draft Labour Relations Bill scheduled to be tabled in Parliament on Tuesday

The committee has received proposed amendments to be considered from public hearings held during the past two days

Halton Cheadle on behalf of the labour ministry said yesterday the ministry would consider amendments relating to the use of agency shop fees and a code of conduct for organisational rights to be negotiated at the National Economic Development and Labour Council (Nedlac). The appointment of Labour Court judges would also be considered

Cheadle reinforced the ministry's position on a number of the issues raised, however

Opposition, Cheadle said, revolved around the plight of small business and the independent body which had been appointed by the bargaining council to consider exemptions and to extend agreements to non-parties. There were also problems with farm labourers' access to organisational rights and the exclusion of consultants in conciliation procedures

The Farm and Rural Labour Rights Advocacy Group raised the issue of the Bill's lack of ability to facilitate the organisation of unorganised workplaces. The group said the specific circumstances of rural and farm workers was not addressed

or taken into account in the Bill.

JP Landman of the Afrikaanse Handelsinstituut said the AHI supported the Bill and his organisation's presentation was not an attempt to unravel the Bill. He said that although labour and business had concluded an agreement, they both had expressed reservations. Landman said the Nedlac process was a brave attempt to deliver a product under tough circumstances, with compromises having been made on all sides

He said AHI's reservations revolved around employment, small and medium-size businesses and the extension of agreements to bodies not bound by Nedlac.

Submissions were not heard by the SA Agricultural Union following a "mix up" in the times during which submissions could be made

The union's Kobus Kleinhans said yesterday it was not calling for the Bill to be delayed. But "if it goes through Parliament in its current form it will do so without our support", he said

He said the SAAU had voiced its reservations through the process and "the idea should not be created that there is tension with Business SA"

He said that BSA had recorded "a certain amount of reservation" relating to the strike provisions, workplace forums, the complex collective bargaining systems and the one week's minimum severance benefit upon retrenchment.

Cosatu general secretary Sam Shilowa said the majority of organised labour's reservations had been addressed except for scab labour

## LABOUR BILL (166)

### Right of passage

FM 8/9/95

The Labour Relations Bill that emerged from complex tripartite negotiations at Nedlac was due to be subjected to parliamentary and public scrutiny this week — after the main participants in the legislation appear to have worked their way towards an exhaustive consensus. The Bill was scheduled for release on Tuesday.

Two days were set aside for hearings on the Bill by the National Assembly's portfolio committee on labour, chaired by former unionist Gaolathe Oliphant. If any fundamental alterations are made to the Bill at this stage, the Nedlac role players might feel miffed. Labour Minister Tito Mboweni, for one, is anxious that nothing derails the Bill.

Others believe it must pass this crowded session for its various structural provisions to be in place for next year's round of wage negotiations. A scuttling, or even serious violation of the Bill, could upset the tentative tripartite balance that was struck at Nedlac, which is constitutionally empowered to negotiate labour law.

Herein lies the nub of the problem. Parliament is the supreme lawmaker of the land, subject only to the constitution. The new MPs feel that the principles of transparency and accountability will be flouted if the Bill passes without at least some form of parliamentary scrutiny.

Unfortunately, any procedural delays this session, due to end on September 15, could see the Bill — among the most important devised by the new government and its partners in Nedlac — missing the legislative deadline unless a further session is called this year, possibly in November after the community elections.

Various bodies have been invited to attend the hearings and asked to make further

submissions or explanations of their respective positions. SA Chamber of Business director-general Raymond Parsons has released a letter directed to Oliphant and dated September 2.

Parsons points out "As you know, Sacob is a member of Business South Africa and participated in the Nedlac negotiations on the Bill. We are party to Nedlac's 'agreements' and therefore do not deem it necessary to take up your invitation to participate in any public hearings on the Bill scheduled for September 6-7 1995."

Sacob believes speedy implementation of the Bill is in the best interests of all concerned and Parsons' letter stresses

- Labour legislation should not be seen in isolation from the general economic environment and, in particular, SA's need to increase productivity and become internationally competitive,
- A new economic growth path must be sustainable and accompanied by job creation on a large scale,
- Legislation regulating the labour market must provide the necessary flexibility for the overriding economic goals to be achieved,

- Sacob will urge that consideration be given to the development of guidelines for the application of the law in a manner sympathetic to the interests of small business, and
- In Sacob's opinion a crucial aspect in regard to the effective implementation of the Bill is the establishment and operation of the Commission for Conciliation, Mediation and Arbitration. Note should be taken of the numerous issues that the commission will be required to handle in terms of the Act and the sheer logistical effort and resources that may be required given the much wider application of the Bill.

Parsons concludes "The above should in no way be construed as implying that the passage of the Bill through parliament should be delayed."

It is difficult not to discern a certain irritation in this letter. Having been through the Nedlac mill, the Bill is probably about as good a framework for labour regulation as SA is likely to achieve — at present. It does not err too greatly towards what might be termed a grossly regulatory environment.

But perhaps parliament objects to having to pass legislation which, to some extent, it thinks has been foisted on it. True or not, this is the perception that appears to be behind the convening of the parliamentary hearings. ■

## Fivaz announces 8 000 police promotions

NATIONAL police chief Commissioner George Fivaz yesterday announced the promotion of about 8 000 police members, who had passed examinations, to non-commissioned officer ranks

Mr Fivaz said it gave him "great pleasure to reward the hard work and commitment of thousands of police officials"

But he said that he was unable to announce the promotions to commissioned ranks yet, as they had to be approved by President Nelson Mandela

He stressed that those whose promotions would be backdated "will not lose anything financially" — Staff Reporter

## Truckers prohibited from harassing staff

TRANSPORT company **Maatline Carriers** was granted an interdict in the Cape Supreme Court yesterday to prevent truck drivers from demonstrating and intimidating staff at the company's premises near Bellville

The drivers are not allowed within 200m of any of the company's depots in the Western Cape

**Maatline Carriers** managing director Mr **Chris Bredley** said police had to be called to the company's premises twice yesterday — Sapa

## 'Consultation needed in implementing Labour Bill'

JOHANNESBURG: More consultation was needed to ensure the implementation of the Labour Relations Bill once it was passed by Parliament

National Economic Development and Labour Council executive director Mr Jayendra Naidoo told a labour conference here "Though we might have the Labour Relations Bill we have little agreement on how we will achieve these goals (It) needs to be more concrete for us to have a genuine crack at transformation"

"We need to set a common starting point, which outlines what is required of each constituency to help us get beyond the three percent growth mark."

The Labour Bill should not be judged before it was implemented

"We are not looking forward to a strike-free environment, but it rewards those using good procedure and intervenes if partners can't agree," he said

A Parliamentary committee has started assessing the bill

● Weak trade unions and strong business conglomerates would not create economic stability, Cosatu general-secretary Mr Sam Shilowa said yesterday

Addressing Parliament's Labour Committee, he said it was important that labour have a regulatory framework — Sapa-Reuter



# Unions back passage of labour bill

(166) ARG 9/19/95  
WEAK trade unions and strong business conglomerates would not create economic stability, Congress of SA Trade Unions general secretary Sam Shilowa said

Addressing parliament's labour committee on the Labour Relations Bill, Mr Shilowa said it was important that labour had a regulatory framework. The Bill would create a highly unionised society, increasing stability and lowering costs.

He rejected arguments that only five to seven percent of the population would benefit from the measure. Trade union members totalled about 2,5 million and taking their dependents into account, between 16 and 20 million people benefited from advances made by the trade union movement.

Certain sectors of the economy, such as mining and manufacturing, were highly unionised, he said.

Mr Shilowa said although labour also had certain reservations about the bill, such as "scab labour", it supported its passage through parliament this session. Cosatu would also abide by the government's right to make amendments to the measure.

In its response to the bill, Afrikaanse Handelsinstituut spokesman JP Landman said labour legislation had to be adjusted to increase the labour absorption rate in the economy.

Unemployment was increasing steadily and there was no correlation between economic growth and job creation, Mr Landman. He said business worldwide were cutting back on the number of employees. He said 93 out of every 100 people coming onto the labour market could not find jobs and labour legislation had to be reviewed to address this.

Sapa

2/10/95 (166) (P)

### Farmers should know labour law

FARMERS should get to know the labour legislation that applied to them and their labourers, Transvaal Agricultural Union (TAU) manpower chairman Willie de Bruyn said yesterday.

Farmers needed to draw up understandable contracts before hiring labourers and should also give attention to salaries, leave on public holidays and the benefits paid to workers, he said.

# 'Only high density will solve backlog'

(123) BD 11/9/95

Nicola Jenvey

DURBAN — SA's housing backlog can be overcome only when high-density developments are introduced and the concept of "one person, one plot" is removed, says National Housing Minister Sankie Mthembu-Nkondo.

Opening the first phase of the Cato Manor housing development outside Durban at the weekend, Mthembu-Nkondo said communities were justified in complaining about the apparent lack of housing development. A government announcement would be issued "fairly soon" to rectify the situation.

She told a group of placard-holding protesters demanding that houses be made available for renting that increasing government housing stock and providing communal dwellings for rental were matters that would "receive serious consideration".

The Cato Manor housing project is part of special presidential project.

Under it about 41 000 new houses and 137 schools would be built, providing permanent dwellings for 250 000 people. The projects would be geared towards households earning less than R3 500 a month.

Local government and housing MEC Peter Miller said KwaZulu-Natal had to build about 250 000 houses within five years "to

make meaningful progress towards eliminating the backlog", which would require funding from national level.

Miller again stressed the province's claim for 22%-25% of the national housing budget — compared to the 19% received in 1995/96 — was not based solely on demographics, but also on the province's ability to deliver.

Since the Regional Housing Board was formed in February last year, R430m had been allocated to existing projects and R438,8m to new project-linked subsidy schemes. This represented 80 000 new housing opportunities for the province.

Another 59 projects worth R244m were under way throughout KwaZulu-Natal and would deliver 25 000 core houses during the financial year.

"The provinces' capacity to deliver in line with the objectives of current housing policy is an important factor in determining future budgetary allocations and KwaZulu-Natal has that capacity," Miller said.

Nkondo said the private sector, provincial and national government, and communities had to work together to extend the state housing subsidy to its limits.

"However, permanent consultation without delivery does not empower the people, but destabilises the community. If communities want houses, then the time for talking is over," she said.

## Council wants Bill amended

Renee Grawitzky (166) BD 11/9/95

CAPE TOWN — The central chamber of the Public Service Bargaining Council (PSBC) has proposed that certain sections of the redrafted Labour Relations Bill tabled in Parliament be amended to accommodate the Public Service situation.

The central chamber met late last week to review the redrafted Bill and has submitted its recommendations to the parliamentary standing committee on labour relations.

The parties' main concern revolves around abolition of the central chamber — which currently negotiates issues such as wages — while retaining the departmental and provincial chambers of the PSBC as well as the Educational Labour Relations Council and the National Negotiating Forum of the SA Police Service.

The parties would now be required to

negotiate issues previously negotiated within the PSBC in the Public Service Coordinating Bargaining Council, which would include educators and police.

Their opposition revolved around the fact that the teaching and police sectors would be able to deal in their own forums with matters pertaining to their specific sectors retained in the Bill.

Meanwhile, the 107 000-strong Public Service Association (PSA), although complimenting the drafters of the Bill, said the PSBC was sidelined in the process of the drafting of the Bill.

PSA GM Casper van Rensburg said the National Economic Development and Labour Council was not represented by public service employers or employees.

A number of employee organisations were of the view that they had not been afforded the opportunity of commenting fully on the redrafted Bill, he said.

# Crucial labour Bill prepares for final hurdle

(166) 12/9/95

ONE of the most crucial pieces of legislation to be drafted under the new government is expected to be passed through Parliament and the Senate this week, despite the controversy that has surrounded it since its publication in draft form seven months ago.

The Labour Relations Bill finally tabled in Parliament last week incorporated the Nedlac agreement, consideration of over 281 written submissions and Cabinet decisions. The Bill — double its original length — lays claim to being the first to be written in plain language to make it more accessible to users.

The overriding theme of oral submissions made last week to the standing committee was the view that the Bill would overregulate the labour market with the provisions relating to centralised bargaining and the extension of bargaining (industrial) council agreements to non-parties, such as small business. This was seen to have an adverse impact on small business and job creation.

JP Landman of the Afrikaanse Handelsinstituut questioned whether the Bill would enhance or impede labour absorption.

He also questioned the creation

of statutory councils which had the potential of converting themselves into bargaining councils which could extend agreements to non-parties which "is a perpetuation of the worst failures of the old Industrial Council system". He said it was all very well for an independent body to consider exemptions but the criteria for granting such exemptions would be decided by the parties to the collective agreement — "those with vested interests in not seeing the exemptions granted".

Head of the drafting team Halton Cheadle says there is nothing in the Bill to prevent parties from practising decentralised bargaining, it creates flexibility for parties to design an appropriate labour relations system to suit their circumstances.

Most submissions attacked the new Bill as being pro-union — and very few even attempted to deal seriously with its attempt to create a framework for fundamental change in the workplace.

The Bill to be tabled in Parliament today undoubtedly favours strong and well organised unions and employer organisations — and given the state of both, this could be problematic. But this in itself could

## RENEE GRAWITZKY

actually energise the organisations to create greater capacity and organise themselves.

The granting of organisational rights, which will accrue to "sufficiently representative" unions, has provoked differences of opinion between union allies Cosatu on the one hand and Nactu and Fedasal on the other. The two latter (and smaller) federations have opposed the Bill for providing that a majority union can conclude an agreement to change the threshold for representativeness to attain certain organisational rights. They would like all parties to decide.

A number of issues around strikes, lockouts and the use of temporary replacement labour during strikes were left to the Cabinet.

Despite the ANC's antipathy towards the use of "scab" labour, employer representations were sufficient to ensure that, effectively, there will be no restriction contained in the Act. Employers will be bound to give a minimum of seven days notice of intent to employ replacement labour, but this notice



CHEADLE

may be given up to a month before the strike begins.

The Cabinet decided against permitting the right to strike over alleged unfair dismissals. All such disputes will be settled through arbitration. The Bill provides that the vast majority of disputes be referred

to the Commission for Conciliation, Mediation and Arbitration — which is the heart of the Bill.

Cheadle says the transactional costs of the new dispute resolution procedure could be reduced quite substantially. He says the commission will take six to seven months to be established and budgetary estimates for 1996/97 are about R110m.

The Code of Good Practice for dismissals creates a greater degree of flexibility and clearly spells out the procedures to be followed.

In terms of retrenchment, the parties could not agree on a fixed amount for severance pay. The Cabinet finally decided on a minimum one week's pay — although where an employee unreasonably refuses to accept an offer of alternative employment, severance pay will not be mandatory.

The draft Bill will apply to all employees excluding members of the SA National Defence Force and security agencies.

Criticism of the Bill has been noted but, taking into account present reality, government could not have opted for legislation which does not attempt to address the imbalances in the workplace.

## Labour Bill leaps over the parliamentary hurdle

(166)  
Renee Grawitzky BD 12/9/95

CAPE TOWN — The Labour Relations Bill passed its biggest hurdle last night with the Parliamentary Labour Portfolio Committee voting in favour of its adoption — with the DP opposing and the NP reserving its position.

This approval by the committee enables the Bill to be tabled in Parliament today for adoption.

The Portfolio Committee, following intense debate, approved the report outlining its deliberations. Intense debate revolved around the wording relating to the failure of the committee to invite submissions by certain individuals and whether a number of organisations were accommodated by the committee.

The committee approved the Bill subject to significant amendments agreed to after recommendations made by the Committee of Principles, who took into account changes proposed by political parties.

Amendments related to the deletion of the seven-day notice period required by employers when planning to use replacement labour and the tightening of provisions regarding the appointment of an independent committee to consider exemptions when a collective agreement had been extended to non-parties.

Other issues related to the Commission for Conciliation, Mediation and Arbitration, the Judicial Service Commission providing input in the appointment of judges to the labour court and the rewording of the clause on the granting of accommodation, food and basic amenities during a strike or lockout.

Business South Africa said the proposed amendments improved the Bill.

See Page 14

# Green light likely for Labour Bill

## Political Correspondent

THE redrafted Labour Relations Bill, which vastly enhances rights of trade unions, will be put to the national assembly for approval today.

The bill, the result of negotiations in the National Economic Development and Labour Council (Nedlac), a troika of business, labour and government, was approved by the national assembly labour committee yesterday. (166)

The only amendments accepted unanimously by the labour committee were that

- Sexual harassment in the workplace be listed as one of the areas of jurisdiction of the Commission for Conciliation, Mediation and Arbitration;

- The commission be independent and representative in respect of race and gender, and

- Labour Court judges be appointed by the minister of labour on the advice of Nedlac and the Judicial Services Commission.

ARG 12/9/95

angry pupils from ten different Soweto schools tried to force the gate open during a demonstration for the release of a pupil who had allegedly killed Chafunya gang leader Mduduzi Mhlongo; Police threw tear gas canisters to disperse the crowd.  
PIC LEN KUMALO

# Labouring over Mboweni's Bill

(166) Sowetan 12/9/95

**T**HE NATIONAL Assembly's labour committee adjourned twice yesterday to give members the opportunity to study proposed amendments to the Labour Relations Bill

The committee met at 9am but adjourned shortly after when members complained they only received amendments proposed by the Labour Ministry, and other documents, just before the start of the meeting

The second attempt, shortly after 11am, was postponed to 2pm to give members the opportunity to go through the documents properly and study a report on last week's public hearings. ANC members caucused after both adjournments.

Most of the Ministry's proposed

## Last-minute amendments delay Bill's passing in labour committee

amendments are technical, correcting spelling errors and incorrect cross-references and amending English text to fit the Afrikaans version

One of the amendments deals with conscientious objectors to union membership and the deduction of agency fees from employees' wages without consent

In terms of the amendment, a conscientious objector may ask the employer to pay the amount deducted from his or her salary into a non-union fund administered by the Department of Labour

An addition to the chapter dealing with dispute resolution was that the Commission for Conciliation, Mediation and Arbitration give advice or training regarding sexual harassment in the workplace to employers, employees and unions

The draft Bill, published last week, is expected to be passed by Parliament before the end of the week, when the session ends.

Proposed Democratic Party amendments released on Monday have not yet been discussed by the committee - Sapa

# Labour Bill on track after delay

2 (166) Star 12/9/95

Cape Town - The National Assembly's labour committee had to adjourn twice yesterday morning to give members the opportunity to study proposed amendments to the Labour Relations Bill.

The committee members complained they had received amendments proposed by the labour ministry, and other documents, just before the start of the meeting.

One of the amendments deals with conscientious objection to union membership, and the deduction of agency fees from employees' wages without consent.

In terms of the amendment, a conscientious objector may ask the employer to pay the amount deducted from his salary into a non-union fund

administered by the Department of Labour.

The person will, however, have to show that it is against his conscience to be a member of an organisation.

An addition to the chapter dealing with dispute resolution was that the commission for conciliation, mediation and arbitration give advice or training regarding sexual harassment in the workplace to employers, employees and unions.

The draft Bill, published last week, is expected to be passed by Parliament before the end of the week, when the session ends.

Proposed Democratic Party amendments released yesterday have not yet been discussed by the committee. - Sapa



# Labour bill to be debated today

ET 12/9/95

(166)

THE Labour Relations Bill, with amendments by the national assembly's labour committee, is to be debated in Parliament today.

Several changes were made to the bill yesterday after the committee discussed amendments proposed by Nedlac's Committee of Principals, headed by Labour Minister Mr Tito Mboweni.

The Nedlac proposals were based largely on changes sought by the ANC

Cosatu president Mr Sam

Shilowa said yesterday the bill had been a victory for labour. The Democratic Party, however, said it remained opposed to the measure.

The amendments accepted unanimously by the labour committee were that:

- Sexual harassment in the workplace be listed as one of the areas of jurisdiction of the Commission for Conciliation, Mediation and Arbitration,

- The commission be independent and representative in terms of

race and gender; and

- Labour Court judges be appointed by the Labour Minister on the advice of Nedlac and the Judicial Services Commission.

The section stating that employers had to give a trade union seven days' notice of their intention to engage replacement labour was scrapped. A restriction preventing employers from taking on replacement labour to maintain production during a strike or lock-out was retained — Sapa

# DP and NP to oppose bill

(166) CT(PR) 12/9/95  
By BRUCE CAMERON

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Tito Mboweni, the labour minister, has threatened to use an ANC majority to force a contested Labour Relations Bill through Parliament today as the legislation ran into last-minute opposition.

The Democratic Party, dissatisfied with last minute amendments to improve the position of small business, is to vote against the bill when it comes before Parliament while the National Party was last night reserving its position.

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Tony Leon, the leader of the DP, said the main objections to the legislation was the consequences for small business while Leon Wessels, the NP spokesman, said his party was concerned about the lack of consultation with the public service.

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Sam Shulowa, representing organised labour, and Bokkie Botha representing organised business, said they were happy with the amendments made by the committee and wanted the Bill passed speedily.

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Botha said he did not agree with the DP view of the bill's effects on small business. Mboweni said the opposition from the DP and the NP was not unexpected

# Majority support for Labour Relations Bill

BD 13/9/95 (166)

Renee Grawitzky

CAPE TOWN — The Labour Relations Bill was debated in the National Assembly last night with support expressed by the ANC, PAC, NP, African Christian Democratic Party and opposition coming from the DP, Freedom Front and IFP.

The Bill will be voted on in the National Assembly today and in the Senate tomorrow.

Despite support expressed by a number of political parties, concern was expressed about the haste in which the Bill was being pushed through the parliamentary process.

Labour Minister Tito Mboweni said the Bill before the House represented "the third major revolution of the labour relations system since the 1920s in our country".

Chairman of the Standing Committee on Labour Relations Godfrey Oliphant said the Bill was a victory for workers everywhere and the vision contained in the reconstruction and development programme.

Oliphant said the inclusion of the use of scab labour had no place in the new dispensation and this aspect would have to be reviewed. One of the significant last minute amendments was in fact — with the approval of the ANC — the deletion of the notice period required by employers before using replacement labour. It is understood this was agreed to after the ANC proposed amendments to extend the prohibition on the use of replacement labour.

DP leader Tony Leon who opposed the Bill said Cosatu general secretary Sam Shilowa was quite right when he said that "the big winner in the passage of this Bill will be Cosatu".

Leon said the ANC promised SA "jobs, jobs, jobs" but the Bill would actually shrink the number of job opportunities.

Leon Wessels of the NP said despite a number of reservations relating to the impact of the Bill on the economy, "we do not wish to stand back from the tripartite processes that were started years ago with our blessing".

## Minister<sup>(166)</sup> hails new labour bill

**CLIVE SAWYER**  
Political Correspondent

THE Labour Relations Bill, which is expected to be approved by the national assembly today, will herald the third wave of industrial relations in South Africa in the past 70 years. *Aug 13/95*

This was the view of Minister of Labour Tito Mboweni when introducing the second reading debate on the bill yesterday.

The measure, which confers significant new organisational rights on unions, was the culmination of long and difficult struggles and the initiatives of the new order, he said.

Godfrey Olifant (ANC), who as chairman of the committee on labour helped ensure the swift passage of the bill, urged employers not to use "scab" labour.

Leon Wessels (NP) said that while his party had reservations about the bill, the NP supported it because it was the culmination of tripartite processes that began under the previous government.

The bill was opposed by the Inkatha Freedom Party and the Freedom Front, and was supported by the African Christian Democratic Party.

A frequent criticism of the bill was that it favoured big trade unions and big business at the expense of their smaller counterparts.

# Thumbs up for Labour Relations Bill

(166)  
Sowetan  
13/9/95

## **Sowetan Correspondent**

NEW LABOUR legislation tabled in Parliament yesterday would not remove all tension from labour relations, Labour Minister Tito Mboweni has warned.

Introducing the Labour Relations Bill in the National Assembly, Mboweni said it would "lay a modern foundation for addressing our under-performing labour market and for transforming the world of work and improving working life".

Parliament is due to vote on the Bill today. National Party spokesman on labour Mr Leon Wessels indicated that the NP would support the Bill but Democratic Party leader Mr Tony Leon said the DP opposed it.

The Freedom Front indicated it would oppose the Bill but both the Pan Africanist Congress and the African Christian Democratic Party will support it. The Bill is therefore guaranteed to pass and will come before the Senate tomorrow.

It has been a controversial piece of legislation since it was unveiled in February and has been subjected to hours of negotiation at National Economic Development and Labour Council (Nedlac).

Leon alleged that the Congress of SA Trade Unions was the "big winner" in the passage of the Bill which attempts to replace adversarial labour-management relations with simple mediation procedures which are intended to lessen the number of strikes besetting the economy.

Mboweni described the legislation as "the third major revolution of the labour relations system since the 1920s". It combined the promotion of economic growth with a "societal commitment to social justice and human rights".

The Bill extends the industrial relations system to all workers - including domestics and farm workers - but does not include members of the defence force and the intelligence agencies.

# Passage of labour law guaranteed

(166)

BY PATRICK BULGER  
POLITICAL CORRESPONDENT

Star 13/9/95

Cape Town - New labour legislation tabled in Parliament would not remove all tension from labour relations, Labour Minister Tito Mboweni warned yesterday, when introducing the Labour Relations Bill in the National Assembly.

The assembly is due to vote on the Bill today. NP labour spokesman León Wessels indicated his party would support the Bill, but DP leader Tony Leon said the DP opposed it. The FF indicated it would oppose the Bill too, but the PAC and the ACDP will support it. The Bill is, therefore, guaranteed to pass and will come before the Senate tomorrow.

It has been a controversial piece of legislation since it was unveiled in February, and has been subjected to hours of negotiation at Nedlac.

Leon said Cosatu was the "big winner" in the passage of the Bill, which attempts to replace adversarial labour-management relations with simple mediation procedures intended to decrease the number of strikes besetting the economy.

Mboweni described the legislation as "the third major revolution of the labour relations system since the 1920s".

It combined the promotion of economic growth with a "societal commitment to social justice and human rights", and was enabling rather than prescriptive. It would allow for the dynamic development of a new labour relations system, he said.

"We do not claim this Bill will eliminate, at a stroke, all tensions in the conduct of labour relations. Tension and conflict are inherent in the relationship between workers and their employers."

# Labour urged to adapt act

(166) CT(BR)13/9/95

BY LLEWELLYN JONES

STAFF WRITER

The national priorities to create employment and further the aims of the RDP made it imperative that the employer and labour sectors adapted the labour relations act to enter a new phase of co-operation, Rod Harper, the senior partner in the labour department of Webber Wentzel Bowers, said at the International Executive Communications Conference in Johannesburg yesterday.

"South African industrial rela-

tions is at the crossroads as there is a real possibility that a resistance attitude, on the part of employers, and an old-style class-warfare approach, on the part of union members, may lead to enduring conflict."

He said there was no doubt that the new act could be used for the wrong purposes.

Employers could refuse to disclose relevant information and the unions could use the workplace fora to transfer information to collective-bargaining meetings, attempting to wrong-foot employers.

# Massive support for Labour Bill

~~AA~~ BO 14/9/95 (166)

Renee Grawitzky

PARLIAMENT yesterday passed the Labour Relations Bill which is intended to lay the foundation for the transformation of the way in which employers and employees interact in the workplace and to provide for effective and efficient mechanisms for resolving disputes before resorting to industrial action.

The ANC achieved overwhelming support for the Bill, which was passed after 289 votes were recorded in favour and 42 against — with parties including the DP and IFP voting against.

The Senate will vote on the Bill today.

Cosatu general secretary Sam Shilowa said he was relieved the process was over so that he could focus on other major issues facing the labour movement. He said the struggles waged by workers were not in vain and now "we have a Bill in all respects that can be termed a labour friendly Labour

Relations Act"

Business SA spokesman Adrian du Plessis said: "This is most certainly a new start for industrial relations and we think we can turn the broad support for this law to good account by using it to focus on the real economic challenges facing SA."

Labour Minister Tito Mboweni said the Bill provided for "substantive transformation to the industrial relations system" which would entrench organisational rights, change the mechanisms for resolving disputes, transform the system of collective bargaining and create institutions in the workplace which would facilitate distributive bargaining.

Mboweni said: "We do not claim that this Bill will eliminate, at a stroke, all tensions in the conduct of labour relations .. (but) this legislation .. will lay a modern foundation for addressing our under-performing labour market, for transforming the world of work and improving working life."



# Labour Bill joins statutes

(166) Star 14/9/95

Cape Town - ANC Cabinet ministers and MPs congratulated Labour Minister Tito Mboweni when the National Assembly passed the Labour Relations Bill by 289 votes to 42 yesterday.

The Bill will be considered by the Senate today and President Nelson Mandela will then sign it into law.

The IFP and the DP opposed the Bill, with DP leader Tony Leon telling the assembly the biggest winner was trade union federation Cosatu.

He expressed fears that it would not contribute to small and medium business development.

NP labour spokesman Leon Wessels said the NP held Mboweni accountable when he said small and medium enterprises would not be prejudiced.

- Political Correspondent

# New bill has kept our labour affairs department busy

(166)

27 (198) 14/9/95

Sacob's labour affairs department has had a torrid time since February. That was the month the draft Labour Relations Bill was released for public comment. Since then most of the department's time has been taken up putting the views of organised business on the bill.

Gerne Bezuidenhout, Sacob's director of labour affairs, says the bill is probably the most important part of the minister of labour's five-year plan, which involves the reviewing of all the country's labour legislation and market practices.

When the Act is promulgated by parliament it will govern the way South Africa deals with trade unions, with collective bargaining, with strikes and any other matters which affect labour.

Bezuidenhout says some of the contents of the Bill are to be welcomed, but others are cause for concern. "How it will finally work out remains to be seen."

He says if there is a message in the Bill it is that we should try to get it working.

South Africa has been plagued by industrial action and by strikes so it is crucial that the level of industrial unrest is reduced.

"Unless we achieve this we will not get the foreign investment we need nor will we get fellow South Africans to invest in the expansion of their businesses."

Bezuidenhout sees one negative and two positive aspects in the Bill for the business community.

The negative aspect is that the

Act will contain a wide right to strike — though the trade unions will say this is a positive move, he comments.

But the positive side for business is that there will be a new structure — the Commission for Conciliation, Mediation and Arbitration (CCMA) — and a new process for dealing with industrial action.

Assuming this commission works, which means that the government will have to provide all the funding and the necessary staff, it will provide a most positive element in the improvement of labour relations.

Bezuidenhout said the actual negotiations on the Bill were conducted in the Labour Market

Chamber of Nedlac by Business South Africa, of which Sacob is a part.

The chamber had to keep its members informed so they also understood what was in the Bill and what the practical effects would be on them.

The chamber communicated with its members on the Bill in a number of ways — by issuing brochures, by working through all its committees, through its monthly Monitor publication, through newsletters and by attending meetings of the member chambers.

However, now that the Bill is shortly to become law, this does not mean that Sacob's task is at an end.

"Now we have to explain to our members what the Act will involve,

and appoint representatives on the various bodies that will flow from the Act, including the CCMA which will be managed by government, organised labour and organised business, including Sacob."

Once the Labour Relations Bill is taken off the agenda, the Labour Market Chamber will turn its attention to the investigation of all aspects of labour market policy.

Sacob is calling for labour market practices to be as flexible as possible in order to promote job creation. It wants the least number of mechanisms for the regulation of wages.

Although expanding the number of small businesses is not the full answer to job creation problem, this process will play an important

role. Consequently, the small business sector must be provided with a friendly environment.

To ensure this, Sacob is taking up a position against a national minimum wage, says Bezuidenhout. It is also opposing the so-called incomes policy.

Sacob is more in favour of the market determining wages and not some government decree.

However, one factor that could influence the level of wages is the practice of collective bargaining, which will be regulated by the Labour Relations Act.

Business believes that collective bargaining must be free from government interference.

Secondly, it would like to see it on a voluntary basis.

MBOWENI 'GIVEN TOO MUCH DISCRETION'

# Labour relations bill passed by assembly

**THE** Labour Relations Bill was passed by an overwhelming majority in the national assembly yesterday, but critics say it will do nothing for the growing army of unemployed.

**T**HE national assembly passed the controversial Labour Relations Bill yesterday, with 289 members voting in favour and 42 against

Only the Democratic Party, the Freedom Front and Inkatha voted against the bill. Not all their members were present for the voting

DP leader Mr Tony Leon said the bill gave the Minister of Labour too much discretion

National Party labour spokesman Mr Leon Wessels told the house before the voting that the NP believed "it is correct to try to move away from adversarial labour relations towards .. a dispensation where there is greater scope for mediation, negotiation and arbitration"

The bill, drafted by the govern-

ment, trade unions and business, guarantees the right to organise and be recognised, to enact closed-shop agreements under certain circumstances and to engage in limited secondary strikes

It sets up simplified dispute resolution mechanisms and provides for collective bargaining on welfare and pension funds and, by agreements between employers and unions, on wages

## Powers

Mr Wessels urged Labour Minister Mr Tito Mboweni to use the wide discretionary powers given to him by the bill in a balanced way "to arrest the concerns of small trade unions as well as small (and) medium enterprises"

(1bb) CT14/9/95  
Mr Leon said his party voted against the bill because it discriminated against small businesses, could curb the creation of new jobs and was not investor friendly

He said the bill was passed at great cost to the country, in which 93 out of every 100 job-seekers could not find jobs.

The only relevant question was would the legislation increase their chances of finding jobs, and it did not look as if it would

While the DP believed the bill would lead to better relations between employers and workers, the growing army of unemployed would not reap the benefits

The bill was submitted to the national assembly for debate on Tuesday with late amendments agreed to by the National Economic Development and Labour Council

The bill will go to the vote in the senate on Thursday and then be passed to President Nelson Mandela for final approval —  
Reuter

# Farmworkers threaten action against new Bill

Renee Grawitzky

ONE day after Parliament voted overwhelmingly in favour of the Labour Relations Bill, organisations representing rural and farmworkers have threatened countryside marches this weekend and next week, to protest against the fact that their concerns relating to the Bill were bypassed.

Dawie Bosch of the Farm and Rural Labour Rights Advocacy Group said yesterday that his organisation, which represented a coalition of rural service organisations, farm unions and advice offices, felt the Bill did not take into account the specific concerns of this sector.

He said one of the main concerns was that the Bill recognised only the extension of organisational rights to unions in organisations which were already organised. This did not facilitate the organisation of workers in vast unorganised sectors.

Halton Cheadle, head of the drafting team appointed by Labour Minister Tito Mboweni to draft new labour legislation, said during the public hearings of the standing committee that this concern was provided for in the Bill.

The Nactu-aligned National Union of Farmworkers was not available for comment, while the Cosatu-aligned SA Agricultural Plantation and Allied Workers' Union said that it distanced itself from such proposed protest action.

# A new era in boss-worker relationships

(166) (132) Jan  
By Abdul Milazi  
Labour Reporter

15/9/95  
THE newly passed Labour Relations Act heralds a new era of industrial relations in which workers and employers will work together, labour lawyer Mr Rod Harper said yesterday

When the Act was passed in Parliament on Tuesday, the notable change was on the issue of scab labour which has been hotly contested by business and labour. The seven day notice requirement before an employer can use scab labour has been scrapped.

Now employers do not have to give notice of their intention to use scabs during a strike. However, employers cannot use scab labour while locking out workers, if the lockout is intended to break the strike. But they can lock out workers and use scabs if workers were locked out to prevent damage to property.

Harper said the main thrust of the Act was to promote employee participation in decision making.

"Notwithstanding employer misgivings about the new Act, it would be wrong to engage in resistance politics in regard to the implementation of the Act," said Harper.

Independent trade unions and the Federation of South African Labour Unions have complained about the closed shop clause which they claim amounts to bullying tactics.

Fedsal president Ben van der Walt said "Using the law to try to write smaller unions out of an agreement is not collective bargaining, it is bullying tactics which will never work."

## Talks for final constitution

THE Constitutional Assembly's streamlining sub-committee should meet at least seven days during the Parliamentary recess, in a bid to produce a working draft of the final constitution by November 15, the CA management committee decided yesterday.

The first of these meetings would be held on September 28.

The management committee reconfirmed that the May 9 1996 deadline for adoption of the Constitution should stand, but that progress would be reviewed in February.

### Certify constitution

CA executive director Mr Hassen Ebrahim pointed out that the Constitutional Court could certify the Constitution after it had been adopted.

Except for the chapter of fundamental rights, all the CA theme committees had now completed their work and the management committee should congratulate them, Ebrahim said.

It was agreed the sub-committee would meet on September 28, October 9, 10, 19 and 20 and on two or three days early in November.

Mr Richard Sizani of the Pan-Africanist Congress objected to the packed agenda for today's constitutional committee meeting.

He said this placed an inordinate strain on, especially, the smaller parties in the light of Parliament's hectic end-of-session schedule - *Sapa*

# POLITICS

## Labour legislation gets nod, awaits signature

Star 15/9/95 (166)

■ BY JUSTICE MALALA  
LABOUR REPORTER

The Labour Relations Bill, the first major piece of SA legislation to be agreed upon by the major stakeholders before going to Parliament, now only awaits the signature of President Mandela before it becomes law.

The Bill yesterday overcame its final hurdle when the Senate passed it, bringing to a close eight months of intense negotiations and lobbying.

The Bill, drafted by government, trade unions and business representatives in the National Economic, Development and Labour Council, guarantees the right to organise and be recognised, to enact closed-shop agreements under certain circumstances and to engage in limited secondary strikes.

It sets up simplified dispute resolution mechanisms and provides for collective bargaining on

welfare and pension funds and, by agreement between employers and unions, on wages.

In his address before the passing of the Bill last night, Minister of Labour Tito Mboweni said it represented a "bold effort to effect systemic change" in the country.

He said the key feature of the Bill is that it extends access to the industrial relations system to every worker, except those in the national defence force, the intelligence agency and the secret service.

The Bill also establishes a firm statutory basis for the exercise of organisational rights and embodies a major reform of the mechanisms for resolving industrial disputes, he said.

The National Assembly passed the Bill on Wednesday, with 289 members voting in favour and just 42 members of the Democratic Party, the Freedom Front and Inkatha voting against.

# Labour Bill will sort out sex pests

~~166~~ 166 Star 16/9/95  
By TROYE LUND

Gaps used by employers to escape prosecution for sexual harassment have been narrowed by the Labour Relations Bill passed by Parliament earlier this week.

According to the Sexual Harassment Education Programme (Shep), 76% of SA's working women are sexually harassed at work.

They are now guaranteed a fair hearing before an informed, trained commission

"Some rulings of the past have been clearly bigoted, sexist and in favour of the male perpetrator," said attorney Shirley Welsh, who made submissions to Parliament on behalf of Shep.

"The previous system tended to make sexual harassment do to labour law what rape is to criminal law - the

victim is humiliated and turned into the accused," she said.

Victims of sexual harassment will no longer have to apply to the Department of Manpower and then to the Industrial Court should they want the department's ruling overturned. Cases will be heard by a commission for conciliation, arbitration and mediation.

No appeal can be made against the commission's decision, but people who sit on the commission will be better equipped to give an informed judgment. Commissioners are to receive specialised training on the subject

Welsh is adamant that each case be heard for its individual merits by people who are sensitive to aspects that are not part of other labour disputes.

According to Shep, the changes will make it easier for women to report harassment.

# What about us? Farm workers hostile to bill

**AFRIKA MSIMANG**  
Staff Reporter

FARMWORKERS threaten to become increasingly militant after the adoption by parliament of the controversial Labour Relations Bill without any attempt to include several proposed amendments to meet their concerns.

The Farm and Rural Labour Rights Advocacy Group has now raised the issue of the bill's failure to help in "unorganised" farm workplaces.

They see their prohibition from representing farm workers as a permanent declaration of war and division of the urban working class from farmworkers

But Labour Minister Tito Mboweni called the bill a critical step towards transforming labour relations. Congress

■ The new Labour Relations Bill ignores the rights of farmworkers who are becoming increasingly hostile to their city cousins.

of South African Trade Union general secretary Sam Shilowa agreed the bill would encourage and facilitate better organisation of workers

Provisions in the bill include

■ The union must achieve the status of sufficient representativity

■ Notify the farmer in writing that it has achieved sufficient representativity.

■ The farmer must meet with the union within 30 days to attempt to conclude a collective agreement regarding the content of organisational rights of unions, including conditions of access

■ If the dispute is unresolved, the union

can refer it to a conciliation commission.

■ The commission must conciliate the dispute over a period of 30 days.

But farm workers often do not make it past the first provision, as less than one in 40 farm workers belong to a union.

According to Dawie Bosch, facilitator of the advocacy group, only eight percent of farms had more than 50 workers and only two percent had more than 100.

Group member Lionel Beerwinkel said it was clear provisions in the bill were made without consideration for farm workers

According to Mr Bosch, farm worker unions needed access to organise and they could only gain access when they were already organised — a Catch 22 situation.

At present, the number of farm workers on each farm was very low. Also, organisers had to travel long distances to keep contact with union members.

(166) ARG 16/9/95



(166)  
**Labour act a  
victory for the  
workers, says  
Cosatu chief**

*Star 16/9/95*  
South Africa's new Labour Relations Act was a victory for workers, and arguments that it would prove a disaster for economic development were "rubbish", Cosatu said yesterday

"For us it represents a resounding victory for workers, a radical departure from the past, and sets us under a new dispensation for the management of industrial relations," Cosatu general secretary Sam Shilowa told reporters

"Those who are hell-bent on union-bashing have described the bill as a disaster for SMEs (small and medium enterprises), job-creation and investment. I must say with pride that this is all rubbish. We are as committed to the development of SMEs as outlined in the RDP," he said.

The union federation's only regret was that there was no outright ban on the use of scab labour, he said

"But neither did we lose this one. If anything, we were able to erode employers' use of scab labour in an employer-initiated lockout."

Shilowa added that Cosatu was not "selling out" by accepting the LRA - Reuter

NEWS NATIONAL

# Cosatu happy with Labour Relations Act

(166) Sowetan 18/9/95  
New labour standards set – but the scab labour issue remains

By Abdul Milazi  
Labour Reporter

**T**HE NEWLY PASSED Labour Relations Act was a victory for workers and a radical departure from the past, setting new standards in industrial relations management, Cosatu general secretary Mr Sam Shilowa said at the weekend.

Shilowa said most of the issues tabled before the National Economic Development and Labour Council were either resolved in Cosatu's favour or based on revised positions by the Department of Labour and unions.

"There are clearly areas that represent a decisive breakthrough. Examples of this are provisions which entrench the rights of workers to organise, bargain collectively and strike with protection from dismissal," said Shilowa.

He said there were also provisions

which on the surface looked good, but needed careful scrutiny and discussion to ensure they achieved their objectives. These were proposals for workplace forums as well as the proposed new system for dispute resolution, mediation and arbitration.

There were other provisions which were of concern to the federation, either in content, form or the way they were drafted. These, according to Shilowa, included provisions around centralised bargaining and lock-outs.

Other issues which labour tabled during the May 4 negotiations included the inclusion of police and intelligence in the LRA. So far only the police have been included.

Shilowa said: "The only regret is that we did not achieve an outright ban on the use of scab labour. He said Cosatu remained resolute that scab labour had no place in the country's industrial relations."



Cosatu general secretary Sam Shilowa, with Cosatu officials Dorothy Mokalo and Nowetu Mpati, at a news briefing on the Labour Relations Bill. Picture: ROBERT BOTHA

## Scab labour 'will never be accepted by unions'

Renee Grawitzky

THE fight to ensure a total prohibition by employers on the use of scab labour would continue on the shop floor and would be raised in the National Economic Development and Labour Council (Nedlac), Cosatu general secretary Sam Shilowa said on Friday on the passing of the Labour Relations Bill.

Shilowa said the Nedlac agreement "while itself not fully satisfactory was another milestone in labour's favour", and

the legislation passed by Parliament "reflects in great measure areas that we tabled".

He said the only area of regret was not achieving the outright ban on the use of scab labour.

Shilowa referred to a warning by standing committee chairman Godfrey Olphant that employers who abused the concession granted on the use of scab labour would pay dearly.

When the labour movement hailed the law as a victory for workers it was not attempting to "claim a victory".

Shilowa said "anyone who moves from a position who says that we sold out is a demagogue".

He said the acceptance of the government of national unity was seen as a necessary evil to move the country forward. Shilowa said the new labour legislation

did not stop parties from reaching in-house agreements on certain issues through negotiation or collective power. For example, through negotiation unions could reach agreement on the establishment of union-rather than employee-based workplace forums.

The same could apply to the payment of severance pay which should be at least four weeks' pay, he said.

This issue would be taken up in collective bargaining and also in terms of the revision of the Basic Conditions of Employment Act.

Shilowa said some last-minute changes to the draft Bill could not have been achieved without the support of the ANC who had "demonstrated the determination to lead the process of transformation at the workplace".

ATED

## Uncertain future for clothes sector

BY JON BEVERLEY

SPECIAL WRITER

The clothing industry remains in poor shape for the future, says F N Haslett, the chairman of Sterling Clothing. This is in spite of the improvement in income which saw a R373 000 turnaround from a loss last June to a surplus of R218 000 by the end of this June.

The greatest uncertainty is over the relaxation of duty on imports from Zimbabwe, which came into effect at the weekend, together with the continuing drought and the "ever present uncertainty in the labour market".

The results show a 40 percent improvement in turnover to R24 million and a 108 percent rise in operating income to R1 017 million — a trend that has been ongoing since last year's poor first-half results.

Earnings a share are a modest 1,1c — against 1,5c for the whole of last year and a loss of 0,8c for the first half of last year. No forecast is made for the rest of this year.

## Labour act 'a victory for unions'

BY ROSS HERBERT

STAFF WRITER  
ET(BR) 18/9/95

The Labour Relations Act was a victory for unions, Sam Shilowa, Cosatu's secretary general, said on Friday at a press conference called to counter complaints that Cosatu had "sold out" on key provisions.

Cosatu faced criticism from the Farm and Rural Labour Rights Advocacy Group that the act ignores provisions demanded by agricultural workers. Shilowa said the final bill was far closer to the union's positions than to those proposed by Business South Africa.

He said the ANC had inserted several union-favourable clauses before the bill was passed in the National Assembly on Wednesday. He said fighting to gain more could have delayed the bill until the next parliamentary session.

He said he regretted failing to win an outright ban on the use of scab labour. Under the final bill, employers can use replacement workers in the absence of a lock out.

He said Cosatu would work next year for passage of a mandatory minimum of four weeks severance pay for dismissed workers.



**NO SELL OUT** Cosatu's secretary general, Sam Shilowa, denies claims that the union has 'sold out' on key provisions of the Act.

PICTURE: JOHN WOODROOF

## 'VAT must rise if economy is to grow'

BY AUDREY D'ANGELO

CAPE BUSINESS EDITOR

Foreign investors are enthusiastic about South Africa, there is no reason for the economy to slow down and growth of 4 percent or 5 percent is possible, said Brian Kantor, a professor of economics at the University of Cape Town.

In an upbeat address to the annual congress of the Cape Assurance Industry Liaison Committee on Friday, Kantor said consumer spending and exports were rising,

capital inflows were good and foreign loans cheaper because the perceived risk factor was lower.

He expected continued stability for the rand.

But it would be essential for VAT to rise and for personal income tax to come down in the next Budget.

Kantor said there was reason for great satisfaction about the healthy state of the economy.

"About 60 percent to 65 percent of the economy is actually consumption spending, and that is growing nicely."

The formal part of the economy, which was the only part that could be measured, was growing at a rate of 3 percent. But the informal sector was important and it was also growing.

This was shown in the taking up of formerly excess capacity in industry and the willingness of manufacturers to invest.

The earnings of the industrial sector of the JSE were 30 percent ahead of last year, after tax. Kantor said the excellent news was that international capital markets

were giving South Africa virtually everything it asked for.

"It comes in a variety of ways, but the most important is in trade credit lines. This is thought of as short-term capital, but in fact it is continually rolled over in trade. It is the best finance you can have — apart from direct investment."

Companies such as IBM and Ford had returned and others such as McDonald's were coming for the first time. Foreign companies already here were making capital investments to remain competitive.

## Mboweni warns on danger of unacceptable protest actions

Renee Grawitzky

(166) (162)

BD 21/9/95

LITTERING, highway blockades and the taking of hostages during disputes were not acceptable protest actions and were not reflections of democratic rights, said Labour Minister Tito Mboweni.

Speaking this week on democracy and the workplace at a Centre for Policy Studies seminar, Mboweni said democracy required obligations from SA citizens and current evidence showed that if democratic forces did not strongly assert themselves the country would degenerate into anarchy.

He said lack of delivery in the workplace and outside could undermine democracy and allow for certain social forces to gain the upper hand and ensure the democratic experience ground to a halt.

He said the "revolution of the angry could be upon us if the fundamental problems are not addressed".

The slide towards authoritarianism could become an option when "things are going tough". The workplace was a long way from transformation, he added.

Numsa general secretary Enoch Godongwana, speaking on behalf of Cosatu, said the proposed workplace forums would have to be credible — "if not, they will not deliver". The credibility of workplace structures would only be achieved if it was accepted that labour was a stakeholder in the workplace. He said the "law may be good" but it would not deliver unless parties changed their "mindset".

Adriaan du Plessis of Business SA told the seminar: "You cannot sustain democracy without economic growth, and economic growth without democracy is not sustainable either".

He said the challenge was to ensure that the system of labour rights encouraged the flexibility necessary for perpetual change in the workplace.

# Labour Act 'cash cow' for conference organisers and training companies

Renee Grawitzky

VOTER education was last year's "cash cow" for conference organisers, training companies, industrial relations consultancies and a range of non-governmental organisations — but this year and next the focus will be on the Labour Relations Act (LRA)

It is still unclear as to when the Act will come into effect, but those affected by the legislation will be looking to familiarise themselves with its implications and devise strategies to deal with it. This is where the training and consultancy services will come in

However labour experts have warned that potential clients will need to be discerning about the assistance and training on offer.

Labour, government and business are debating the implementation date of the new law, which was approved by both the national assembly and the senate last week. The labour ministry believes the Act will come into effect early next year.

There has been some discussion about whether there should be staggered implementation, as institutions such as the Commission for Conciliation Mediation and Arbitration (CCMA) could take up to six months to be established and to become completely operational.

However, notices of seminars and courses on the LRA have already started flooding the market, and experts warn that many are from "fly-by-night" operators

The going rate for seminars is between R500 and R700 for half a day. A fair number of those on offer provide a broad overview of the Act and the views of labour and business — with some dealing with specific sections of the Bill.

Within the labour

movement itself, organisations such as the Workers' Colleges in KwaZulu-Natal, the Western Cape and Eastern Province and the Cosatu research wing, the National Labour & Economic Development Institute (Naledi) have compiled training courses for shop stewards, organisers and officials.

Kessie Moodley of the Workers' College in Durban said workers should be trained by organisations linked to the labour movement

Moodley said trainings around the LRA would include general details of the Act, worker participation and how to deal with workplace forums

Naledi director Jeremy Baskin said a three-hour training programme had been compiled which would be used by Cosatu and its affiliates.

He said it was essential that decision makers were trained as soon as possible to understand the broader implications of the Act. Line managers and human resource officials should also get instruction in how it will work

Companies such as IR Network, in conjunction with Naledi, will conduct joint management and shop steward training

Industrial relations consultant Andrew Levy said it was necessary to impart applied and practical knowledge, as opposed to abstract information, and "we will focus on how the parties should interact in the new environment". He said new behaviours would emerge and both labour and business needed to learn how to react and interact

Labour consultant Gavin Brown said besides a half-day course run later in the year in conjunction with Contemporary Labour Law, in-house training would be the main focus of his organisation

# Labour needs slick mediation body

(166) ~~10~~ ~~151~~  
Renee Grawitzky

BO 21/9/95  
THE success of the new labour relations system was dependent on the effective functioning of the proposed commission for conciliation, mediation and arbitration, independent mediator Charles Nupen said yesterday

Speaking at the Innes Labour Brief seminar on preparations for the Labour Relations Act, Nupen said the social partners within the National Economic Development and Labour Council (Nedlac) had accepted this "They will have to give it life," he said

The social partners would be involved in policy making and would have to ensure the commission worked

He said "Nedlac will have to move with due haste to establish the governing body so that the commission can be up and running"

Nupen speculated it could take up to nine months to set it up

The governing body of the commission — which would be a tripartite arrangement — allowed for the nomination of three representatives from labour, government and business He said these nominations did not necessarily have to come from within their

constituencies "I hope that the social partners will look to people to govern the institute who have the expertise and who do not necessarily represent sectoral interests"

A good many of the commissioners required would have to be drawn from the ranks of the social partners

Adrian du Plessis, presenting an employer perspective on the Labour Relations Act, said there had been a mutual sense of frustration between labour and business negotiators as they tried to reach agreement on the labour Bill

"The subject did not lend itself to a distributive type of bargaining."

Du Plessis said: "This reflects on the need for the careful consideration of the agenda within Nedlac and (the need) to include the social partners in the deliberation preparatory to the drafting of legislation."

He said the relationship between the consensus-seeking process in Nedlac and the law-making process in Parliament was not properly structured and, in the future, attention should be focused on trying to find the proper balance and relationship between Nedlac and Parliament

# Arbitration laws to be revamped

(1bb) Star 22/9/93

■ BY NORMAN CHANDLER  
PRETORIA BUREAU

South African laws relating to international and domestic arbitration are likely to be revamped in terms of recommendations expected to be made by the South African Law Commission.

Acting on proposals from the Association of Arbitrators of South Africa (Aasa), the commission is investigating all facets of the 1965 Arbitration Act.

The commission said in Pretoria yesterday that it was debating to what extent international commercial arbitration laws should be implemented in order to regulate international arbitration with a South African connection and what measures should be taken.

"Political developments in South Africa are leading to more economic links. As business people regard arbitration as a favoured means of dispute resolution, it is important that the country's arbitration law be in line with international norms," the commission said.



# Bill a triumph for Tito Mboweni

**BARRY STREEK**  
POLITICAL STAFF

**F**OR Minister of Labour Tito Mboweni, the adoption of the Labour Relations Bill by Parliament last week was undoubtedly a personal triumph – and afterwards he justifiably threw a party at his house to celebrate.

He had overcome substantial problems in the negotiations between business, labour and government which included nation-wide protest marches by Cosatu in June and demonstrated that the Nedlac structures could work to the benefit of all parties.

He had also overcome bureaucratic delays with the publication of the 298-page bill and managed to convince reluctant parliamentarians that they were not being regarded as rubberstamps, despite the rush.

Mboweni told MPs that the measure was the “third major revolution of the labour relations system in our country since the 1920s”, after the 1924 Industrial Conciliation Act and the Wiehahn reforms initiated at the end of the 1970s.

Of course quite how revolutionary the reforms will be will depend on the effect of the new law on factory floors, the civil service, the farms and homes with domestic labour.

There is little doubt, however, that the legal framework for major changes in labour has now been created and will come into effect once President Mandela has signed the bill.

Mboweni has initiated a five-year plan to modernise labour law and the institutions that regulate the labour market.

One of the major problems with industrial relations is that labour lawyers, trade unions and industrial experts often talk in a language and in terms which no ordinary people ever use.

The drafters of the bill made a conscious effort to use what they called “plain language” because, as was stated in an explanatory memorandum attached to the bill, “the laws regulating labour relations are complex statutes containing an intricate web of cross-referencing. Their meaning is neither clear nor consistent. The objective was to make the law easily and equally understood by lawyers, judges and ordinary people without legal training”.

It was the first time this had been done with any legislation in South Africa, including the use of short sentences “as far as possible”, and substantial progress was



**EXPEDITIOUS:** Mr Tito Mboweni, who has piloted his Labour Relations Bill through Parliament

made, but it still is somewhat complex.

The bill applies to all employees and all employers except those in the South African National Defence Force and the intelligence agencies. Domestic and farm workers will get full labour rights for the first time in South African history.

All workers now have the right to strike, although the new Essential Services Committee can, in terms of an International Labour Organisation definition, prohibit strikes and lock-outs in “essential services”. It would be

instructive to see if this provision is invoked before the deadline given by nurses for their wage demands expires, but there may not be enough time to appoint the new committee.

The bill, the memorandum states, “promotes collective bargaining”, although bargaining in the workplace is left to the parties and the courts, by conferring a number of organisational rights for unions. These include the right of access to employers’ premises for union-related purposes (although this expressly excludes private homes), the right to stop-order facilities, the right to elect trade union representatives, the right to time off for union activities and the right to information for collective bargaining purposes.

It introduces workplace forums to promote workers’ participation and representation in the workplace, but this is specifically separated from collective bargaining.

The procedure for the registration of trade unions and employers’ associations is simplified and the discretionary powers of the Registrar of Labour Relations are removed.

## No appeals allowed

The bill also fundamentally overhauls dispute resolution procedures by promoting private procedures, mediation and in the last resort arbitration. The new Commission for Conciliation, Mediation and Arbitration (CCMA) will play a key role in this regard.

The existing procedure over unfair dismissals, currently “one of the most lengthy and expensive in the world” according to the memorandum, is drastically overhauled through a system of compulsory arbitration through “a simple, quick, cheap and non-legalistic approach” has been adopted.

The bill does not permit appeals from the arbitrator’s award to “speed up the process and free it from the legalism that accompanies appeal proceedings”.

It also establishes a Labour Court within the Department of Justice with the same status as the Supreme Court.

The Labour Relations Bill is, in Mboweni’s words, “a bold effort to effect systematic transformation”, but as he said in his introduction to the National Assembly debate, labour relations is “a dynamic process” and the bill was “enabling rather than prescriptive”.

It is indeed now that the “enabling” which will shape South Africa’s industrial relations

**See Business Report, Page 21**

CF  
(166) 22/9/95

# Labour bill approved, but Mboweni won't rest long

By BRUCE CAMERON

POLITICAL EDITOR

Tito Mboweni, the minister of labour, breathed a sigh of relief as his much contested Labour Relations Bill was approved by the Senate in the closing hours of the 1995 parliamentary session.

It had been a long slog getting it by business and the unions, past the parliamentary labour committee and then through both houses of parliament.

It was a close run, particularly in the early stages when there was an almost total breakdown in discussions between labour and business and then again at the parliamentary stage, with sensitivities that the rights of the legislature as a sovereign body were being chiselled away.

His relief is evident in his thanks to parliament "that they did not disturb the delicate nature of the (Nedlac) agreement".

But the ebullient minister's problems are not yet over. Aspects of the bill are almost certain to be challenged in the constitutional court, working experience with the fundamental changes in the labour legislation will probably require future amendments, he has to create the structures required by the legislation, and his programme of overhauling all labour-related legislation is nowhere near complete.

In an interview with Business Report, Mboweni said he would have liked to have delayed the date of promulgation of the Act until Workers' Day on May 1 — but "that is a bit far away".

Work is going ahead on creating the institutions required by the legislation. These include the commission for conciliation, mediation and arbitration, the industrial services commission, and trans-

formation of the current industrial councils, through Nedlac, into the various bargaining councils, representing different sectors of industry.

But while he continues to guide the Labour Relations Bill through its final stages to promulgation by President Nelson Mandela early in the new year, Mboweni is starting to prepare for the next round of legislation.

The legislative process, despite the criticisms, will be much the same as that used for the Labour Relations Bill, although probably less rushed.

Mboweni pointed out that parliament itself agreed, in passing the Nedlac legislation, that all labour legislation should be charnelled through Nedlac.

He acknowledged that parliamentarians had a responsibility to their constituents and to the country as a whole and they should be given proper time to debate issues.

He is keen to perpetuate the system of using a smaller body of "principals" of senior representatives of government, business and labour, which had evolved to break the deadlocks in the Labour Relations Bill and assisted in piloting the legislation through parliament.

"This democracy is still young. We are all learning every day how to manage this transformation process. There is no formula book. Things will develop."

Mboweni has a number of things on his short-term agenda. These include:

□ A white paper of future labour market policy. This would be drawn up from conclusions reached in the invest-

gations of the recently formed Labour Market Commission and the labour market research department of the International Labour Organisation, which is preparing a country report on South Africa.

The commission, which "has already completed about half of its work", was dealing with a number of vexing questions including the relationship between the creation of jobs and the need for minimum wages, the relationship between the public and private sector wages and employment practices, and the need for human resource development.

Mboweni said the white paper would be presented to parliament next year.

□ The Manpower Training Act is to be changed to the Human Resources Training Act. This would entail a national skills audit to determine what skills are available and would include looking at skills and industrial development on a regional basis.

□ The introduction of an employment equity law, which would be aimed at outlawing all forms of discrimination in employment, including the last vestiges of job reservation such as on the mines, where white miners and blacks miners could still be placed on different grades.

□ Redrafting the Basic Conditions of Employment Act. This could include transferring the chapter on unfair dismissals from the current Labour Relations Bill to the redrafted Act, setting maximum working hours, fixing minimum wages. (On these issues Mboweni knows he is facing another "major fight".)



RELIEVED Tito Mboweni thanked parliament for its delicate approach.

□ A revision of the Unemployment Insurance Act, which will include an investigation into cover required and how to deal with the structural unemployment, with possible options such as retraining programmes rather than only cash benefits.

Mboweni said there were a number of things that worried him about the labour market. These included growing unemployment, the treatment of mineworkers and the position of farmworkers.

Mineworkers played a critical role in the economy but were paid less than people in the administrative side of the industry.

The government, he said, should take the issue of joblessness as seriously as it took the position of homelessness. An economic growth rate of between five and eight percent was required before any impact could be made on unemployment.

There was an additional problem that economic growth could improve without creating more jobs.

Various options were being considered "and we should be able to make proposals in due course".

On the issue of mineworkers, Mboweni said there needed to be a minimum wage to recognise their contribution to the economy.

"I feel very strongly there has to be more recognition of mineworkers. They dig up the gold with which Johannesburg glitters. I know it is an explosive statement but if any sector deserves a minimum wage it is the mining sector. Their position must be improved as part of skills grading. Mineworkers have been short-changed for many years."

Farmworkers also deserved a better deal, Mboweni said. "They work under horrible, horrible conditions. I don't think when people eat they think who has produced the food."

The approach in improving the lot of farmworkers had to be carefully considered. "Farmworkers are about the most vulnerable of all workers in our society. We cannot be careless. They are so far from the public eye. It is not like workers in Johannesburg where they can get the attention of the public. I hope together with the farmers' unions we will be able to deal with these problems."

□ Business Report will be sponsoring a series of half-day seminars for the nation's decision makers, "and South Africa's new era in labour relations will be the subject of the first one. The seminar — jointly sponsored by Southern Life — will explain the practical implications for business and labour leaders of the new Labour Relations Act, with presentations by Mboweni and Adrian du Plessis of Business South Africa.

# Govt expects rough ride over 40-hr week proposal

**ALIDE DASNOIS**  
Business Editor

(166) ARG 23/9/95  
THE government is expecting tough opposition from business against moves to fix the working week at 40 hours, Minister of Labour Tito Mboweni said yesterday.

Mr Mboweni was addressing delegates to the SA Clothing and Textile Workers' Union (Sactwu) congress in Cape Town.

He said he had already been warned by business that he was "in for a rough ride" on the new Basic Conditions of Employment Act, next on the agenda now that the Labour Relations Act had been passed by parliament.

His plan to cut the working week to 40 hours has been referred to by business as "a youthful indiscretion".

Mr Mboweni called on trade unions to support him in the battle ahead.

Also on the agenda was a new employment equity law, which would outlaw all forms of discrimination in the workplace.

Mr Mboweni, greeted by singing Sactwu members when he rose to speak, invited the union to help workers who were less experienced in trade unionism.

Workers in the transport sector who "block the highways whenever they

have a grievance" had to be shown how to use their muscle against employers.

The nurses who had recently been on strike had genuine grievances but no experience in negotiations.

"You have to help them get organised to articulate issues," he said.

Otherwise, he said, there was a risk of "rightwing solutions — people will say there's chaos and anarchy ... let's use the army".

Mr Mboweni also called on Sactwu to free an experienced unionist to work in his department.

This would speed up the restructuring of the department, which was "taking too long".

The minister said the report of the Labour Market Commission would be ready by next June and it would be presented simultaneously to parliament and to the National Development and Labour Council (Nedlac).

"We have learnt from the LRA process," said Mr Mboweni, in a reference to parliamentary dissatisfaction with government handling of the Labour Relations Act.

Some members of parliament have expressed anger at being asked to "rubber-stamp" bills when the details had already been ironed out in Nedlac.



at the Library Gardens. Police used stun grenades to maintain control over the workers.

# Special labour tribunal will hear public service complaints

(166) (200) BD 27/9/95  
David Greybe

CAPE TOWN — A special labour tribunal had been established to hear employee grievances which resulted from the public service rationalisation process, Public Service Minister Zola Skweyiya announced yesterday.

He said with the rationalisation process "entering a critical phase", the implementation of the Labour Appeal Court Sitting as Special Tribunal Court Act, 1995, was a "significant development".

According to Skweyiya, the "final and binding" decisions of the tribunal would prevent drawn-out legal battles between the state and disgruntled public servants.

He said while the tribunal's es-

tablishment "can easily be interpreted as a step by government to gear itself for an expected flood of disputes over rationalisation", this should not be the case.

"If managements of public service departments and provincial administrations were to apply the measures pertaining to the rationalisation of personnel correctly and with compassion, then there should hardly be any need for a public servant to have to utilise the special tribunal."

Public Service spokesman Joel Raphela said last night he was "unaware of any cases which have been heard by the tribunal, or of any in the pipeline". He said the Act would be administered by the Justice Department.

Officials from the main public service unions and government said recently they were unaware of any major complaints about rationalisation among SA's estimated 1,2-million public servants.

The tribunal was created on September 1 in terms of the interim constitution. However, the Constitution of the RSA Amendment Act, 1995, extended the tribunal's life by a year, from the previous one year.

Skweyiya said the reason for the extension was to allow public servants time to submit claims. However, he has complained of delays in the rationalisation process. SA National Defence Force grievances would be heard until the end of 1998.

# Programme *Sowetan 28/9/95* to speed up labour disputes

(10) (166) (122)  
ABOUT R2 million is to be spent clearing a backlog of more than 6 500 unresolved worker/employer disputes countrywide – including 680 cases in the Western Cape. The bulk of them, more than 4 000, are in Johannesburg

Details of the National Settlement Week programme were announced yesterday by the Independent Mediation Service of South Africa, (IMSSA)

The Industrial Court outlined details of a programme to be held in Cape Town between November 6 and 10. The Cape Town programme follows a National Settlement Week in Durban and precedes one in Johannesburg

Run simultaneously with settlement attempts in Port Elizabeth and East London, it is expected to clear about 200 outstanding Western Cape cases at a rate of 40 a day

The National Settlement Week initiative was sanctioned by Labour Minister Tito Mboweni who said in a state-

ment that the plight of workers was one of his motivations. The Industrial Court and IMSSA will offer workers and employees the chance to mediate existing disputes by placing at their disposal the services of skilled and respected mediators and arbitrators

“Another reason is the need to start our new dispute settlement resolution system with a clean slate

“We cannot afford to burden the new system with the problems of neglect caused by a previous government,” the statement said

Mboweni also condemned the former dispute resolution system of conciliation at industrial councils and conciliation boards as “ineffective” and “wasteful of scarce resources”

“The industrial court was never fully sponsored by the previous government. The court was regarded as an institution which made inroads on the privilege of employers to deal arbitrarily with their workers”

# Labour law good news for strong companies

(166)

ARL 30/9/76

**MAUREEN MARUD**

Business Reporter

THE new labour relations dispensation is a change for the better for those companies that practise good labour relations, says Adolph Landman, president of the Industrial Court.

"It doesn't matter what you've got on paper. If you have a strong business and you practise good labour relations, you'll get through," he said in Cape Town yesterday at a Labour Relations Act workshop for management.

The act, which has yet to be promulgated, gave certainty, Professor Landman said.

"We now know what the parameters are and we can organise ourselves to live within that scope."

He said the old Labour Relations Act was difficult to understand and to apply. "You had to adapt and make it work. We did it and we will do the same with the new one."

Another reason for confidence was the way government was dealing with strikes, he said.

"They are now beginning to sound like employers in the 80s setting ultimatums."

Although the consensus was that the new act was union-friendly, the spirit in which it was applied by employers and approached by trade unions was important.

The most important labour court would be the Constitutional Court, he predicted.

That body would play a formative role with regard to major principles, he said.

For instance, there was a lot in the new labour legislation that could be challenged in terms of the constitution.

"Small businesses that don't like the new bargaining councils may challenge that on the basis of it being an infringement of their right to freedom of association."

# Nupen nominated to head new commission

(166) (155)  
BY ROSS HERBERT

CT(BA) 2/10/95  
STAFF WRITER  
The minister of labour, Tito Mboweni, confirmed that he intended to nominate Charles Nupen to head the commission for conciliation, mediation and arbitration in terms of the Labour Relations Act

Sources close to the ministry said Mboweni wants Nupen to organise the new agency but remain at the helm only for a fixed time, perhaps as brief as 12 months, to make way for a black candidate

Mboweni would not confirm the limited tenure. However, Nupen said he was discussing the position with Mboweni and, "I think one would be looking at a fixed period of time"

Until March this year, Nupen was head of the Independent Mediation Service and was tapped by Mboweni to arbitrate the Pick 'n Pay dispute with the SA Commercial, Catering and Allied Workers' Union last year. He also served as commissioner of the Independent Electoral Commission.

"In my view, he is obviously the best candidate for the post. Whether we can afford him or not is another question," said Mboweni. He said that getting a person with the right professional credentials and credi-



**CONCILIATORY** Labour  
Minister Tito Mboweni

bility among business and labour was important to making the new arbitration system work.

He said he had not yet discussed the appointment with the National Economic Development Labour Council "Nedlac, of course, will have to agree."

"Twelve months is just too short a time to set up the commission," said one industrial relations attorney concerned that moving Nupen out too soon would hamper the commission's reputation for impartiality and would leave too little time to firmly establish it.



# New SA Labour Act curtains State's role

(166)

Nov 3/10/95

The Labour Relations Act (LRA) of 1995 will change the way Africans as both workers and employers conduct themselves in the workplace. In redefining and curtailing the State's direct role in labour disputes, the new Act clearly gives form to the newly acquired constitutional rights and obligations of labour and business.

The Act of 1995 is only the third major legal initiative in this century. It replaces the LRA of 1956 which provided the backdrop for the bitter and antagonistic union struggles of the 1970s. It contains two major philosophical departures from the former legislation. First, the old LRA made no distinction between collective bargaining relations and the individual employer-employee relationship. By contrast, the new Act itself to collective bargaining arrangements in which a framework is provided for the conduct of trade union-employer relationships. It dispenses with costly and time-consuming Industrial Court procedures.

Secondly, the new LRA breaks with the adversarial pattern of employer-union relationships of the past and introduces mechanisms to promote harmonious workplaces. The LRA applies to all workers, including those in the public sector, with the exception of members of the SA National Defence Force and the intelligence services. Members of the SA Police Service are included, subject to special provisions. Previously excluded categories of workers like contract workers and casuals are included.

The Act provides two distinct arenas for negotiating employer-worker relations. Bargaining councils where collective agreements (including wages) within industrial sectors are reached and workplace forums which govern the working relationship at individual workplaces and at industry level. Bargaining councils, which replace the industrial council system, are the forums within which disputes are resolved and collective agreements reached. A registered trade union or a registered employers' organisation may initiate a bargaining council whose jurisdiction will be determined by the Act. An agreement reached by a bargaining council may list

**SOUTH AFRICA'S first democratic Parliament is reshaping the legislative landscape, introducing new legal rights and obligations whose impact will be widely felt. In this, the first of a weekly 10-part series on major statutes emerging from the 1995 session of Parliament, Political Correspondent Patrick Bulger (above) examines the Labour Relations Act**



those issues which may not form the subject of strikes or lockouts.

The other arena of negotiation is the workplace forum. These are established on the initiative of unions at workplaces in which a minimum of 100 workers are employed. The forum attempts to deal with matters directly related to the production process.

Management prerogative is lessened as trade unions can share important information related to production techniques and the financial state of the workplace or industry in which they have organised. Disputes arising from the forums are to be referred to a Commission for Conciliation, Mediation and Arbitration.

The LRA greatly expands the power of unions and eases their ability to organise within the workplace. "Sufficiently representative" unions, that is unions that represent 50% of workers in a workplace or industry, can enter into "agency shop agreements" with employers.

The union can then conclude agreements on behalf of all workers and can have union fees deducted from their salaries, even from non-members.

The constitutional rights of workers to strike without dismissal and of employers to "lock out" workers are upheld. A dispute which is unresolved after being referred to the relevant bargaining council can form the basis of a "protected strike".

A strike that does not comply with the procedures and which results from a dispute about a matter that is regulated by collective agreement is not protected and lays the strikers open to dismissal.

The lack of a statutory obligation to bargain, motivated

by the scrapping of the previously strike-ridden area of wage-related disputes and the cumbersome Industrial Court process, introduces a large degree of voluntarism. Critics have argued that the absence of a duty to bargain could in itself promote strikes.

On the other hand there is an assumption that collective agreements reached freely in advance between employers and unions will limit the opportunities and need for strikes and lockouts. Strikes in contravention of such agreements open workers to dismissal and possible civil action.

Another major area of controversy generated by the new LRA relates to its provisions on "centralised bargaining", which is part of an attempt to set industry-level determined wages and working conditions. As the legislation was steered through a variety of consultative processes including Nedlac and Parliament, statutory centralised bargaining was dropped, but industry agreements can, by agreement, be extended to new workplaces.

The Act's primary purpose is to encourage negotiated and mediated solutions to the issues dividing bosses and workers. To this end, the conciliation commission has been provided for.

The Act attempts to remove the acrimony from union-employer relationships and proposes a new labour regime consistent with the Reconstruction and Development Programme's aims.

Whether it contributes to upgrading the labour force and to economic growth will be its fundamental test. And whether it will stand the scrutiny of the Constitutional Court will be another severe test.

## Back labour Act, companies urged

(166)  
Renee Grawitzky

BD 19/10/95  
COMPANIES which tried to avoid participating in statutory councils as proposed in the new Labour Relations Act could find such councils being imposed on them without having participated in the councils' design, Rod Harper of Webber Wentzel Bowens said

Harper, who addressed a seminar on 'The new LRA, 1995 — It will rock you!' in Johannesburg last week, said it was preferable for employers to participate voluntarily and assist in the design of councils rather than being landed with a structure which did not suit the particular sector or company

The SA Steel and Engineering Industries Federation's Dave Carsons said the Act provided for fundamental changes to the SA collective bargaining process

He said the new collective bargaining model contained three main components — the removal of the duty to bargain, the active promotion of collective bargaining and the emphasis on centralised collective bargaining

Carsons said that within the National Economic, Development and Labour Council government, labour and business shared one-third representation each

However, in view of the close relationship between labour and government, there was a possibility, he said, that Nedlac could be used to "start the process of centralised bargaining"

## 'ANC, NP must act against crime'

Mduduzi ka Harvey

BD 19/10/95  
THE ANC and NP are fiddling while Rome is burning, says DP spokesman Douglas Gibson

Crime was rising and instead of taking responsibility to address the problem the ANC and NP had resorted to pointing fingers, Gibson said

DP leaders met Safety and Security Minister Sydney Mufamadi and his Gauteng counterpart, Jessie Duarte, this week. At the meeting they said the public believed crime had escalated out of control, while the authorities had not done enough to curb it

The DP countered Duarte's recent claims that crime was on the decline, citing Gauteng as the Mecca of SA's car hijackers.

Statistics provided by DP safety and security spokesman Peter Leon indicated that in the first six months of this year 4 060 cars had been hijacked in Gauteng. This averaged 25 a day

He said 75% of all car hijackings occurred in Gauteng and because the police had no information technology to help it fight hijackings the figure was likely to increase

Leon said although the NP was demanding security now, crime had increased overall at double

the population rate between 1990 and last year under the FW de Klerk administration. In that period crime had increased 21% — rape 58%, robbery 57%, vehicle theft 38%, serious assault 27%, illegal firearms 21% and murder 14%.

The DP called on De Klerk to resign as chairman of the Cabinet committee on security and intelligence if he did not take responsibility for doing something about crime

The DP criticised the fact that SA had only — 1,29 police per 1 000 people compared to the required 2,5 per 1 000. Also, despite the police losing 4 000 to 5 000 staff yearly, the ANC was criticised for placing a moratorium on the recruitment of new police in Gauteng until June next year

Although the government of national unity had implemented the Community Safety Plan in March this year, the DP claimed crime had increased — rape by 12%, serious assault 10,5%, housebreaking 10%, theft 8%, vehicle theft 5,3% and robbery 4,4%

The DP also called for the introduction of anti-hijacking legislation by providing for minimum sentences, a presumption against bail and the declaration of a crime state of emergency

## Call for total ban on landmines

Bonile Ngqiyaza

BD 19/10/95  
A STRONG call for the SA government to implement an immediate overall ban on the production and use of anti-personnel landmines was yesterday made by a group united under the banner of the Campaign Ceasefire.

Campaign Ceasefire spokesman David Bruce said "The SA constitution obliges the SA government to abide by the terms of international law and does not permit South Africans to, deliberately or negligently, kill people in other countries"

Bruce said the ceasefire campaign had during the past months tried to take up the issue in a way consistent with support for the SA government. He said the group was also considering approaching the Constitutional Court to address the issue, as it believed landmines were illegal under interna-

tional law.

As an indication of Campaign Ceasefire's seriousness, they called on government to reverse its recent decision to start the development and production of so-called "smart" anti-personnel landmines, Bruce said

In accordance with the announcement on Friday by the International Campaign to Ban Landmines to in future closely monitor landmine production and to blacklist companies involved in manufacturing anti-personnel landmines, the ceasefire campaign believed that the SA arms industry — particularly the Denel group — were candidates for such a blacklist

"During the coming months we, together with our partners in the International Campaign to Ban Landmines, will consider implementing a boycott of Denel products," Bruce said

In addition to seeking the support of other groups, he said, Campaign Ceasefire would also continue collecting signatures for a petition in support of an international ban on landmines.

In a speech delivered in his absence, Anglican Archbishop Desmond Tutu said while the Anglican church supported the recent decision by government to ban the export of landmines, it believed the step fell "far too short" of what was required.

"We call on the government, and all governments everywhere, to ban not only the export but also the manufacture, storage, import or use in any way of landmines."

The ceasefire campaign also appealed to government to treat the matter as a priority issue and to work towards "the implementation of an urgent consultative process on the landmine issue in southern Africa," Bruce said

# Labour Act may lead to greater

# mistrust in the workplace

By ROSS HERBERT

FEATURE WRITER

Call it the doomsday scenario the Labour Relations Act meets human nature:

Sometime next March corporate elders at XYZ Manufacturing gather for a bosberaad. Cut-rate imports are rushing to market, employees are restive, wage negotiations loom, job cuts and cost-cutting seem imperative.

"We need employee help or we're doomed," the chairman says. All agree the best way is to start a workplace forum. Unions sceptically agree to discuss it but weeks pass. As wage negotiations near, the union requests disclosures on costs, profit, export plans and explanation of rumours of impending layoffs. Management's blood pressure begins to rise after the third meeting to talk about the forum is cancelled by the union. "They don't want to cooperate," managers begin to fume. Meanwhile the union's suspicions ripen over delays in fulfilling the disclosure request. "You're holding out on us to get us to cave into a lackey workplace forum," stewards grumble. Supervisors are dumfounded. Silence is guilt. It's true, stewards rage. Curses and old grudges fly. Soon a strike roils the plant. Contention one, Co-operation zero.

Such a scenario is possible because the new Labour Relations Act opens far more avenues for employer-employee interaction. New arbitration procedures, bargaining councils, workplace forums, and exchanges of sensitive information — all are intended to foster co-operation but have the potential to devolve into misinterpretation, unmet expectations and more — not less — mistrust.

## Obstacles

The first obstacle will be the high state of expectations surrounding the bill. Workers expecting a major shift in workplace relations will be disappointed. Workplace forums are the centrepiece of the LRA's measures to promote a more co-operative work world. Management is amenable to experimenting with the idea

"We have to take the bull by the horns with this. It's a Rubicon we have to cross, not only as corporations or unions, but as individuals," said an industrial relations executive at a conglomerate who was unwilling to be named for fear of further raising tensions and expectations surrounding the LRA

Charging in will not help in the view of unions. "Our fear at this stage is they will tie us into an arrangement that will legally preclude us later. They must find a balance between their eagerness to cooperate and the union's interest," said Enoch Godongwana, the general secretary of the National Union of Metalworkers of South Africa

"I'd be surprised if you get a huge run on forums initially among unions. It would be greeted with a very hostile response," predicted Charles Nupen, who is Labour Minister Tito Mboweni's choice to head the new Commission for Conciliation, Mediation and Arbitration (CCMA), which will take over most of the dispute resolution functions of the present industrial court

If a union is recognised as representing all workers, it has the right to select forum members. However, when one union has not been so recognised companies and workers meet under the auspices of the CCMA to agree on a constitution for the forum. Neither companies nor unions can dictate, but they can influence the forum's terms.

Unions will be highly selective in instituting workplace forums, focusing on companies where

unions are strong. Godongwana said management should not expect a big push with forums until after unions have had a chance to learn from the process at selected sites.

Once rolling, membership on forums and rules for elections promise to be contentious issues. According to Rod Harper, an industrial law specialist at Webber Wentzel Bowens, management employees at several firms have begun to organise themselves into unions in response to the act.

Management must "consult" with forums on a variety of issues and are required to reach joint agreement with them on a shorter list of issues, including restructuring, discipline codes and layoffs, affirmative action and changes to benefit schemes or their boards.

Over time, the politics and expectations will, consultants say, put pressure on management to widen the purview of forums and blur the distinction between consultation and joint decision making. "There will be fights about what goes into the consultation box versus the joint decision making box," Godongwana said

## Disputes

Such fights will potentially be compounded by disputes over disclosure of information, which the bill requires. Unless handled candidly and professionally, there is the risk that requests for information escalate, with management delaying for what it considers legitimate business reasons and labour interpreting the delays as foot dragging

Although Labour Minister Tito Mboweni dismisses the idea, the LRA's workplace forum and disclosure provisions offer enormous potential for industrial espionage. For example, a forum is entitled to information on new technology plans, changes in production methods, or export promotion plans. The forum can call any expert to a meeting to discuss such issues and the expert is entitled to all information disclosed to forum members. The key criteria will be what is "relevant". Companies will retain the right to refuse "confidential" data

Companies and unions will also have to agree on the timing and acceptable form of information disclosed. Can companies trust unions and hand over executive reports, replete with sensitive information, or will they have to create a whole new arm to their employee communication functions to produce LRA disclosure reports?

"It will be a contentious issue, there is no doubt about that. South African companies are not used to sharing information with their workforces. There is still an enormous amount of distrust between employers and trade unions in many companies," said Brian Angus, the executive director of the Steel and Engineering Industries Federation of South Africa

Avoiding such pitfalls will put a lot of pressure on the people skills of line managers. Where employers and employees have a "mature" relationship, as one consultant put it, the bill can improve co-operation, but where that mature relationship is lacking, the opposite may occur

"More than anything, attitudes are going to have to change. Attitudes on the shop floor line people,

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supervisors and foremen. Implementation is really going to be up to line people," said Gavin Weiner, the director at Andrew Levy and Associates, an industrial relations consultancy

"The most important thing companies who are not in an industrial council need to do is give serious thought to bargaining strategy. If they aren't thinking about it, they ought to be," Angus said

Under the LRA, Nedlac must draw up guidelines for demarcation of industries for collective bargaining councils. The focus will be on industries not now organised, but several firms told Business Report they intended to raise the issue of redefining some of the present industrial councils. According to Angus, discussions are under way with chemical workers as to whether plastics companies should remain in the metal industry council, where they now fall, or they should move into a chemical

Industry bargaining council.

Another contentious issue will be the use of temporary agencies. The LRA attempts to close off the loophole provided by temporary agencies or labour brokers. Companies that use temporary agencies will be liable for any violation of collective bargaining agreements by the temp agency, including underpayment of wages and safety violations

**Bargaining**

The distinction between the use of temp agencies and outsourcing of certain functions, such as security or maintenance, is not clear in the LRA. For example, the mining industry outsources a variety of work. Outsourced workers fall outside Chamber of Mines collective bargaining and earn less than their counterparts directly employed by the mines

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Such practices could be subject to legal challenge under the new law

The LRA also promises to cause a reshuffle in the legal profession. The LRA creates a Labour Court, which will handle major issues such as strikes or lock-outs allegedly not in compliance with the act, picketing or unfair dismissal disputes that cannot be resolved in arbitration. Unlike the present industrial court, which uses "presiding officers", the act calls for a more professional court, staffed with advocates or judges experienced in labour law.

Paying advocates enough to justify taking a court position will be a problem. Weiner believes it will inevitably lead to far more part-time judges.

Most routine disputes will go to the CCMA for arbitration. The LRA forbids lawyers from representing companies or unions in arbitration hearings. Instead managers will have to represent themselves

In disputes with employees That will mean managers and union staffs will have to be trained to effectively make their cases before arbitrators

"Companies are going to have to start training people to argue their own arbitrations. You can get the best coach in the world but if you don't have the skill you'll be beaten," Weiner said.

In the effort to streamline dispute resolution, the act also requires that company managers keep minutes of disciplinary hearings with employees and document decisions surrounding information disclosure and workplace forums, which will impose a significant paperwork burden on managers.

The CCMA itself also will have to scramble to hire and train sufficient arbitrators to handle the load. "This will be arbitration on a scale we've never seen before. The big question is where is the commission going to get qualified people," Weiner said.



**INFORMATION** Brian Angus, the executive director of Seifsa



# Peerings AF

South Africa has been dubbed the population still use candles as the wood or paraffin for heating. These seminal study, *South Africans Rich* study provides new evidence of thaves a

By ZELDA

**T**en years ago the Southern Africa Lab and Development Research Unit (Sald. of the Economics Department at the University Cape Town published *Uprooting Poverty - 1 South African Challenge* - the report of the Secc Carnegie Inquiry into Poverty and Development. It was a shameful indictment of the vast socioeconomic gulf that divided blacks and whites in country.

In the desolate landscape near Telebridge in the Transkei, women collect firewood. The Saldru study found that of those who collected wood 48 per cent spent two to four hours doing so.

Picture Paul Weinberg



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**PLACE:** Gambling to the Wanderers week with ands of punters out a total of 00 on the limited cricket match

# Strik

THE motor industry's 27 in August, in which 60 000

on 15.01.88 A.L.I.

# New labour act 'goes against global trend'

■ BY FRANCOISE BOTHA

The Labour Relations Act, which is set to come into effect in May next year, had been called a third revolution in South African labour law and indications were that the country was going against the international grain with its introduction, said André van Niekerk, a labour

law consultant to Anglo American and a member of the act's drafting team

Speaking at the Institute of Personnel Management's annual convention in Johannesburg yesterday, Van Niekerk said South Africa was perhaps bucking the international trend by introducing legislation that had the specific purpose of promoting collective

bargaining, extending organisational rights to unions and entrenching workers' right to strike

He said, however, that the introduction of the act needed to be seen in light of the circumstances that surrounded post-apartheid South Africa

"The implications of emergency into a competitive market for an economy characterised by low growth rates, high unemployment but a shortage of skilled and technical workers are obvious.

"Unless the process is carefully managed, further unemployment and its social consequences will characterise the dismantling of the protections enjoyed by South African industry," Van Niekerk said

Star 25/10/1976

# Mboweni sets May 1 debut target

(166) CT(MR) 25/10/95

By JIM SMITH

Labour Minister Tito Mboweni said yesterday he hoped the landmark Labour Relations Act would take effect next year on May 1 — Workers Day — but he encouraged employers and the trade union movement to immediately start conducting their relations in the spirit of the new law.

Speaking at the first Business Report/Southern Life Briefing, Mboweni called the new law "the third major revolution of the labour relations system since the 1920s in our country" — after the turmoil surrounding the 1922 miners' strike and the Wiehahn Commission reforms of 1979, which legalised black unions.

"However, unlike its predecessors, (the new act) is fundamentally rooted in a concept of economic progress that is inseparable from a societal commitment to social justice and human rights," he said.

"These twin aspects are the core of the act — it bears all the hall-

marks of the democratisation of our society, and it represents a further attempt by the government to position the South African economy for the 21st century and beyond."

The omnibus Labour Relations Act, which rewrites South Africa's entire body of labour legislation, was adopted by Parliament last month after tortuous negotiations that sometimes appeared likely to strain the parties to breaking point.

## Partnership

The compromise bill that finally emerged was hailed as the first tangible product of the social partnership principle that underlies the National Economic Development and Labour Council.

Mboweni said the Act was on President Mandela's desk, awaiting the minister's advice on when it should be made effective.

He noted that substantial planning was still required, in particular to set up the new Commission for Conciliation, Mediation and Arbitration (CCMA) which formed a cornerstone of the revamped industrial relations structure.

The CCMA would introduce more responsive and flexible dispute-resolution mechanisms, Mboweni said.

Addressing an audience of more than 200 business and labour leaders in Johannesburg, Mboweni said businesses and unions now could start to prepare the groundwork for the new workplace forums, which he described as the single most significant departure in the new law from the old way of labour relations.

Forum members would need training to interpret and act on the increased information to be disclosed to workers under the new law.

Mboweni said domestic workers were covered by the law, and asked seminar delegates who employed domestic workers: "What are you doing to prepare?"

□ See Page 16

# Better prospects for shop-floor solutions

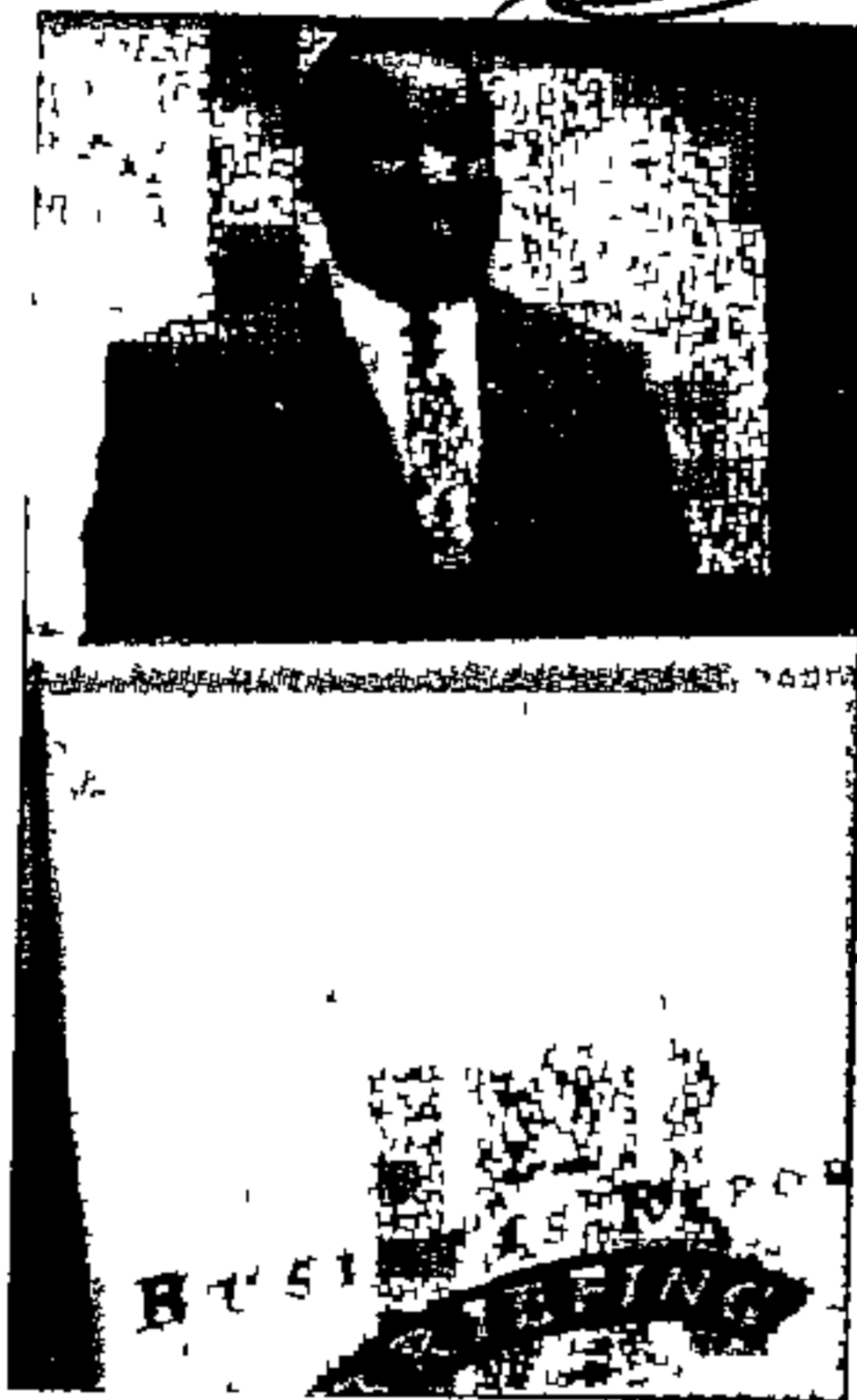
By JIM SMITH

The central players who negotiated the new Labour Relations Act warned yesterday of potential flash-points in the new law, but largely agreed that the new industrial relations framework would improve prospects for solving disputes and forging workplace partnerships.

Mediation specialist Charles Nupen, who chaired the half-day Business Report/Southern Life Briefing seminar in Johannesburg, said the new Commission for Conciliation, Mediation and Arbitration (CCMA) faced the challenge of hurrying and training several hundred mediators before it could begin its work.

Nupen, who was chosen by Labour Minister Tito Mboweni to lead the new commission, said the team of mediators would be responsible for facilitating the resolution of disputes — including disagreements over the creation and conduct of the workplace forums that must be established under the new law.

Law professor Halton Cheadle, the main drafter of the new act, said the CCMA would shift the dispute resolution process from the "rather amateurish" current system of government conciliation boards, to a more streamlined approach that had been developed and refined by Nupen's Independent Mediation Service of South Africa during the



Labour minister Tito Mboweni  
PHOTO JOHN WOODROOF

1980s and 1990s

The role of labour lawyer would change from that of litigator to arbitrator and problem-solver, Cheadle said.

Adrian du Plessis, the chief negotiator for Business South Africa, said the process had shown the immense difficulty of trying to negotiate a detailed statute with bargaining tactics more suited to settling a wage dispute.

He said the negotiators had used "every form of bare-knuckle tactic", and debates over individual words had disguised disagreements

over major principles

Du Plessis said while collective bargaining remained essentially voluntary, "there are clear threats and inducements to centralisation"

He expressed concern that workplace forums "remain inextricably at the discretion of a majority union — although once established are open to all"

Nevertheless, echoing the sentiments of every speaker at the briefing, Du Plessis said the new law contained the seed of a system of broadly based legitimacy that fosters effective and direct engagement between workers and managers.

"The LRA gives us the tools, some sharp, some blunt and, dare I say, some that may even be dangerous, and invites us to get back to work on the tasks at hand," Du Plessis said

Ebrahim Patel, the deputy general secretary of the South African Clothing and Textile Workers Union, cautioned labour not to be careless in its use of its increased right to strike.

"We must use our power potently but sparingly (and) avoid a premature resort to power"

Patel said organised labour faced a daunting task of training thousands of shop stewards to participate effectively in the new workplace forums and sectoral councils.

"Workplace forums introduce a new set of tools for managing change," he said

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(166) CT (BR) 25/10/95

# Labour act 'goes against global trend'

BY FRANÇOISE BOTHA

STAFF WRITER

The Labour Relations Act, which was set to come into effect in May next year, had been called a third revolution in South African labour law and indications were that the country was going against the international grain with its introduction, said André van Niekerk, a labour law consultant to Anglo American and a member of the act's drafting team

Speaking at the Institute of Personnel Management's annual convention in Johannesburg yesterday, Van Niekerk said South Africa was perhaps bucking the international trend by introducing legislation that had the specific purpose of:

- promoting collective bargaining,
- extending organisational rights to unions, and

entrenching the right to strike

He said, however, that the introduction of the act needed to be seen in light of the circumstances that surrounded post-apartheid South Africa

"The implications of emergence into a competitive market for an economy characterised by low growth rates, high unemployment but a shortage of skilled and technical workers are obvious

## Consequences

"Unless the process is carefully managed, further unemployment and its social consequences will characterise the dismantling of the protections enjoyed by South African industry," he said

Van Niekerk said that while the government, business and trade

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union movement had reached agreement at national level, "the threads of accord are not that apparent" at enterprise level

He cited the move into cabinet positions and other government levels by apartheid-era union leaders as a reason

"What they left behind was a legacy of confrontation in industrial relations"

Commenting on the third revolution in South African labour law, he said that the change was the most profound since the Industrial Conciliation Act of 1924 and the reforms introduced in 1979 after the report of the Wiehahn Commission

Van Niekerk said that the act represented a concerted attempt by the government to shift industrial relations from antagonistic to co-operative

CT(BR) 25/10/95



## State must share the load — Mboweni

Renee Grawitzky

RD 25/10/95  
(166)  
THE challenge of implementing the new Labour Relations Act did not lie only with the private sector but provided a greater test for the state, which had to move into the 21st century of labour relations, Labour Minister Tito Mboweni said yesterday.

Speaking at a Business Report and Southern Life briefing on the LRA, Mboweni said labour and business should prepare itself now and not wait for the Act to come into effect. He said that before this could happen a number of institutions which underpinned the success of the system, such as the Commission for Conciliation, Me-

diation and Arbitration (CCMA), had to be "up and running".

Charles Nupen, who is currently assisting the establishment of the commission, said that if introduced prematurely it could be condemned for lack of delivery.

Labour's main negotiator in the process, Ebrahim Patel, said it was necessary to have a strong union movement to get the benefit of the new Act. The Act could become dangerous if it became bureaucratic, head office not shop floor-driven and reliant on the law at the expense of organisation.

Business SA spokesman Adrian du Plessis said it would be a pity if this "revolution succumbs to old fashioned adversarialism".

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## Act 'aims at consensus'

Renee Grawitzky

(166)

BD 25/10/95

LEGISLATION such as the new Labour Relations Act could not compel consensus or create co-operation without the will or capacity of labour and business to recognise the destructive force of mindless adversarialism, Andre van Niekerk, a member of the Act's drafting team, said yesterday.

At the 39th annual convention of the Institute for Personnel Management in Midrand, Van Niekerk said on a national level government had committed itself to consensus seeking with business and labour as it sought to implement economic reform.

He said government had tried to ensure this process filtered down to shop floor and company level.

Van Niekerk said the fundamental test of the Act was the extent to which it contributed to job creation, upgrading skills and economic growth.

National Council of Trade Unions president James Mdlalose said management had to acknowledge workers had a role in the company's success and "should be accepted as social partners".

He said: "We must have positive participation at the factory floor, which will mean we build and make our companies succeed. Then we can share in the ultimate gains in the organisation."

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# Mboweni warns of angry workers' revolt

ET (BR) 27/10/95 (166)

By JIM SMITH

Cape Town — Tito Mboweni, the minister of labour, warned yesterday of a looming "revolution of the angry" unless basic conditions in the workplace were improved.

Speaking at the Business Report/Southern Life Briefing in Cape Town on the recently-adopted Labour Relations Act, Mboweni said the next challenge would be to agree on an equally comprehensive overhaul of laws covering basic conditions of employment.

The labour relations act, approved by parliament last month after marathon negotiations between business and labour, focuses on collective worker organisation and bargaining.

Mboweni noted that other workplace problems, especially those affecting basic wage rights and working conditions, formed the next major challenge facing business and labour. He warned that

workers were becoming angry at a perceived deterioration of basic employment conditions since last year's election.

"It is a very serious warning because if we are not able to improve the basic conditions of workers, a revolution of the angry may be upon us sooner rather than later."

Mboweni said he recently received a plea from tea plantation workers complaining that they were paid R160 a month.

He challenged the workers to prove such low pay and was sent a pay slip with a R160 gross as well as deductions that left a net pay of R114. He cited another case where

supermarket workers had remained casual employees for as long as 10 years. And he mentioned a hotel worker who was retrenched after 25 years, and then rehired without benefits.

"This cannot be correct," he said.

"These workers are expecting us to draft a law to help them."

These cries for help from workers were putting serious pressure on the government to push

faster on revamping the entire body of employment law, Mboweni said.

"The labour relations act is just one element of major labour policy reform needed in this country." The overhaul would cover the Basic

Conditions of Employment Act, which governed matters such as working hours, holidays, vacation pay, sick leave and other leave, as well as the Wages Act.

Duncan Innes, an independent labour consultant, said it might be premature to implement the Labour Relations Act on May 1 next year unless the structures were in place to carry out the law.

Among these were the Commission for Conciliation, Mediation and Arbitration, which needed to hire and train mediators throughout the country to resolve disputes.

Innes also expressed concern that the new workplace forums to be created under the act could get bogged down in disagreements over policy issues just when South African companies needed to be flexible and responsive to cope with global competition. Forum members would need to be well-trained and operate with clear rules to avoid such delays, he said.



# Parties involved to be shown redrafted jobs Act

**Renee Grawitzky**

A REDRAFTED Basic Conditions of Employment Act is expected to be presented to the parties within the labour market chamber of the National Economic, Development and Labour Council (Nedlac) by the labour ministry early next year.

The ministry's five-year programme outlines the process by which a draft would be prepared by an expert and presented to the minister. The passage of the

amendments would follow the same procedure as with the Labour Relations Act

The minister's five-year plan outlines some of the motivation for the redrafting of the Act. The ministry argues that legislation regulating individual employment should be found in just one statute instead of, as now, distributed among several statutes. "This is particularly the case in respect of the procedures for the resolution of disputes that arise from the application or interpretation of indi-

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vidual employment law"

The head of the ministry's drafting team on the Labour Relations Act (LRA), Halton Cheadle, said recently aspects of the LRA would be incorporated in the redrafted employment Act. And Labour Minister Tito Mboweni told the Cosatu congress last year that the type of amendments they could expect in the employment Act could include a 40-hour week, improvements to maturity provisions and the redefinition of casual workers

BD 2/11/95

## 'Relevant facts' only in job ads

ARG 3/11/95 (166)

### Education Reporter

ARBITRARY criteria such as age, gender, religion or marital status may no longer be used by employers and recruitment agencies as factors in job advertisements — in terms of the revised Labour Relations Act.

This, said Bill Sewell, director of Anchor Renwick Management Services, had necessitated a complete change of mindset and a revision of candidate assessment methods used by many employers.

In future, it would be essential that candidates were assessed using the relevant criteria only

Mr Sewell said in a statement that

one could not apply the same tests to an individual educated in formerly white schools and someone educated under the Department of Education and Training system

Nor could one apply tests which required a western understanding to people who did not have a western background.

To ensure the right person was selected for the right job under the new law, it was imperative that job descriptions were more specific, focusing on the duties, skills and performance expected rather than on personal details, which could be arbitrary stereotypes.

# Warning that new labour Act could affect work prospects

Beatrix Payne

(166)

BD 7/11/95

JOHNNIC chairman Pat Retief has warned that the new Labour Relations Act could affect employment prospects. Writing in the industrial group's annual report, Retief said that establishing a stable and co-operative industrial relations climate was one of the greatest challenges facing government business and labour.

JOHNNIC would "seek to give it (the Act) full effect in our managed operations" but was concerned about productivity and employment.

The Labour Relations Act guarantees unions the right to organise and be recognised, enact closed-shop agreements and in certain circumstances engage in secondary strikes. It also allows for simplified dispute resolution mechanisms and collective bargaining on welfare and pension funds.

Regarding the planned unbundling of certain group interests to black business, Retief warned that the process would take time and would have to satisfy the interests of all shareholders.

"The scale of the investment is such that it will take some time to reach a sound basis for the ultimate transfer of control," he said. The investment had to make sense in business terms as it would only then make a contribution to black economic empowerment.

The group, whose operations include Omni Media, Multichoice, and holdings in SA Breweries, Premier and Toyota, was concerned about the relatively slow growth in gross domestic product. The 3%-a-year rate was half that required for a reduction in unemployment and social inequality.

"Both are essential if democracy is to take a firm root in our society," he said.

# Employees want say over changes

BD 9/11/95

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Greta Steyn

LABOUR wants employers to be forced by law to have detailed discussions with their employees whenever "significant business changes" are planned, according to a proposal tabled at the National Economic, Development and Labour Council (Nedlac).

The detailed proposal for information-sharing forms part of the "social plan" Act labour hopes will be drawn up after discussions in Nedlac's trade and industry chamber. However, the proposal met immediate resistance from business, who felt that it should be discussed in the labour chamber.

A final decision has not yet been taken on the appropriate chamber for the debate.

Business has objected to the plan because it moots the establishment of financial reserves to compensate workers suffering as a result of industrial restructuring, and also because of the "cumbersome" requirement to discuss planned changes with employees.

A source said that if the information-sharing and consultation proposals were implemented, the result would be harmful delays in industrial restructuring.

Labour says in its submission that information-sharing on major changes should occur in com-

panies with more than 50 employees, along the lines of the German model which defines major changes as "any alteration which may entail substantial prejudice to workers". These include scaling down operations; transfers of departments; mergers; changes in the organisation, purpose or plant of the business; and introducing new work methods and production processes. The final decision, however, still rests with the employer.

"The letter of the (German) law does not allow the works council to determine the content of any change that the employer plans — but the works council can use certain tactics under the law to influence the situation," it says.

Employers have to timeously supply workers with "extensive" information on changes, including the likely effects on the workforce. Employees can apply to include a neutral expert in discussions at the information stage. In consultations, workers' proposed alternatives must be discussed in depth. "The employer must try to reach an agreement."

Mediation can take place if an agreement cannot be reached, and if that fails, conciliation can be tried. If all attempts at reaching agreement have failed, the employer can implement the measure as originally planned.

**Collective faith**

FM 10/11/95

**The new** Labour Relations Act — enacted by parliament and to be implemented in the first half of 1996 — is the product of long deliberation and intensive bargaining involving government, labour and business

It is the centrepiece of what is hoped will become a more constructive era of labour relations (*Leading Articles* November 3)

Though there have been misgivings about the balance struck between the conflicting interests, Prof Halton Cheadle of the Wits Centre for Applied Legal Studies and leader of the team that drafted the Labour Bill, considers the Act a better product than some hasty judgments have indicated

Indeed, many comments have ignored important aspects of the legislation. There is nothing in the new Act that commits bargaining councils to centralised determination of wages. It is only the practice of setting wages at sectoral level through industrial council agreements in the past that leads commentators to believe that the same pattern of collective bargaining will be reproduced in the new dispensation.

If the Australian trades unions have decentralised their collective bargaining within a framework of industry-level structures of bargaining, there is no reason local trade unions should not be persuaded to do the same, if it is necessary to secure growth and job creation.

Though the Act promotes sectoral bargaining, it does not impose a duty to bargain. Where employers and trade unions bargain, what, how and with whom are left to agreement. The courts have no role in determining these issues. The statute plays a limited role by providing an enabling environment for sectoral bargaining.

The Act stresses the primacy of collective agreements. For example, employers and trade unions can contract out of the Act and, by collective agreement, regulate their labour relations in a manner that suits them. As the Basic Conditions of Employment Act now stands (it is under review), the provisions of that Act will not apply where there is a collective agreement. All of this promotes greater flexibility, allowing businesses to respond to the demands of the market through collectively bargained (and therefore legitimate) outcomes. ■



## Workplace forums 'no easy solution'

Renee Grawitzky

166 (166) (166)  
BD 13/11/95  
WORKPLACE forums as provided for in the new Labour Relations Act would be unable to move SA beyond adversarial relationships towards more co-operative ones, Port Elizabeth University industrial relations unit head Mark Anstey said recently.

At an Industrial Relations Association of SA (Irasa) seminar Anstey said he did not believe that the National Economic, Development and Labour Council (Nedlac) would achieve this either.

However, Federation of SA Labour Unions (Fed-sal) general secretary Dannhauser van der Merwe said workplace forums would deliver and result in a move away from adversarial relationships.

He said: "Unions initially opposed workplace forums but changed their minds after they saw that there were instances where they worked and strengthened unions." He said the establishment of forums would take time, would require the will and change in mindset to make them work and would require training and increased capacity.

Anstey said the new legislation was largely based on the German experience, but did not go the whole way. Instead of following the German example where workplace forums were employee-driven, in SA they would be union-driven. This was problematic as trade unions and more specifically majority unions would have the "sole gateway to democracy".

Anstey said it was understandable that unions would want to control workplace forums to some extent in order to prevent a recurrence of incidents in the 1950s and 1960s when employers tried to co-opt unions through works councils. In Germany workplace forums worked parallel to collective bargaining. In terms of the proposed system in SA, such forums would be subordinate to collective bargaining.

Anstey said the Act might obstruct less developed labour relations systems.

## Human resources management

# Bill ushers in an era of co-operation

THE interaction between management and unions has become less confrontational as the latter moves to constructive engagement rather than disputes

Andrew Levy Associates senior partner Brian Allen says: "The Labour Relations Bill is having a significant impact on relations between management and employees. There is a strong move to democratise the workplace, empower the workers and

create the framework for management to consult the workforce more"

Democratisation will narrow the divide between management and labour and create greater understanding in an inherently adversarial relationship.

"Management is generally threatened by the thought of labour empowerment—but the ex-

tent to which workers can interfere in management is limited and clearly defined, and can play a positive role," Allen says.

Empowerment, for instance, involves giving labour more control over health and safety matters. People may now refuse to do work that they perceive as unsafe, and as a result they may

be expected to show greater interest in contributing to the safety of the workplace

At the same time, collective bargaining is becoming more centralised. Allen sees this as a positive trend which will make the negotiation process more efficient

On a broad industrial level, as well as on the in-

dividual factory floor, the challenge to management is to sell ideas instead of giving instructions. "For instance, SA as a nation needs to develop a work ethic. This demands commitment and a greater interest in the job itself on the part of labour.

"But one cannot expect to develop a work ethic among people who

are merely regarded as units of labour," he says

The first challenge in making the process work is to upgrade middle management—which is feeling the pressure of change

He says: "Traditionally we have promoted people to a supervisory function because of their technical ability, and have ignored their human relations abilities

"But in today's environment it is essential to manage for results"

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BD 17/11/95

**A**SPECTS of the new Labour Relations Bill are pure social engineering, designed to force employers and labour representatives to co-operate with each other.

Industrial relations consultant Gavin Brown says they are likely to be largely unworkable and amendments to the Act could become necessary within 18 months of its promulgation.

"The Bill is undoubtedly a noble attempt, but it is naive to think legislation will change the way people behave at such a fundamental level. Success, if it comes at all, will come only after conflict," he says.

"As it stands, it fails to meet SA's real need for an Act which will encourage employment while restricting labour exploitation. We need to deregulate the labour market, make it easier for people to create and get jobs, but in many ways this Bill does the opposite."

When promulgated, the Act will require unions to co-operate with companies to increase efficiency. Brown

*Flaws in the new Labour Relations Bill could open the way for conflict in the workplace and challenges in the Constitutional Court, as pressure mounts on businesses to set affirmative action targets. Val Pienaar reports.*

# Naive labour Bill a breeding ground for confrontation

BD 17/11/95

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questions whether either unions or management will be able to break out of their adversarial relationship.

In addition, he says, the Bill is the result of talks between the State, big business and unions.

"Government consulted with the people who had the time to attend the debates. It is facile to say the smaller players were consulted, they are typically too busy with the day-to-day demands of business to get involved.

"Government therefore is responsible for protecting the interests of smaller businesses and the unemployed — and, judging by the Bill, it is questionable whether it has succeeded in doing so.

"I doubt that the requirements of the Bill can be met either by smaller employers with limited resources, or by smaller unions with a less co-operative culture," says Brown.

A feature of the Bill is that it promotes cen-

tralised collective bargaining — a concept which is falling out of favour overseas.

"Any sector of industry is dominated by the larger employers, who can afford to pay higher wages.

"Centralised negotiations will settle on the highest figure — and smaller employers are then forced to pay more than they can afford.

"This puts businesses out of operation. In some cases employees may be persuaded to renegotiate

a lower wage, but in many cases they do not understand why the business is closing. They assume it is because the boss is too mean to pay them properly.

"And the union attitude is that people should rather be unemployed than exploited," he says.

While supporting government's determination that national prosperity will not be built on the back of sweated labour, Brown says the Bill favours workers at the expense of the employers.

And, he says, parts of it may be unconstitutional.

"The Bill entrenches the closed shop, which limits freedom of employment.

"And it allows striking workers freedom to picket in any place to which the public has access, but does not protect other businesses which may not be involved in the dispute against damage and loss of business caused by the strikers.

"It will be a matter of time before someone takes the issue to the Constitutional Court," he says.

# Numsa wants

## privatisation

### debate slowed

By FIONA LENEY

**CT (SA) 23/11/95**  
Johannesburg

A leading trade union leader informed the government yesterday that organised labour was prepared for serious confrontation if the pace of the privatisation debate quickened.

Enoch Godongwana, Numsa's general secretary, said at a labour conference on the new Labour Relations Act that unions were turning their focus to broader socio-economic issues.

The act had removed many areas of conflict which had previously triggered industrial unrest. "The codification of union rights means there will be fewer strikes on those issues," he said.

"Action is more likely to be taken on broader issues. Strikes will be the last resort, but they will come if the government does not listen to us."

He defended public workers' record of industrial unrest, saying that taking to the streets was often the only way to put over demands in a sector with poorly organised labour relations.

He tempered his comments with a guarded criticism of the nurses' strike in September, however. "The nurses' strike was genuine, but such action hits the



**TALKING SHOP** From left to right: Karl von Holdt of the SA Labour Bulletin; Enoch Godongwana, Numsa general secretary; Vusi Nhlalaho, Nelanur president and Bokke Botha of Business South Africa

PHOTO: JOHN WOODROOF

poor; it is our people who suffer. Politically it hurts us. We must use that weapon very carefully."

His remarks supported a clause in the act limiting the right of workers in essential services to strike. "This limitation is internationally recognised. After all, both sides lose in a strike," he said.

Godongwana said centralising union negotiations would contribute towards fewer, but more widespread, stoppages. The new act, which simplified and clarified many aspects of

labour relations, including dispute and disciplinary procedures, should materially improve labour relations, said Bokke Botha, of the Business South Africa group.

"This is about a new start in labour relations in South Africa," said Botha, speaking about the act's implications for small and medium businesses.

"We are still poorly placed to take on massive growth in South Africa." He said that the act would benefit small and medium enterprises in several ways

First, it was drafted in clear and easily accessible language, for all to consult.

Second, it simplified dispute settlement procedures, shortened resolution times, and thereby cut costs.

Third, small companies would have special representation on the central negotiating councils set up by the act. This would not, however, mean special, anti-competitive concessions, as they would only make small companies uncompetitive in the long run, said Botha.

# Servcon looking at low-cost rental plan

BD 23/11/95

Amanda Vermeulen

SERVCON, the joint venture housing company established by the banks and government, is canvassing the viability of renting repossessed properties to people unable to afford their present housing, say banking sources.

Servcon head Denis Creighton said yesterday several options had been suggested for home owners who could not afford their mortgages but could be relocated to more affordable properties — dubbed rightsizing by Servcon.

Home owners who were failing to pay their bonds were to be given a nine-month grace period under the existing programme before having to find alternative accommodation. This grace period was likely to start early next year.

But Creighton said the lack of delivery of new low-cost housing could have a serious affect on attempts to relocate people once the nine months were up.

There was a need also to create the appropriate institutional capacity, such as housing associations, to deliver accommodation housing in the sector, he said.

But the current programme had

proved fundamentally sound in the past six months, and should be allowed to continue.

If necessary, it should be enhanced, he said.

"It is crucial that we do not create expectations by jumping the gun on the rental issue," Creighton said.

"But if such a decision was taken and properly implemented, it could be in the best interests of the banks, government and those sections of the public involved."

Banking sources said informal talks were taking place to test the proposals. But it was too early, they said, to say whether or not the policy would be adopted.

The banks' total number of houses in possession is about 13 500. The Mortgage Indemnity Fund said last week that a total of 44 000 properties were either in possession or owners were not servicing their home loans.

The banks originally asked government for six months in which to assess how many of these loans could be rehabilitated.

The Mortgage Indemnity Fund said that the banks would ask government for more time as only 20% of the properties had been assessed.

# Clash on privatisation could usher in new Act

BD 23/11/95

Renee Grawitzky

PRIVATISATION could be the first flashpoint for strike action under the new Labour Relations Act as it was being sold to workers under the guise of black economic empowerment at the expense of thousands of jobs, National Union of Metalworkers of SA general secretary Enoch Godongwana said yesterday.

Speaking at a joint Cosatu-IR Network "big guns" conference on the Labour Relations Act, Godongwana said privatisation was a possible prescription for first world economies. It would, however, lead to serious confrontation in SA. Strike law could be tilted in favour of working people under the new LRA.

Godongwana said that despite the new Act, illegal strikes would still take place.

He said there could be fewer, but bigger, industrial strikes because the battles would be about broader macroeconomic issues.

Capacity-building within Cosatu and especially among shop stewards

was a prerequisite for any decision to establish workplace forums. A move to immediately rush into establishing forums would represent a danger to the labour movement.

This view was expressed by both Cosatu general-secretary Sam Shilowa and National Education Health and Allied Workers Union president Vusi Nhlapo.

Shilowa said labour had to be clear about what it wanted from workplace forums. "We will spend time negotiating workplace forum constitutions."

Nhlapo said a number of factors had to be put in place before forums could be established. These included worker and shop steward capacity-building, the need for a paradigm shift in the workplace, which would require a change in attitudes and which would take some time to ensure a move away from a climate of adversarialism.

Nhlapo said employers had a responsibility to assist in the training of shop stewards. Shilowa said the first test of the new LRA was whether employers would release shop stewards for training in the Act.

# Jobs crunch for

## New law pricing many workers out of the market

**DAVID BREIER**  
Political Staff

MANY Cape Town domestic workers have lost their full-time jobs since the government last year forced employers to improve their conditions, according to employment agencies

And even more could lose their jobs as the SA Domestic Workers' Union presses for a minimum wage of R600 a month, which could place a further burden on households struggling to make ends meet

The Basic Conditions of Employment Act passed last year turned domestic work into a confusion of red tape and form-filling in a bid to overcome the exploitation of many domestic workers working long hours for a pittance

Among the worst cases of exploitation were in the Western Cape where "slave syndicates" are reported to recruit young girls in rural areas with the promise of lucrative domestic jobs.

They are then "sold" to em-

■ Fulltime domestic workers could be pricing themselves out of the market — but some Cape Town domestics are improving their skills to qualify for higher pay.

ployers who force them to work as servants without pay

Last year's Act set out a host of basic conditions to improve the lot of domestic workers — but at the cost of pricing them out of the market, according to agencies

Many employers had been put off by last year's legislation and now believed they could no longer afford a domestic as they had to pay more for less than they used to, agencies reported

As a result, employers were becoming more demanding and the regulations had backfired, resulting in workers losing their jobs

Some employers had converted from having fulltime maids to employing chars for one or two days a week.

Over the past year things had become worse for both employers and their domestic

workers as a result of the regulations, agencies believe

Employers were getting less work, and domestic workers had fewer jobs

But not everyone is losing out Cape Town's Domestic Workers' Association has taken the initiative in training domestics to improve their qualifications so they are more in demand and qualify for higher pay

Marieta Hierse, a lecturer at the association's People's Technikon in Salt River, said "concerned employers" had not been put off by the provisions of the Act. "Rather, they are eager to comply," she said.

"The contract is for the benefit of both employer and employee. It safeguards both sides, including cases where workers abandon their jobs. Previously employers did not

have a leg to stand on," she said.

Mrs Hierse confirmed some employers now found they could not afford fulltime domestic workers and preferred to employ chars

The association recommends minimum pay scales — depending on the workers' skills, and its "technikon" is devoted to improving the skills of domestic workers

This includes courses in house management as well as communication skills, such as how to answer the telephone correctly

Domestic workers are taught how to use electrical appliances correctly, including cleaning and caring for them

They are taught consumer skills such as shopping as well as basic cooking and baking.

Other courses are in child-care, first-aid and care for the elderly and disabled.

Mrs Hierse said employers requiring childminders were increasing, demanding first-aid skills.

## Act a minefield of conditions

Political Staff

THE year-old Basic Conditions of Employment Act sets out a minefield of conditions for people who employ domestic workers

■ It specifies a maximum 46-hour working week. Domestic workers on a five-day week may not work more than 9 hours a day, and those on a six-day week may not work for more than eight hours a day.

■ It provides for a written agreement between an employer and a domestic worker to increase the working week by 16 hours for not more than 26 days in a year

■ Domestic workers may not work for more than five hours continuously without a meal interval of at least an hour, but there can be agreements that the meal period be as short as 30 minutes

■ The time by which a do-

mestic worker's meal exceeds 75 minutes shall not be regarded as time worked. But if a domestic worker keeps an eye on the kids, the aged, the sick or the frail during her lunch break, she shall be deemed to have worked during her break.

■ Overtime may not exceed three hours a day and must be paid at not less than one and a third times the hourly wage including the value of payment in kind such as meals and accommodation

■ The maximum overtime may be increased by application to an inspector of the Department of Labour

■ A domestic worker who works for up to four hours on a Sunday or public holiday must be paid at least a full day's wage. If she works for more than four hours, she must be paid for double time. Or she can be paid, at one and a third

time and get one day's leave on full pay within seven days.

■ Annual leave must be at least 14 consecutive days on full pay, extended by a day for every public holiday during this period. If the job is terminated, the value of outstanding leave must be paid out.

■ Domestic workers are entitled to at least 30 days of sick leave in three years — provided she has a medical certificate if away for more than two days in a row.

■ Every employer must provide a domestic worker with a certificate of service on terminating employment, except where the worker deserts.

■ It is illegal to employ anyone aged less than 15 years

■ Pregnant domestic workers cannot be required to work four weeks before the expected birth date or eight weeks after.

■ It is an offence to victi-

mise or dismiss a domestic worker who gives evidence against an employer in court or to an inspector, or because she belongs to a trade union, or discusses job conditions with fellow workers.

■ It is also illegal to fire a domestic worker for refusing to carry out an order in conflict with the provisions of the act.

■ Proper notice must be given before terminating a job — one month's notice in the case of a monthly-paid worker.

■ Every employer must keep a time and wages register and an attendance register except where they have concluded a written agreement.

■ Employers must provide facilities for inspection by inspectors of the Department of Labour. Any employer who hinders an inspection, will be guilty of an offence

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Picture. ROY WIGLEY, Staff Photographer

□ **FIRST AID:** Domestic workers Elsa Fortuin and Nazeema Shamodien with lecturer Marieta Hierse learning first aid at the People's Technikon in Salt River.

# Changing the face of South Africa

Labour Relations Act is only the beginning of the road for Nedlac

By Abdul Milazi  
Labour Reporter

**T**HE WORK OF THE National Economic Development and Labour Council (Nedlac) entrusted with the task of changing the face and direction of South Africa's labour relations is far from over

Apart from successfully facilitating the drafting and passing of the new Labour Relations Act one of the most crucial pieces of legislation to be passed in the post-apartheid era Nedlac still faces the challenge of implementing it

Nedlac spokesman Mr Lomin Saayman told *Sowetan* that the intention was to address all outstanding areas in time for the Act's implementation which is targeted for March next year

He said Nedlac still has to draft codes of practice on picketing dismissals based on operational requirements and requirements for closed-shop agreements

A sub-committee of two delegates per constituency (comprising business, labour and Government) will begin drafting these codes and will table its first report on December 7

It also has to determine criteria for the demarcation of sectors and areas, and the actual demarcation of sectors and areas for statutory councils

A group of three delegates per constituency will reconcile the different concerns raised since the beginning of the year during the Labour Market Commission discussions

Nedlac still has to nominate an independent chairman and three representatives from labour, business and Government for the governing body of the Commission for Conciliation, Mediation and Arbitration

The secretariat will receive these nominations and forward them to Labour Minister Tito Mboweni

Saayman said the work on the Act that remained to be done was crucial to its successful implementation, and so was ensuring that its users on the shopfloor understood its content and implications

He said Government, labour and business were already planning a variety of education programmes and campaigns to popularise the Act

"The Labour Market Chamber sees its role as that of supporting these programmes and synchronising the various initiatives to avoid duplication," said Saayman

## Wage Board

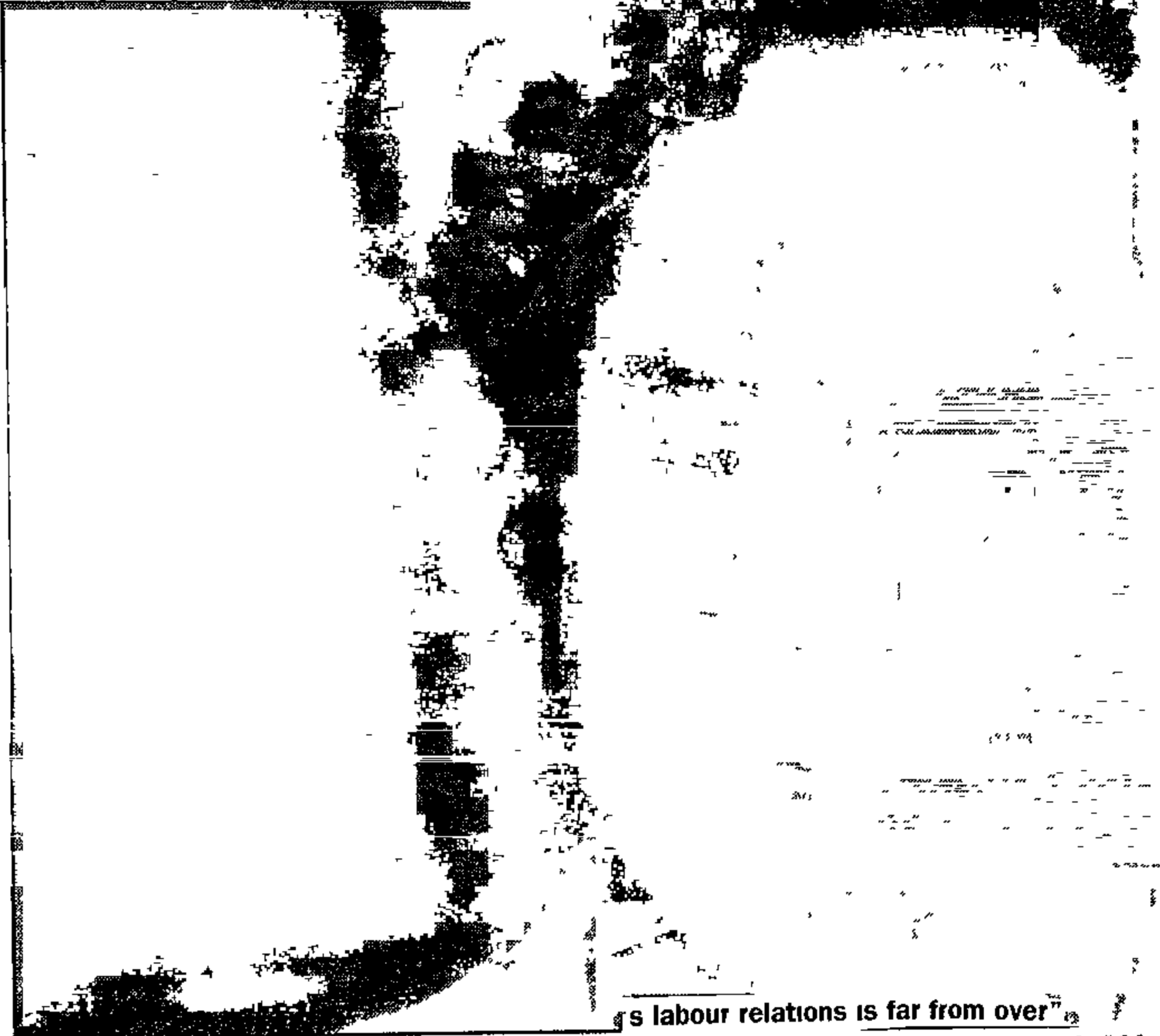
Nedlac also identified the composition and work programme of the Wage Board, concerned with investigating wages and conditions of employment, as issues which need immediate attention

Saayman said the Government delegation within Nedlac has undertaken to table recommendations on these issues

The Labour Market Commission has already verbally reported to the Labour Market Chamber on the progress it made on the issue of minimum wages

Nedlac's Executive Council met yesterday to reflect,

# labour



Nedlac executive director Jayendra Naidoo .. "the task of changing the face of South Africa's labour relations is far from over"

deliberate and approve some of the organisation's recommendations on restructuring the Labour Market and its achievements

Among the issues discussed were next year's budget, the draft bill on tax amnesty, nominations to the committee investigating civil pensions, industrial policy and industrial

restructuring, and the framework for social partnership and agreement-making in Nedlac

● The Labour Market Chamber is a body within Nedlac concerned with considering all matters regarding workers and the workplace

The Nedlac Act stipulates that the Chamber considers all proposed labour market policy

before it is introduced in Parliament

It is convened by three representatives Congress of South African Trade Unions secretary-general Mr Sam Shilowa, Business South Africa chairman Mr Bokkie Botha and Department of Labour deputy director-general Mr Les Kettleidas

**“The Labour Market Chamber sees its role as that of supporting these programmes and synchronising the various initiatives to avoid duplication”**



# Federation formed to fight Industrial Council legislation

**Business Reporter**

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A FEDERATION of clothing employers' associations has been formed to fight membership of the Industrial Council

"The Industrial Council system is a legacy of apartheid," Alan Biesheuval, press officer of the newly-formed federation said in an interview on Friday.

He said any factory that employed five or more people was forced to belong to the Industrial Council and to comply with the same rules and regulations that applied to all members, regardless of their size

This put the smaller factory at a severe disadvantage when it came to paying a minimum wage and having its employees belong to pension and provident funds, he said

"Legislation that is binding on the bigger groups is binding on anyone who employs more than five people. They force you to conform to all their rules and regulations," Mr Biesheuval said

He said labour was 80 percent of the smaller factory's cost, whereas it represented only about 30 percent of the total operating cost of the bigger factories

"We say those that need the Industrial Council should have it under freedom of association. But it should not be forced on anyone," he said.

# Labour Act 'will help to bridge the divide'

By FRANÇOISE BOTHA

Cape Town — While both employers and the unions have reservations about the new Labour Relations Act, the provision for workplace forums and improved disclosure are set to bridge the labour divide, says Paul Benjamin, partner in attorneys Cheadle Thompson Hayson

Giving a union perspective of the Act at a Deneys Reitz seminar in Cape Town this week, Benjamin said that it showed an important shift towards establishing co-operation between trade unions and employers. "But, both sides have reservations, so it will take time to filter through," he said.

Benjamin highlighted the fact that trust in the workplace was low, saying this stemmed from the racial divide and withholding of informa-

tion because of lack of trust. He added the new disclosure requirements had gone some way to bridging the divide and restoring trust.

Benjamin said the provision for workplace forums should be seen in terms of the long term aims of labour peace and a contribution to economic change.

It would also create a climate of co-operation in the workplace.

He said this was an important move away from the situation of conflict that existed before.

"What this Act offers is very much quicker dispute resolution. This is a major contributor to avoiding disruptive circumstances and is a saving for employers. It will also promote labour peace since resolved disputes are not subject to appeal. This will allow businesses to concentrate on the issues they need to," he said.

# Some workers are too invisible to be covered

By FRANÇOISE BOTHA

Cape Town — In a light-hearted moment, attorneys at Deneys Reitz took a different look at the new Labour Relations Act and their remarks showed that lawyers do have a sense of humour.

Attorney Rob Perrot said that a number of sectors had been excluded from the act. These included the national defence force, the national intelligence agency and the secret service.

"The reason the spies have been excluded is that you're never quite sure who you are dealing with," he quipped.

This would undoubtedly put a strain on employee-employer relations — the very thing the act was trying to avoid. Speaking about the exclusion of

the independent contractor, Perrot said this would obviously prevent any sham close corporation, for tax purposes, from being covered by the act.

There were probably many irate contractors who wanted to petition for an amendment, he said.

## English

The act was written in the kind of English that we can all understand — no law degree is required and all formalities have been dropped. "Shall" and "these" went out with the demuse of colonialism, or so it seems.

Perrot said: "Some Canadian called Bill or Bob was called in to put it into plain English for us. "Some parts are more plain Canadian than plain Bill (or Bob for that matter)."

# New labour act includes gains for both sides

**ALIDE DASNOIS**  
Business Editor

**BETTER** rights for workers are a good thing for employers, according to labour lawyer Paul Benjamin.

Speaking at a Denys Reitz seminar on the new Labour Relations Act (LRA) which comes into force next year, he said the act had many important advantages for employers.

Employers' worries about some of the provisions of the act which had attracted the most attention were misplaced

The basic trade union rights — on access to premises, deductions for union dues, leave

for union representatives, etc — entrenched in the act meant that issues which had previously been a source of time-consuming negotiation would now be taken for granted

"It means there are certain battles which don't need to be fought any longer," Mr Benjamin said

In the 1970s and 1980s, because of the absence of entrenched rights, unions and employers had spent months negotiating recognition agreements which sometimes ran to 80 pages

"The new act is saying don't let's waste time on this any more."

On the much-discussed workplace forums set up by the act, which make provision for joint decision-making by employers and employees on some issues and for consultation on other issues, Mr Benjamin said "Both sides have reservations which it will take time to resolve"

For instance, unions were not happy about the presence on the forums of non-union employees

"But the workplace forums are in line with the long-term social aim of the act, which is to achieve labour peace, by moving towards greater co-operation and greater trust in the workplace"

Employers' refusal to disclose information about the company was a source of distrust, he said

"At present, we lag behind the rest of the world on information disclosure. We haven't got an open society

"The act tries to codify the rules about disclosure. It hasn't changed the law"

Other areas where the act had advantages for employers included collective bargaining and dismissal, where the LRA allowed employers and workers to design their own procedures

"This offers the prospect of faster resolution of disputes," Mr Benjamin said

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