Legal Notes

The COSATU/ SACCOLA/ NACTU agreement

The Centre For Applied Legal Studies (CALS) writes on the COSATU/SACCOLA/NACTU agreement on proposals for a new Labour Relations Act.

After months of negotiating, COSATU, NACTU and SACCOLA reached agreement on interim amendments to the Labour Relations Act. They also agreed to jointly request the state to legislate the proposed changes. The Minister of Manpower then published a Bill: the LRA Amendment Bill, which is summarised below. The parties also agreed to pressure the state to enforce a set of *basic worker rights* for all workers.

The parties agreed that all workers are entitled to the following basic rights:

- The right to belong to a trade union without victimisation.
- The right to bargain collectively, including trade union rights such as stop order facilities, access, representation, and the right to negotiate about conditions of employment.
- The right to withhold labour.
- The right to work.
- The right to protection.
- The right to development.

SACCOLA agreed to urge its members to act in accordance with these principles, even where workers are not covered by the LRA, eg. farm - and forestry workers. The parties agreed to urge the state to translate these rights into law to cover workers throughout the country.

The Labour Relations Amendment Bill

A part of the agreement between COSATU, NACTU and SACCOLA concerns specific amendments to the Labour Relations Act. This agreement was submitted to the Minister of Manpower and a final Bill is to come before the parliamentary standing committee on 18 June.

The following are the amendments contained in the Bill:-

Definition of an unfair labour practice The Bill amends the definition of unfair labour practice. It reverts to the broad definition it was before the 1988 amendments. The proposed definition also says that a fair dismissal can only take place with good and sufficient cause and and after following proper procedure.

Concerning retrenchment, the employer has to consult in good faith to reach agreement over the need to retrench, the manner of retrenchment, the selection for retrenchment and how to lessen the hardships caused by retrenchment.

Most significantly strikes and lockouts are no longer covered by the definition. The Industrial Court will therefore no longer decide on the fairness of a strike or lockout and will not be able to interdict strikes.

Scope of the Act The Bill proposes to bring workers working out at sea in South Africa within the scope of the Act.

The Act will also be amended to allow for the registration of trade unions whose scope of registration includes both the private and state sector.

Registration The Bill proposes that racially exclusive unions will not be allowed to register.

The Industrial Court
The Bill sets out a procedure for a party who fails to refer a dispute within the time period concerned to apply to the Industrial Court for special consideration so that the dispute can be heard.

The Bill allows for two expert assessors to assist the judge during appeals in the Labour Appeal Court . This panel of assessors will be appointed by the Minister of Justice on joint nominations by the major national federations of employers' organisations and trade unions.

The Bill introduces a procedure for appeals: any person appealing to the Labour Appeal Court must serve and file all documents within 30 of noting the appeal. The Judge President the Supreme Court Provincial Division will convene a hearing of the appeal within 60 days of the documents being filed.

Referral of disputes

Industrial councils The Bill scraps the bureaucratic and complicated requirements of deadlock, the notice of deadlock, and the certificates that accompany the referral. It will also be unnecessary for an industrial council dispute, eg. a wage dispute between NUMSA and SEIFSA to be referred back to the council before legal strike action can be taken.

The only remaining time-limit is with disputes of rights, which will have to be referred within 180 days from the date of the unfair labour practice, unless the parties agree to a longer period As mentioned earlier, the Industrial Court also has the power to allow the late referral of a dispute.

Conciliation boards
Much the same provisions apply in the application for the establishment of a conciliation board: the certificates and deadlock notices are scrapped and the application must be signed by an official or office bearer of the trade union or employer's organisation. The applicant must also have proof that a copy of the application has been sent to other parties. Again, in the case of rights disputes, the application for a conciliation board must be lodged within 180 days from the date of the unfair labour practice.

Determination of unfair labour practices The Court will determine what the nature of the dispute is and whether it is an unfair labour practice.

Industrial Court Judgements The Bill removes the old secrecy clause. It provides for the proper publication of judgements, preserving where appropriate, the right to confidentiality.

Liability Clause The Bill deletes the whole of the controversial Section 79 which presumes that a trade union authorised unlawful industrial action.

The bill also contains new provisions concerning strike

interdicts. Interdicts will only be granted 48 hours after an application has been made. In exceptional circumstances, the period may be shorter, but then the other parties must be warned. Other parties must have a reasonable opportunity to be present at Court to oppose the application. If a trade union or employer gives at least 10 days notice of a strike or lockout, no interdict will be granted unless the other party has been given at least 5 days to reply. ☆

COSATU comments

Labour Bulletin requested commentary from COSATU's LRA Working Committee.

The two-year long Anti-LRA campaign and the new political situation have pushed employers and the state to agree to amend some of the most objectionable clauses of the Act. In addition employers have agreed that **basic worker rights** should be protected by law and to put pressure on the public sector employers to implement these rights. Employers have realised that, where they were once spearheading reform, the state itself is today moving faster.

The most significant amendments proposed in the Bill are briefly:

- a strike can no longer be interdicted on the basis that an employer claims it is unfair
- the new dismissal/retrenchment procedures are in line with ILO (International Labour Organisation) principles and give greater job security
- the time limits and bureaucratic procedures for referring disputes are scrapped, except for the 180 days limit for referring disputes of rights
- appeals are heard sooner and a panel of expert assessors is agreed to by the unions
- racist unions cannot register
- unions with private and public sector members can register
- off-shore workers are covered by the Act
- interdicts should only be sought after procedures have been followed.

Campaign must not lose momentum

While it is significant that the anti-LRA campaign spear-headed by COSATU has scored victories, the struggle for a progressive LRA is far from over and the campaign has not lost momentum (See Labour Action). During the week 11-15 June, COSATU made representations to the ILO to stress the urgency for the bill to be passed and for other demands to be met. COSATU will discuss mass action if legislation is not passed.

Outstanding issues

The most anti-worker aspects of the LRA still remain. What the trade union movement wants of labour law is that it should:

- protect strikers from dismissal
- cover all workers
- protect union rights to represent workers
- endorse appropriate bargaining forums, particularly industrial bargaining
- provide an industrial court system which is expert, while also being cheap, quick and efficient.

COSATU/NACTU and SACCOLA have agreed in principle that the industrial court system and legal rights of strikers should be reviewed and two sub-committees have been set up. At the recent ILO conference attended by SACCOLA, the NMC, COSATU and NACTU the ILO supported the unions' position that procedural strikers should not be dismissed, considerably strengthening the demand.

The most serious failure of the negotiations has been the state's refusal to extend basic rights and the LRA to all public servants, bantustan, domestic and farmworkers, and their refusal to seriously involve themselves in discussions. The only breakthrough here is that the public sector employers are prepared to sit on the NMC if it restructures itself, as proposed, into a National Labour Council which represents all the major players. ☆