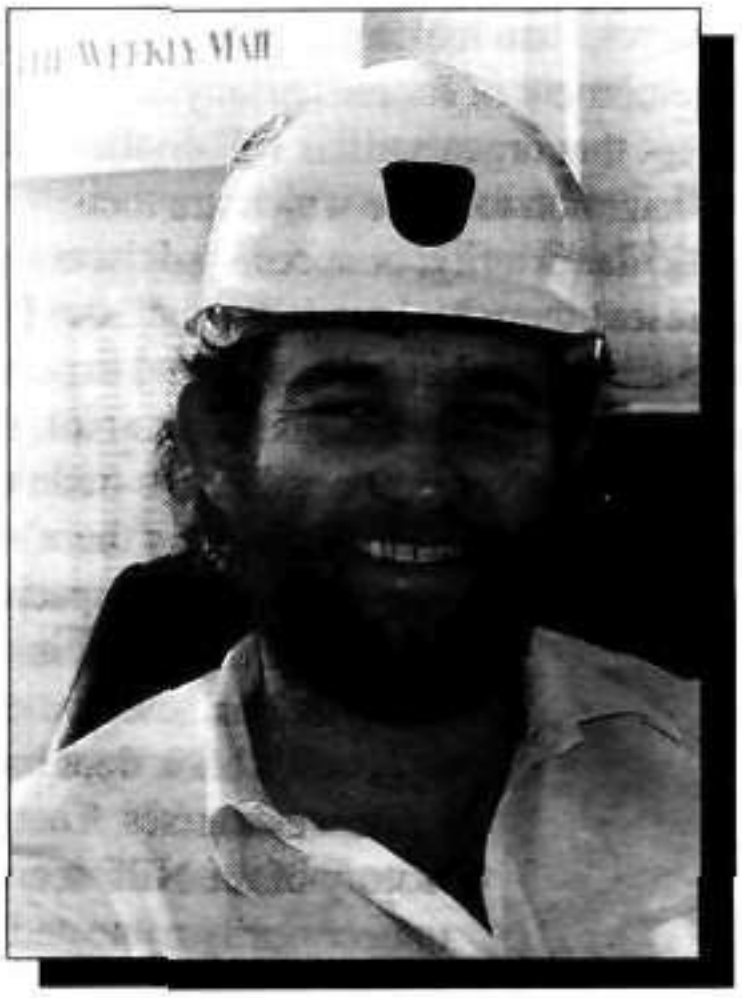
legal notes

New labour laws: *implications for unions*



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South African labour law underwent extensive changes in 1993. This note surveys these changes to remind readers of the present state of the law and to help identify issues unions will *face in 1994.*

Farm workers

The Unemployment Insurance Act was extended to farmworkers from the beginning of 1993. However, farmers have until the end of March this year to register as contributors to the fund. This means many farmworkers will not be entitled to realistic unemployment benefits for another few years.

The Basic Conditions of Employment Act (BCEA) has applied to agriculture since May Day last year. This sets maximum daily and weekly working hours, limits overtime and provides for special rates for overtime and work on Sundays and public holidays. It also gives the right to paid leave and sick leave and protection against victimisation. In the absence of the Department of Manpower allocating resources to inspect farms (which is unlikely), it will be up to unions to ensure the law's implementation.

The Agricultural Labour Relations Act extended the Labour Relations Act (LRA) – with some changes – to agriculture from 17 January 1994. The Act creates the Agricultural Labour Court – a "small claims" court for unfair dismissal cases in the farming industry. Designed to be quicker and cheaper than the Industrial Court, it is not yet operating as funds have not yet been allocated to it. However, farmworkers are still entitled to take their cases to the Industrial Court.

The Act extends LRA procedures for collective bargaining and dispute resolution to agriculture, with one important change. Farmworkers are not permitted to go on strike (and their employers cannot lock-out). However, they have the right to refer unresolved disputes, including disputes over wages or conditions of employment, to compulsory arbitration. The arbitrator's decision will be binding. This means that, for the first time, legally binding minimum wages can be set for farmworkers. This allows unions to creatively use arbitration to improve farmworkers' wages. This is particularly important given that organised agriculture continues to oppose minimum wages and the extension of the Wage Act to agriculture.

Domestic workers

The BCEA was extended to domestic workers on 1 January 1994, for the first time guaranteeing their conditions of employment by statute. However, the BCEA offers extremely limited protection, for instance, only two weeks paid annual leave and no guaranteed protection against dismissal for taking maternity leave. One innovation is that domestic workers who work three days or less per week for an employer are entitled to paid leave and paid sick leave. This does not apply in other sectors. The government has indicated that the LRA will be extended to domestic workers in 1994. Still on the agenda is the urgent need to extend social security benefits such as unemployment insurance and worker's compensation.

The public sector

At the beginning of 1993, there was one LRA in South Africa (not to mention the many in the homelands). Now we have four. In addition to the Agricultural LRA, there is the Public Service Labour Relations Act (PSLRA) and the Education LRA. The PSLRA applies to government employees other than the army, the police and teachers, but includes correctional services (prisons). It sets up a public service bargaining council with different chambers for different government departments and creates an extremely complex dispute resolution system. The unfair labour practice powers of the Industrial Court are extended to the public sector and a procedural right to strike is created. However, workers are not protected against dismissal if a strike lasts longer than six weeks or if the conduct of the strike is unreasonable.

In addition, the PSLRA includes some of the LRA's worst features – including the controversial strike ballot requirements. A wide group of employees are classified essential service workers and are prohibited from striking. (This goes beyond ILO standards.) Their disputes will be referred to arbitration, but the implementation of arbitration decisions will depend upon approval by parliament. The Education LRA creates a similar collective bargaining framework for public sector teachers and allows them to utilise the Industrial Court.

Regulations have been published to regulate collective bargaining in the police force. Police can now join trade unions which recruit members among the police or correctional services (prisons). They are prohibited from striking and unresolved disputes are referred to arbitration. Police trade unions are not allowed to affiliate to broader trade union federations and must be apolitical.

Despite demands for the LRA's extension to the public sector, there is now separate public sector legislation. The new legislation has advantages, but also many drawbacks. These include the bargaining council rules, the complexity of dispute procedure and limitations on the right to strike and arbitration proceedings. The needs of all sectors could be met by a single consolidated LRA and this demand will certainly continue.

The Occupational Health and Safety Act (OHSA)

This Act replaces the Machinery and Occupational Safety Act (MOSA). It improves the system of health and safety representatives by requiring that representatives be elected and by increasing their powers, functions and rights. These include rights to information, to be assisted by technical advisors during workplace inspections and to accompany inspectors on inspections. Representatives must be elected at every workplace with more than 20 workers by the end of April 1994 and employers must consult trade unions on this. Unions should now be developing their positions for these consultations.

In addition, the law provides that health and safety representatives must receive adequate training to perform their functions. Without the effective implementation of training requirements, workplace health and safety is unlikely to improve. The law places the onus on employers to provide healthy and safe working conditions and increases

the penalties for employers who do not comply with the law. OHSA is an improvement on MOSA, but it will be up to the unions to use the laws as a vehicle to ensure health and safety conditions are improved.

Compensation for Occupational Injuries and Diseases Act

This Act will replace the Workmen's Compensation Act from 1 March 1994. Most importantly, it modernises the approach to the compensation of workers who contract occupational diseases and extends the list of scheduled diseases to reflect international standards. The Act also introduces a Workers' Compensation Board with limited advisory powers on which trade unions will be represented. An important change is that employers will be obliged to pay worker's compensation for the first three months of any absence due to injury or occupational disease. This should result in injured workers receiving compensation payments earlier. However, most of the structure of the old Act is intact and the major problem, the low compensation payment for many permanently disabled workers, is not resolved.

Labour law and the constitution

Changes to labour law did not attract as much attention as the negotiation of South Africa's new constitution, particularly the controversy over the right to lock-out. The new constitution is an interim constitution which will last until the Constituent Assembly (the Legislative Assembly and Senate) adopts a new constitution. This must be done within two years.

The interim constitution sets out fundamental rights, some of which apply to labour relations. These bind all legislative and executive state organs. In other words, parliament cannot make a law that is inconsistent with the constitution and a government agency cannot take an action or decision that violates the constitution. It does not regulate relations between private individuals such as between a worker and employer within the private sector. This can be illustrated by the first labour right in the constitution — the right of every person to fair labour practice. This prevents parliament from making laws that deprive people of their right to fair labour practices and the government (as employer) from depriving its employees of this right.

The other rights in the constitution operate in the same way. These are the right of workers to form and join trade unions and to organise and bargain collectively. For collective bargaining purposes, workers are given the right to strike and employers recourse to the lock-out. Again, the government cannot legislate to deprive workers of this right. The right to strike is not expressly mentioned in the LRA and its inclusion in the constitution will form the basis for arguments that there can be no right to strike without strikers being guaranteed protection against dismissal.

The constitution is the country's basic law and all other laws must be consistent with it. However, laws dealing with employment practices, collective bargaining and the regulation of industrial action are excluded from this provision. The constitution cannot therefore be used to attack the validity of the LRA and institutions it creates. Only parliament can change the LRA. However, before this is done, the NMC must have an opportunity to consider proposed changes and make recommendations.

This brief description barely scratches the surface of the new constitution. Unionists should get to know its contents so that they can make sure their unions articulate their views when the final constitution is drafted.

Conclusion

The recent changes have expanded the number of workers covered by labour legislation. At the same time, this process has introduced an unnecessary multiplication of legislation. The entire framework of labour legislation requires urgent review to create a proper legislative basis for economic development. ☆