LABOUR LEGISLATION –

1996 – 1997 – JULY.

Labour act's discrimination clause to hit benefits industry

(166) CT (BR) 8/1/96

By Maggie Rowley

Cape Town — The implication of the unfair discrimination prohibition contained in last year's Labour Relations Act and the effect of Aids will have far-reaching consequences for employers and employees, and also possibly the employee benefits industry, warns Janina Slawski, the senior manager for risk management at Risk Management Consultancy.

The act, due to be promulgated early this year, will be followed by the establishment of labour courts and no doubt a flurry of private-sector test cases regarding HIV testing and employment, Slawski says

To date, the few cases that have been tested have come before the Constitutional Court and have involved the state and employers of the public service

"However as soon as legislation is in place we can expect test cases to come from the private sector particularly in view of such groups such as the Aids Law Project which will be keen to bring cases before the courts for precedents to be set"

Slawski says that while the act states that it is an unfair labour practice for an employer to discriminate against an employee or job applicant, the inherent requirements of the job could be used to justify discrimination.

She says that if membership of an employee-benefit scheme is also a requirement of employment then the conditions governing membership of the scheme form part of the conditions for employment

However, for application of these conditions to be regarded as a fair requirement for employment, the employer would have to show that the conditions were either related to the inherent requirements of the job or justifiable for other reasons

"Suppose, for example, that an HIV test is required in order for an applicant to join a group life scheme

"If the HIV test has no bearing in determining an applicant's ability to perform the job or cannot be justified in any other way, this could constitute unfair discrimination in the employment decision," she says

"Whether or not the inclusion of the HIV test as a condition of entry to the group life scheme is unfair is a separate issue. The underlying question to be answered is whether it is fair to exclude someone from employment just because they do not qualify for membership of an employee benefit scheme."

'Is it fair to exclude a person from a job because he does not qualify for the benefit scheme?'

Slawski says that if membership of an employee benefit scheme is not required for employment, then conditions of employment must be viewed separately from the conditions of acceptance into the employee benefit scheme

She says that it is necessary to draw a distinction between HIV and Aids

"For many jobs, someone with Aids would be unable to fulfil the inherent demands of the job which would be a justifiable reason for refusing employment"

For someone who is HIV positive, the issues are rather different, she says

"For example, it would probably be very difficult to justify refusing to employ an unskilled person for a job with little investment in training, purely because the person is HIV positive," Slawski says

"At the other extreme would be an example where a substantial investment is to be made in an applicant, with returns on the investment expected to accrue over several years

"Whether refusal to employ an HIV positive applicant in this instance would be justified remains to be tested"

Slawski says that if employers are not permitted to test for Aids for membership of employee benefit funds this could well force employers to stop such benefits

"The whole issue is one of costs If they can't test, they will have to either lift premiums or cut benefits which would make the schemes unattractive to employees

"At the end of the day we could well see employers scrapping such schemes and employees having to join private schemes"

May Day target for labour Act now seems out of reach

(166)

Renee Grawitzky

BD 17/1/96

THE implementation of the Labour Relations Act could be delayed beyond the labour ministry's unofficial target of May 1

The ministry said yesterday no final date for the implementation of the Act had been set National Economic, Development and Labour Council (Nedlac) executive director Jayendra Naidoo said the labour market chamber would meet next week to discuss how implementation should take place

Labour Minister Tito Mboweni had, on numerous occasions, indicated informally that he would like the Act to come into effect on May 1 However, it has been speculated this might not prove possible due to administrative constraints, especially in setting up the conciliation, mediation and arbitration commission.

Labour ministry spokesman Shareen Singh said the ministry had not made any official public commitment to enact the legislation from May 1 The ministry was, however, targeting and working towards that date as the date for implementation

Naidoo said it was in everyone's interest to ensure the legislation was enacted "sooner rather than later" However, this consideration had to be balanced against ensuring that the institutions were established with credibility and were in place to provide services in terms of the provisions in the legislation

To ensure the core institutions and structures were up and running by the time the Act came into operation, certain sections of the Act providing for their establishment came into effect from January 1

These sections included the establishment of the essential services committee; the appointment of a registrar of labour relations and the registrar's functions; the establishment of the commission and its governing body and provision around its staffing, the appointment of the judge president and judges to both the Labour Court and the Labour Appeal Court; and the development of codes of good practice by Nedlac on a range of issues

Steven Friedman of the Centre for Policy Studies said if the legislation was delayed for logistical reasons it could prove helpful for the parties to be able to reflect on how the Act should be used

Unknown union group demands to see Mandela

ARG 26/1/96

Labour Reporter

A NEW and unknown federation of trade unions, claiming it represents about 300 000 workers, has threatened action if it is not granted a meeting with President Mandela over the Labour Relations Act

The Act was extensively debated in the National Economic and Development Council (Nedlac) by organised labour and business. But the Congress of Independent Worker Organisations (CIWO) claims it has never been consulted and that trade unions in CIWO are not represented in Nedlac.

CIWO said many aspects of the Act were unacceptable to it.

These included issues of freedom of association and recognition of minority trade unions.

Louis Roux, a spokesperson for the organisation, said it consisted of 18 minority trade unions ranging "from the far left to the far right".

Two of the trade union groups affiliated to CIWO are the United South African Trade Unions — a federation comprising 16 trade unions, and the South African Iron, Steel and Allied Industries Union, an affiliate of the white South African Confederation of Labour.

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Labour Act amendments to be released

Renee Grawitzky

(166)

BD 12/2/96

THE second major piece of labour legislation to undergo dramatic revision under the Government of National Unity — the amendments to the Basic Conditions of Employment Act — will be released in Cape Town tomorrow.

The proposed amendments, to be presented as a Green Paper, emanated from an undertaking by government to review all current labour legislation as outlined in the labour ministry's five-year plan.

In line with comments made by Labour Minister Tito Mboweni at a Cosatu congress in 1994, amendments to the Act could be expected in areas such as a reduction in hours of work, a substantial increase in maternity leave with guarantees of job security, provision for paternity leave and increased annual leave. Speculation on the controversial phasing in of a 40-hour week might not materialise, with the possibility that government's position could provide for only a nominal reduction in hours of work.

Previous amendments to the Act provided for the inclusion of farm and domestic workers. It will become clear tomorrow whether provisions will be extended to public-sector workers.

Certain unions within the public sector would like to see the Act extended to cover this sector as they argue that it would be unfair not to as this would create a disparity in conditions between public- and private-sector workers.

Concern has, however, been expressed in certain quarters that these amendments are being tabled prior to the drafting of the final report by the Labour Market Commission whose terms of reference included examining minimum labour standards.

The Commission is currently in the process of drafting its final report which could be released by mid-year.

Govt plan on work benefits

POLITICAL WRITER

THE government will today release further proposal governing working hours and conditions of employment such as maternity benefit and leave.

It will also announce consultations on Sunday workers, part-time and night work and home work and child labour.

Minister of Labour Brendan Daly will submit the proposal today to business and labour leaders at a special meeting in Stephen's Green, Dublin.

The documents set forth government policy to provide a framework for debate and discussion.

The Minister of Labour expected it to lead to the adoption of an employment law during the next parliamentary session of Seanad and

IT 13/2/96

Labour shake-up

Government green paper proposes shorter work week

ARG 13/2/96 (146)

CLIVE SAWYER, Political Correspondent

LABOUR Minister Tito Mboweni has unveiled a green paper which proposes the reduction of working hours to 45 a week and the removal of restrictions on Sunday work

Other measures proposed in the paper, which is not yet government policy and is still subject to formal debate with business and labour, include

- Adjusting the system for compensating overtime
- Permitting more flexible working arrangements such as compressed working weeks and the averaging of working hours to be introduced by collective bargaining

The paper represents a longer-term commitment to reducing the working week to 40 hours a week

"This will require a comprehensive and integrated approach involving legislation and national agreements"

Talks on the green paper will lead to a draft Employment Standards Bill to be tabled in parliament in the second half of the year

This will replace the Basic Conditions of Employment Act and the Wage Act

The legislation forms the second major pillar of labour law reform following the passing last year of the Labour Relations Act

Mr Mboweni said the law had to be revised to be consistent with the constitution and the new Labour Relations Act

The national strategy to further reduce hours of work will be carried out in the context of promoting job creation, productivity, human resource development and wage compensation

This strategy could include a framework agreement to be implemented in various sectors, taking into account their specific needs, and a timetable for reduction of working time

Also proposed for possible inclusion in this strategy is an investigation by an Employment Standards Commission and the setting of sectoral employment standards in unorganised sectors

Special provisions for small business and technical assistance for social partners are also being considered

The green paper proposes a "code of good practice" for employers to protect the health and safety of workers

It proposes new regulations for night work, providing for a 20 percent premium for night work and special steps to protect the health of night workers

On public holidays, the green paper proposes new legislation to allow workers to exchange official public holidays for other days off

It proposes greater flexibility to bargain collectively on the administration of sick leave, while the right to paid sick leave at present levels will be retained

Maternity and family-related provisions have been earmarked for reform

Children younger than 15 should be prohibited from working unless a ministerial exemption is obtained

Children between 15 and 18 will not be permitted to do work hazardous to them

Provisions in the Labour Relations Act on unfair dismissal and individual labour practices will be transferred to the new law

The paper proposes a four-week notice period for all workers

Workers should have the right to be given written particulars of their employment

Employers should not be able to discriminate against workers who exercise rights given them by the legislation

Speaking for Cosatu, Nactu and Fedsal, unionist Ebrahim Patel welcomed the release of the green paper He said the three labour federations would discuss a joint position on it.

Bokkie Botha, speaking for organised business, said some aspects of the proposals would prove controversial, notably those on working hours

A 40-hour week will require accord, says Green Paper

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Reports by Renee Grawitzky BD 14/2/96

THE legislated phasing in of a 40-hour week — expected to be one of the most controversial clauses incorporated in the Green Paper on proposals for a new employment standards statute — was not included in the proposals yesterday.

The Green Paper released in Cape Town instead proposed that such an aim could not be "realisable by legislation alone", but could be encouraged by agreement between the main stakeholders.

The Green Paper stated that achieving a 40-hour week and an eight-hour day was its ultimate objective, in line with International Labour Organisation conventions and recommendations

The core proposals, according to the document, sought to remove "rigidities and excessive limits", to support job creation, to ensure time worked did not affect employees' health and safety negatively, and to enable the formulation of flexible arrangements by collective bargaining.

An initial reduction from 46 or 48 hours to a 45-hour week was proposed. There would be further reductions subject to consultation with the main stakeholders, and possible implementation of those reductions through framework agreements at sector or plant level

The drafters repeatedly stated that the economic realities would be a determining factor in reducing working hours, and that such a policy should not be proposed in isolation of strategies being formulated aimed at job creation

A reduction in working hours, the drafters stated, had to be accompanied by the consideration of whether it would be compatible with job creation and not job losses; possible increased costs; the need for employees to be compensated for reduced working hours, the limitations in specific sectors and the effect on productivity

The move towards a framework agreement in a specific sector or company would have to provide for a "phased timetable for the reduction of working time", special provision for small business and technical assistance in implementing reduced hours.

In anticipation of employer reaction to a 40-hour week the document tried to address such concerns and outlined possible advantages of a trade-off between reduced working hours and the introduction of more flexible working arrangements, introduced only by agreement.

The document also examined health and safety considerations arising from implementation of certain working time arrangements. It was proposed that "working time must be arranged so as not to endanger the health, safety or welfare of the employee, other employees or the community"

Green Paper proposes shorter working week, more overtime pay

BD 14/2/96 (166)

Renee Grawitzky and Alan Fine

A GREEN Paper on minimum employment standards has proposed more flexible working arrangements, a one-hour reduction in weekly working hours to 45 hours and a higher overtime pay rate

The paper, which was released yesterday, is a discussion document not yet endorsed by the Cabinet It represents the first step towards amending and unifying the Basic Conditions of Employment and Wage Acts.

Labour Minister Tito Mboweni said 18 months ago that he wanted a 40-hour week to be phased in. The immediate legislation of a 40-hour week was not considered in the document, but provision has been made for it to be phased in.

Key points include the extension of legislation to cover a wider range of employees, consideration of "non-standard" employment including temporary and contract labour, a four-month job security guarantee for pregnant women and three days paternity leave.

Other points are a ban on child labour and inspectors being authorised to issue administrative penalties to employers contravening the legislation

It also proposes an increase in paid annual leave to three weeks, an increase in overtime paid from time-and-a-third to time-and-a half, abolishing restrictions on Sunday work, provision for rest periods and a maximum spread-over period of 12 hours a day

The paper, drafted by labour department official Lisa Seftel and labour lawyer Paul Benjamin, will be subject to public debate and negotiations, including in the National Economic, Development and Labour Council (Nedlac) Labour director-general Sipho Pityana said it was hoped Parliament would pass an Employment Standards Act by year-end

Government concerns about growth, investment and job creation are accommodated in the proposal of a model of "regulated flexibility" intended to "balance the protection of minimum standards and requirements of labour market flexibility" in the face of international competition The document argues that flexibility could be achieved by private agreements overriding certain clauses of the legislation — a route which could be pursued except where it impinges on a fundamental right and where such a change could affect the "public interest".

The Green Paper proposes that employees in sectors previously not covered by the Acts like the farm, domestic and public sectors be covered as well as

Continued on Page 2

Green Paper

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Continued from Page 1

BD 14/2/96

workers not traditionally included under the definition of "employee".

With the increased use of subcontractors, the document proposes that an employer who uses "a labour-only contractor" could be held jointly and severally liable if the contractor violates any employment standards

Security force and intelligence service members, unpaid employees of charitable organisations and trainees would be excluded.

Mboweni said he hoped business and labour would reach consensus Labour representative Ebrahim Patel said the unions sought a law which balanced equity and growth, and would seek to raise the questions of pay for women on maternity leave Business SA's Bokkie Botha said business would assess the document on the extent to which it added to employment costs and to which it would create jobs.

See Page 6

BETTER DEAL FOR WORKERS

Wide changes in job laws planned

CT 14/2/96

(166)

A WORKING week of 40 hours and more protection for part-time workers are among the objectives of a Green Paper released yesterday. **BARRY STREEK** reports.

Sweeping proposals to improve working conditions are expected to be debated by Parliament this year, says Minister of Labour Tito Mboweni

A Green Paper released yesterday says the goals of the labour reforms should include a 40-hour week, maternal and paternal leave, a minimum paid holiday of three weeks and the scrapping of the ban on Sunday work.

If the proposals are adopted, they will transform working conditions for all South Africans and particularly farm, domestic and part-time workers

The director-general of labour, Dr N B Pityana, said public comments should be made by April 12 Once these had been studied, an Employment Standards Bill would be drafted for consideration by the partners in the National Economic Development and Labour Advisory Council (Nedlac) and parliamentary committees

The bill would be submitted to the cabinet on June 30 and debated by Parliament after the winter recess, Pityana said

The Green Paper says part-time workers should be entitled to the same protections as full-time workers on a proportional basis and that employment standards should be extended to contract workers

The Wage Board's name should be changed to the Employment Standards Commission and its functions extended

The legislation should cover all employees except unpaid charity workers, trainees and those in the security forces and intelligence agencies

The Department of Labour is committed to reducing the working week to 40 hours, but in the ir[illegible] would be reduced to 4[illegible] hours a [illegible] from 60 hours to 48 hours for security workers No employee could work more than 12 hours a day

Mboweni said the Green Paper also proposed that the ban on Sunday work should be lifted "It is clear that the restrictions on Sunday work have all but collapsed"

Overtime pay should be 1½ the normal rate and double on Sundays No one should have to work three successive Sundays and employees would be entitled to be paid for public holidays.

Every employee should be entitled to a rest period of 36 continuous hours, including one complete day, in every week.

Workers should be entitled to four months' maternity leave and women should not work for six weeks after the birth of a child. A woman on night work or work that could be harmful to her or her child would be entitled to suitable alternative employment during pregnancy and a year after the birth of her child.

Child labour may become offence

POLITICAL WRITER

AN estimated 200 000 children aged between 10 and 14 are employed as child labour — and this practice should be ended Minister of Labour Tito Mboweni said

Although it was not clear how many were in part- or full time jobs about half these children were employed in agriculture, Mboweni told a press conference

In his Green Paper children under the age of 12 would be prohibited from being employed Ministerial exemptions could be granted to children aged 12 to 14 if the work was not likely to be harmful to their health or education Contraventions should be a criminal offence

New deal for millions of workers

(166) ARG 14/2/96

ESTELLE RANDALL
Labour Reporter

ABOUT four million South African employees, including farm, domestic, contract and part-time workers, stand to benefit from new legislation being prepared by the Department of Labour

The Labour Relations Act, passed during 1995 and poised for implementation from May 1 this year, was an attempt to streamline, revise and regulate legislation governing collective bargaining and organisation

Now, the department's green paper on policy proposals for a new employment standards law aims to revise and replace the existing Basic Conditions of Employment Act and the Wage Act, and so offer protection to particularly vulnerable employees

The release of the green paper for public debate this week marks the first step to develop new laws to regulate minimum employment standards in South Africa And there is a tight schedule to transform the green paper into new legislation by the end of this year

On Monday it was presented to the labour market commission of the National Economic Development and Labour Council (Nedlac) It will be tabled in the labour market chamber on February 22

On February 23 it will be published in the Government Gazette The public has until April 12 to make comments on the document Nedlac is expected to debate and finalise its position by the end of April Based on comments from Nedlac and the public, legislation will be drafted in May

The Employment Standards Bill will then go back to Nedlac for comment It will be presented to cabinet before June 30 and be debated in parliament during the second sitting this year

Proposals in the green paper are underpinned by the concept of "regulated flexibility" – the need to balance protection of minimum standards and the need for labour market flexibility

To achieve this, there are proposals for protection and enforcement of a revised set of basic employment standards and the space to vary these standards through collective bargaining, determinations in sectors and administrative exemptions

Minimum standards proposed cover issues of working hours, maternity leave and family responsibility, individual employment relations and enforcement of the protective provisions suggested

These minimum standards will cover all workers, except those in the security and intelligence services, unpaid members of charity organisations and trainees, who will continue to be covered by the Manpower Training Act

Part-time workers, temporary workers, workers supplied by labour brokers, home workers and contract workers are becoming increasingly important in the economy

However, these workers are particularly vulnerable to exploitation and are not adequately covered by existing legislation The green paper proposes that part-time workers be entitled, on a proportional basis, to the same protective provisions as full-time workers

Employers who engage labour brokers/contractors will also be liable for violations of employment standards, and contract workers will also be covered

Although the department has committed itself to reducing working hours to 40 hours a week, for now the proposal is to reduce normal working hours from 46 and 48 hours a week to 45 hours

In the case of security guards who work a 60-hour week, this will drop to 48 hours

Alongside the reduction in working hours is a proposal to reduce overtime to 10 hours a week, accompanied by an increase in overtime pay from time and a third to time and a half Restrictions on Sunday work should be lifted and instead Sunday work would be treated as overtime

There is also a proposal to further reduce working hours, in pursuit of the 40-hour week, as part of a comprehensive, integrated national strategy of job creation, productivity, human resource development and wage compensation

The strategy involves devising a timetable for reducing working hours, developing a framework agreement which could be implemented sectorally, setting sectoral employment standards in unorganised sectors by the Employment Standards Commission, special provision for small businesses and technical assistance to organised labour and business

The Employment Standards Commission replaces the Wage Board Its functions will be to investigate employment standards in any sector where there is no bargaining council, to ratify agreements that vary employment standards, and to advise the Minister of Labour on a range of issues

There is a proposal that night work should be regulated, that there be a 20 percent premium for night work and that special steps be taken to protect the health of night workers

There is a also a general duty on employers to avoid the negative impact which working hours could have on workers and the public An example is that of transport workers who work very long hours, potentially damaging their own health and endangering the lives of commuters

Another improvement on current legislation is the proposal that annual leave is increased from two to three weeks

On maternity leave, the green paper proposes that workers be entitled to four months maternity leave during which security of employment is guaranteed Women may not work for six weeks after the birth of a child unless this is agreed by a doctor.

Bill tabled to exempt small business from labour laws

Drew Forrest (166) BD 15/2/96

CAPE TOWN — The DP is to table a private members' Bill in Parliament aimed at exempting small business and export processing zones from provisions of the Labour Relations Act

The purpose, DP leader Tony Leon said, was to promote growth — to which "every other policy and ideological consideration should be subordinated".

Leon said the idea was to provide for the blanket exemption of small, medium and micro-enterprises from the "ravages" of collective agreements and statutory wage determinations. Minimum standards would continue to apply in such undertakings

The Labour Relations Act covered the whole of SA, and the Bill would also facilitate the creation of enterprise zones either by geographical area or sector

Leon said that only seven out of 100 jobseekers could expect to find work in the formal sector. The Green Paper on minimum employment standards was also likely to have adverse effect on job creation.

The senate labour committee, which kept the labour Act under constant review, would provide a window of opportunity to re-open debate on the Act.

Leon also said that the DP would be launching a membership drive aimed at recruiting 10 000 mainly black members over the next year to 18 months

New deal for workers

(166) Sowetan 15/2/96

The Green Paper on new employment standards is set to revolutionise South Africa's labour relations. Labour Reporter **Abdul Milazi** looks at the finer points

THE GREEN PAPER on new employment standards published by Labour Minister Tito Mboweni on Tuesday is set to revolutionise labour relations in South Africa and ensure that all workers' rights are protected by law

Although still subject to negotiation by organised labour, business and the Government at the National Economic Development and Labour Council (Nedlac), the new legislation plans to include farmworkers and domestic workers

Addressing Parliament, Mboweni said the proposed legislation was aimed at ensuring that the country's employment standards meet the Government's social and economic goals as outlined in the Reconstruction and Development Programme

The planned new legislation will replace the Basic Conditions of Employment Act (BCEA) of 1993 and the Wage Act of 1957, which also left out millions of workers in sectors deemed as essential services, and sectors where there were no organisational and bargaining structures

Current laws

The green paper looks at the current laws that regulate employment standards and their problems It also proposes themes for the development of new legislation

The BCEA and the Wage Act set minimum standards for the majority of workers in South Africa, and are therefore the formal basis of the employment conditions of millions of workers in the private sector

Although the BCEA covers areas such as working hours, overtime and overtime pay, annual leave, sick and maternity leave, it does not set minimum wages

"The department believes that the BCEA and the Wage Act should be revised and replaced by a single law regulating statutory employment standards," said Mboweni

These were employment creation, improving living standards, improving productivity and reducing social inequality He said that the success of the proposed legislation depended on certain areas of social reform

For example, the provisions concerning sick leave pay would depend on reforms to the health system, while strategies to regulate child labour depended on the reconstruction of the education system

The proposals for improving the enforcement of employment standards also appear in the draft Mine Health and Safety Bill, prepared by the Department of Mineral and Energy Affairs, mining unions and employers

Mboweni said under current legislation, many workers are excluded from the scope of basic rights and they work without legal protection

Labour Minister Tito Mboweni ... his green paper on employment standards will revolutionise South Africa's labour relations.

Others have very limited protection or minimum standards which are harsh or excessive

"Furthermore, the systems for enforcing rights and encouraging compliance with standards (of laws) have become ineffective Many of the standards are also rigid and restrict the productive arrangement of work and working time which hampers productivity and efficiency," Mboweni said

He further argued that some provisions of the BCEA – such as child labour, maternity leave and wage determination – could be challenged under the new Constitution

Criminal courts

He also pointed out that the enforcement of legislation through criminal courts was only advisory, ineffectual and did not encourage compliance with employment standards

'The BCEA and the Wage Act are inconsistent with the Labour Relations Act and other laws administered by the Department of Labour This undermines the effectiveness of the department, Mboweni said

He further argued that the protection of workers rights in these Acts was not integrated with unfair labour practice jurisdiction, while the Wage Act did not apply to the agriculture and domestic sectors

The green paper proposes a legislative model of "regulated flexibility" which is aimed at balancing the protection of minimum standards and the requirement of labour market flexibility

Mboweni said "regulated flexibility" had two main aspects – the protection and enforcement of revised basic employment standards and the establishment of rules and procedures for the variation of these standards

"The new legislation must provide for the variation of employment standards through collective bargaining, sectoral determination for unorganised sectors, administrative variation and individual contracts of employment," Mboweni said.

Proposed legislation

Besides farmworkers and domestic workers, the proposed legislation would also protect vulnerable employees such as contract workers, temporary and part-time workers

The Ministry of Labour further proposed that members of the security forces, such as the military and intelligence services, should be excluded from the new legislation

Also excluded would be unpaid employees of charitable organisations and trainees

The Minister of Labour would have the power, in consultation with the relevant Minister, to exclude the application of any provision of the Act to members of the South African Police Services and employees of educational institutions

The Minister would also have the power to exclude the application of any provision of the Act to employees earning above a defined level

Significant changes include the proposal for the regulation of child labour, an increase in the number of paid leave days from two to three weeks and the call for women to get four months' maternity leave (during which jobs would be secured) The green paper also proposes a 40-hour week

Although the green paper was welcomed by labour, business expressed concern about the impact of the proposed changes on the economy The green paper will be submitted for debate in Nedlac this week and will be published in the Government Gazette for public comment on February 23

It will then be submitted to the cabinet on June 30 in the form of a Bill and is expected to become law before the end of the year

Increased labour standards could prove costly — BSA

BD 16/2/96 (166)

Renee Grawitzky

BUSINESS SA (BSA) has expressed concern about whether the Green Paper on employment standards could achieve a balance between maintaining labour standards and ensuring that legislated costs of employment were not imposed to the detriment of employment creation.

BSA spokesman Adrian du Plessis said yesterday the labour ministry's Green Paper — released this week — proposed to increase labour standards. "The hard question arises how much will it cost and who is going to pay?"

Similar concerns about job creation and economic growth have repeatedly been expressed by government. This week, President Nelson Mandela advised clothing and textile workers that government remained committed to job creation

Business SA released a working document yesterday outlining the principles which should underpin new legislation to regulate minimum employment standards It was drafted prior to the Green Paper's release

The document has been presented to Labour Minister Tito Mboweni.

BSA's document outlined current economic realities and said impediments to job growth and protection were excessive labour market regulations, particularly those relating to minimum wages and other conditions of employment such as maximum working hours.

The document argued that legislation had to strike a balance between protecting "vulnerable workers and ensuring that the costs of employment are not forced by regulation to the point that the unemployed poor cannot get jobs"

Legislation should regulate conditions of employment only in industries or workplaces not covered by collective bargaining arrangements. This included agreements concluded in workplace forums.

Business sources said despite the apparent flexibility provided in the Green Paper to enter collective agreements to override certain clauses, this could occur only through agreements that were reached in bargaining councils.

Issues which could be subject to such agreement were very limited and too prescriptive, they said.

BSA argued that the introduction of a 40-hour week would be detrimental to a major part of the economy

International research had indicated that such a reduction negatively affected the cost of production and with it, economic growth, inflation, balance of payments, government finance and even employment

BSA said employment legislation should establish an employment commission to oversee employment standards and employment creation.

COMMUNICATION UBER ALLES . . . Labour Minister Tito Mboweni says his proposed new Employment Standards Act will not be set in stone but will allow for "variation" Picture: TERRY SHEAN

Flexibility is the key to Mboweni's deal-making

ST 18/2/96 (166)

By RAY HARTLEY
Political Correspondent

WHILE his cabinet colleagues droned their way through parliamentary briefings this week, Labour Minister Tito Mboweni invited information-saturated journalists to his house for a party.

With a fire crackling in the background and jazzy sounds blowing out across the garden, he wandered around chatting to the media about this and that

The party at Mr Mboweni's Cape Town home was not an attempt to buy off the press, but a testimony to his anchoring belief that the simple, obvious notion of "communication" is the cornerstone of successful policy-making

It was communication, he says, that brought about consensus between government, business and labour on last year's ground-breaking Labour Relations Act.

Invariably, the conversation at the party turned to his policy proposals for new employment standards which he released for public comment this week

Some six weeks before releasing the document, which proposes limitations on working hours and other conditions of service, Mr Mboweni informally began communicating with business and labour, asking for comment on draft versions

"Before we released the document, we had another meeting, saying 'This is what it is, these are the differences between the version you saw and this one,' " he says.

For good measure, a further meeting was held with parliamentarians sitting on committees interested in the proposals

Mr Mboweni's strategy of "communication uber alles" might be put to the test in the coming months as unions and business fight over the implications of his proposed changes to the work environment

What Mr Mboweni is attempting to do is to introduce certainty between employers and employees on the basic structure of the working day and how they are paid for what they do beyond the call of duty.

The question is, says Mr Mboweni, leaning forward in his light brown leather armchair "What happens when Joe goes to get employed by Tom?

"Tom should be able to say to Joe: 'Joe, you start work at eight o'clock, you work so many hours a day and you have so much leave after your first year If you work on Sundays, this is what will happen according to the law' "

The law in question would be the Employment Standards Act which will be drafted after the conclusion of the current policy debate.

While last year's Labour Relations Act determined how trade unions and employers should bargain with each other over wages and industry-wide conditions of employment, the new Act will govern relations between individual workers and their employers

The legislation will set minimum standards, with a specialist body called the Employment Standards Commission researching industries to work out bottom lines below which workers should not be pushed

Along with conditions of employment, the commission could also set minimum wages in an industry.

A key proposal contained in this week's policy draft is the reduction of the length of the working week by one hour to 45 hours — a shift in the direction of Mr Mboweni's goal of establishing a 40-hour working week

And the policy document suggests increasing minimum annual leave from two to three weeks

The question that is being asked by critics of the proposals is whether or not it will increase the unit cost of labour by cutting down hours and forcing higher pay for overtime work

For the same money, employers would now get less work, forcing them to choose between higher labour costs and cutting down on production

In the context of President Nelson Mandela's identification of "jobless growth" as a key weakness in the South African economy, it is a fear that Mr Mboweni will have to convincingly lay to rest

But the concerns about the impact of his policy on job creation are unfounded, says Mr Mboweni

Instead of paying the extra premium for overtime work, he says, companies could pay the same wage per hour as normal to a fresh shift of workers, leading to more employment

"We have to look for ways all the time of trying to create one or two jobs At least it's something, some wage in somebody's pocket," he says

And, in a further answer to his critics, he has invented a classic politician's paradox, something called "regulated flexibility"

It is a notion that underscores Mr Mboweni's belief in the power of deal-making to come up with the right answer Instead of setting conditions, minimum wages and hours in stone, he says the policy allows for "variation"

"I'm saying 'Lets get some deals here, flexibility must be built into the process,' " he says.

Apart from certain rights which can't be varied — prohibitions on child labour, discrimination and unfair labour practices — everything else would be up for grabs in negotiations between unions and employers.

Driving Mr Mboweni's belief in the value of social compacts is his social democratic philosophy, a position that strikes the balance between the ANC's socialists and its fiscally conservative right.

It was a philosophy underscored by the thunderous applause given to Norwegian Prime Minister Gro Harlem Brundtland when she addressed Parliament this week

"It's fair to say that one of the reasons the ANC in exile got on so well with the Scandinavian countries was because of some commonness in thinking and approach," Mr Mboweni says

Underlying this approach is his suspicion that "left to itself, the free market will just go crazy"

To take his mind off his deal-making troubles, Mr Mboweni has been reading a book on the information superhighway

Flipping through Nicholas Negroponte's *Being Digital*, Mr Mboweni settles on his favourite passage

"I think of myself as an extremist when it comes to predicting and initiating change But, when it comes to technological and regulatory change as well as new services, things are moving faster than I can believe There is obviously no speed limit on the electronic highway Such is life in the fast lane of the infobahn."

'Feudal labour system to end'

CP 18/2/96 (166)

DRAFT proposals have been drawn up to end the feudal labour conditions under which many workers toil, and to improve general working conditions without damaging the economy

If the proposals become law later this year, there will be a new deal for workers countrywide

The proposals are contained in a green paper on employment standards, which was released by Labour Minister Tito Mboweni earlier this week.

The paper recommends that the law protect all workers, including farm and domestic workers and casual labourers, and suggests a range of sweeping changes to replace the Basic Conditions of Employment and Wages Acts.

But it stops short of radical measures, such as the introduction of a minimum wage and a 40-hour work-week.

The paper's key recommendations include·

- An hour cut in the work week to 45 hours and provision for further reductions of working hours,
- A ban on child labour,
- A maximum 12-hour working day;
- Three weeks paid annual leave;
- An increase in overtime pay,
- The lifting of restrictions on Sunday work;
- Protection of contract workers, temporary workers and part-time workers;
- A four-month job security guarantee for pregnant women;
- Three days paternity leave.

The paper takes into account government concern about economic growth and job creation by suggesting that there should be flexibility in terms of which employers could reach an agreement with employees which would override aspects of the law in order to allow the industry to be competitive

The planned legislation will include public sector employees, except members of the security forces (military and intelligence services)

Also excluded are trainees and people working for charitable institutions

The minister would have the power to exclude the application of any provision of the act to members of the SAPS, employees at educational institutions and highly paid officials.

Minister Mboweni said the paper was designed to ensure that employment standards met the government's social and economic goals

Its recommendations addressed a situation where many workers did not have basic rights and worked without protection

Other provisions of the existing laws were open to constitutional challenge The present system for enforcing workers' rights was limited and ineffective, and some provisions are out of date with modern production requirements

The paper met the needs of the economy through the introduction of a "flexibility model" This allowed for the establishment of basic employment practice and at the same time provided for negotiated agreements to vary aspects of these standards.

There was a close relationship between the proposed legislation and reform in other areas, such as health, education and the environment.

The paper will be open for comment and is likely to be closely examined by the National Economic Development and Labour Council (Nedlac). Both unions and business say it is too early to make detailed comments on the paper, but both sides are likely to attempt to modify aspects of the paper which they feel don't meet their needs

The paper's major recommendations will then be submitted to cabinet in the form of a bill which is expected to become law later this year.

CONCERNED . . . Bokkie Botha says the proposals will stem job growth Picture: RUVAN BOSHOFF

Worker-friendly law will impede job creation, say employers

(166) ST 18/2/96

By SVEN LUNSCHE

This week's announcement of sweeping changes to basic conditions of employment — such as reduced working hours and longer leave — are the second pillar of the Minister of Labour, Tito Mboweni's planned network of legislation to govern labour relations in South Africa.

The controversial Labour Relations Act, which will come into effect on Workers' Day, May 1, and future proposals by the Labour Market Commission on minimum wages look set to create a working environment that will be "extremely labour friendly", according to employer organisations.

"The latest recommendations on employment standards should take this country firmly on the road to a basic living wage for all workers," Mr Mboweni told labour and business delegates at the presentation of the Green Paper on employment standards

Mr Mboweni stressed that the Green Paper did not represent government policy, but employers have expressed fears that some of the proposals would lead to sharp cost increases and impede job creation.

Mr Mboweni hopes to present the Employment Standards Act to the cabinet in June to replace the existing Basic Conditions of Employment Act.

The Green Paper suggests a limit of 45 hours a week, from 46 hours To avoid employers resorting to overtime, work outside the 45 hours should be limited to 10 hours and compensated at a rate of time-and-a-half, rather than time-and-a-third Furthermore, night workers should receive an additional 20 percent while double pay should be awarded for Sunday work. However, other restrictions on Sunday work would be lifted.

The paper also improves minimum paid leave from two to three weeks, offers women four months maternity leave, and gives men three days paternity leave. Under the proposals the regulations would be extended to previously unprotected sectors, such as part-time, farm and domestic workers.

Special attention is being paid to the burgeoning security industry, which could have its working week slashed from 60 to 48 hours. In effect this means the industry would have to change its two-shifts-a-day structure to a three-shift day.

Underlying this approach is the Department of Labour's belief that shorter working hours and more expensive overtime will force employers to increase staff complements.

It is a mistaken view, argues Business SA's Bokkie Botha in a document on minimum conditions of employment, released prior to the Green Paper

"Excessive labour market regulations, in particular those related to wages and minimum conditions of employment, are among the major impediments to job growth and job protection

"The weight of international evidence shows that reduced working hours are ultimately harmful to stability, growth and job creation," says the document

Mr Botha welcomes the proposals which prohibit child labour and protect the rights of women and minorities, but is concerned about the cost of the other regulations on employment creation.

"The urgent imperative of labour-market reform is to ensure that the market functions in a way that it underpins an employment-maximising growth path," says the document.

Mr Botha is confident that the Green Paper does not necessarily reflect the government's final position and that a law on new employment standards is still a long way off.

The paper will be tabled at Nedlac this week.

not appropriate that this information be obtained before Budget figures are finalised for the coming year?

The MINISTER Mr Speaker, the answer to the first part of the question is yes I am not the only one who is concerned The whole Cabinet is concerned about the apparent costs and the apparent number of consultants we have Whether the figures will be available before the Budget is finalised is an open question We will have to consult the Auditor-General and find out whether he will have the figures available I still maintain that it would be futile for me to duplicate that effort if that is already under way at the Auditor-General's office

Mr K M ANDREW Mr Speaker, further arising out of the hon the Minister's reply, let me say that I am aware that the Auditor-General is doing such an audit and that given the fact that it is under way, there would be no point in duplicating it Surely, in the first instance, his department should have set about gathering this information before it finalised the Budget for the year that is about to start on 1 April this year and should not be relying on other period such as the Auditor-General or some committee of Parliament to initiate that kind of investigation to obtain that kind of information

The MINISTER Mr Speaker, I do not know why we isolate the consultants I would imagine that there are many items of expenditure we could classify in exactly the same way Why should we only isolate consultants for us to have a special investigation?

The DEPUTY SPEAKER Order! The questioner does not seem satisfied, but we have to move on, because there is another question, this time for the hon the Minister of Labour

Agreements between foreign companies and labour unions

*10 Mr K M ANDREW asked the Minister of Labour (166)

Whether any "non-union" agreements have been entered into between any foreign companies and labour unions, if not, what is the position in this regard, if so, (a) between which companies and unions, (b) what was the content of these agreements and (c) on what basis were such agreements being permitted?

N12E

The MINISTER OF LABOUR

The Department of Labour is not aware of any such agreements

Mr K M ANDREW Mr Speaker, I thank the hon Minister for his reply Arising out of his reply, may I ask, in the light of various press reports, whether in fact any foreign companies are able to obtain exemptions, either from certain aspects of our labour laws, or alternatively from agreements reached by unions and employers in South Africa, or can obtain concessions that are not available to South African companies

The MINISTER OF LABOUR Mr Speaker, the hon member knows, in terms of discussions which he has had with officials of the department, that we are not in a position to say at all, in terms of any other legislation we are administering, whether such an agreement exists So I would just like to re-emphasise what I said We are not aware that any such agreement exists

Government cheques stolen/cashed

*11 Mr M F CASSIM asked the Minister of Finance

(1) Whether any Government cheques were stolen and cashed during the period 1 January 1995 to 31 December 1995, if so, what was the value of such cheques,

(2) whether any measures have been or are to be taken to (a) bring the offenders to book and (b) recover the stolen money, if not, why not, if so, what measures? N13E

The MINISTER OF FINANCE

(1) Yes, R38,7 million, of which R28,6 million was recovered

(2) (a) Yes

(b) Yes The following measures are applied to recover stolen money

1 When fraud is detected by the Departments it is reported to the South African Police Services whereafter the normal legal proceedings are instituted

2 Inspection and reconciliations are performed daily to detect fraudulent cases that are then referred back to the banking sector within a clearing period of two days

3 The South African Reserve Bank operates a computerized stop payment system for lost or stolen warrant vouchers as reported by Departments

4 With a view to recovering losses from commercial banks, departments report the cases discovered at a later stage to the Office of the Accountant-General

5 A special clearance system is in operation whereby banks request the Office of the Accountant-General to verify warrant voucher particulars for correctness and to confirm that a warrant voucher may be accepted

6 Arrangements were made with the banking sector that approval must be obtained from the Office of the Accountant-General before a warrant voucher in excess of R25 000 can be accepted

7 Printing processes of payment particulars on warrant vouchers were adapted in such a way as to make the forging of warrant vouchers more difficult

8 A system of electronic payment was introduced to reduce the number of payments by means of warrant vouchers

A more comprehensive written answer is available for Mr Cassim

Laundering of money

*12 Mr M F CASSIM asked the Minister of Justice

Whether he intends, after consultation with the Department of Finance, introducing legislation aimed at combating the laundering of money derived from the proceeds of drug trafficking, if not, (a) why not and (b) what steps does he intend taking aimed at stamping out such money laundering, if so, what will be the nature and extent of such legislation, compared to similar legislation elsewhere in the world?

N14E

The MINISTER OF JUSTICE

Pursuant to recommendations by the South African Law Commission, contained in its report on "International Co-operation in Criminal Prosecutions" (Project 98) and in terms of its recommendations, I intend introducing legislation entitled the Proceeds of Crime Bill, 1996 It will make provision for the following

(1) It will give courts of law the power to confiscate the proceeds of crime in general

(2) The confiscation order should be aimed at the value of the proceeds of crime

(3) The confiscation order should not be limited with regard to the offence from which the proceeds are derived

(4) A confiscation order should be imposed in addition to other sentences

(5) A restraint order should be created in support of the confiscation order

(6) Offences should be created to criminalise "money laundering"

(7) Foreign confiscation orders and restraint orders should be enforceable in the Republic

The underlying idea of the Bill is to ensure that in addition to any other punishment, the court would have the power to make an order for payment to the State of any amount which the court has found the defendant to have benefited from by his/her crime A restraint order is an order made by a court on application prohibiting any person who is to be charged with an offence from dealing in any manner with any property to which the order relates, pending the final decision in his/her trial

The proposed Bill makes money laundering an offence It provides that any person who, knowing or having reasonable grounds to believe that property is or forms part of the proceeds of crime—

(a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property , or

(b) performs any other act in connection with such property whether it is performed independently or in concert with any other person, which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the said property or its

Business, labour set to clash over new proposals

Star 19/2/96 (166)

By Justice Malala
Labour Reporter

Business and labour are set to clash over clauses in the green paper on new minimum employment standards released by Labour Minister Tito Mboweni in Cape Town last week, with working hours being the main bone of contention.

The 1,6 million member Congress of SA Trade Unions said it was disappointed at the proposal of a 45-hour working week with a commitment to moving towards a 40-hour week in the future

It said the reduction of working hours, which in some industries were as high as 60 hours a week, would force employers to hire more workers and thus create jobs

But business's main voice, Business SA (BSA), said: "The introduction of a 40-hour working week would have severely detrimental effects on a major part of the South African economy

"By far the majority of international research done in this regard indicates that the imposed reduction of the working week has a negative effect on the cost of production and therefore on economic growth, inflation, the balance of payments, government finance and, over the medium to longer term, even employment," it said

The green paper will be debated by stakeholders in the National Economic, Development and Labour Council (Nedlac) later this year It is expected to be presented to Parliament in its second session this year and to be implemented in 1997

Cosatu said it was delighted that the paper proposed that all workers be covered by the new legislation, and that it was an immense victory for domestic and farm workers, who were previously excluded

It said it was fully behind the inclusion of vulnerable workers, such as part-time employees

BSA said workers covered by collective agreements, youth workers, trainees, small employers, new employees or novices and casual workers, and those who earned commission should be excluded from the new laws

Cosatu said it would also be looking at the measures proposed to enforce the new legislation, and where necessary to propose tightening of these measures

And another battle may be looming on the issue of minimum wages At the unveiling of the green paper, Mboweni said the Labour Market Commission, which has to decide on the issue, would release its report this year

BSA said rigid employment conditions and the setting of minimum wages were onerous for a developing economy and would damage the employment-creating capacity of South Africa's economy

Working women may get relief

(166) CT (BR) 19/2/96

By Françoise Botha

Cape Town — Women will receive a boost to their labour rights if far-reaching proposals presented in the government's Green Paper on new employment standards are adopted.

In terms of current legislation, the Basic Conditions of Employment Act prevents pregnant employees from working for four weeks before and eight weeks after the birth of a child This has given rise to a large number of applications for exemption

The proposal recommends reducing the period after the birth to six weeks if the woman is medically fit to return The entitlement to four months' maternity leave has been retained

Provision is made for alternative work to be given to night workers and those doing work that may be harmful to the worker or the child. The employee should not suffer any loss of benefits during the pregnancy or for a year following the birth

In terms of the new Labour Relations Act, job security has been provided for pregnant and nursing women.

Employees with more than one year's service may be entitled to three days' paid child-care or paternity leave during the year following the birth of the child

Other proposals include reduced working hours for women to assist increased parental responsibility

Part-time workers, the majority of whom are women, may also receive a boost The proposal states they should be entitled to the same statutory protection as full-time employees Another option is to provide this protection on a proportional basis

The Green Paper suggests giving part-time workers who have been employed for two years or longer preferential consideration for a vacancy This would be subject to the standard criteria of qualification and experience. However, these employees only represent 2 percent of the workforce.

The Basic Conditions of Employment Act classified part-time workers as "casual employees" working for three or fewer days a week In terms of the legislation they were denied the right to paid leave, paid sick leave and notice of termination

Domestic workers employed for three or fewer days a week are considered regular day workers

Call for two-tier labour market

(166) (173)

Adrienne Gillomee

BD 21/2/96

ANGLO American Industrial Corporation called yesterday for a two-tier labour market to allow new investments at a different and lower wage level without minimum standards and said the unions "should stay out of this sector"

Chairman Leslie Boyd told the conference such conditions were necessary if SA wanted to reduce unemployment "The notion of a 40-hour working week is an example of the damage that can be done to our cost competitiveness by ill-conceived labour legislation." Boyd said initial low wages coupled with improving labour productivity created jobs But investment in labour-intensive industry was unlikely if labour market flexibility and productivity were constrained by statute

Boyd said SA had not yet developed the recipe to encourage fixed investment. Capital totalling R20bn flowed into the country last year, most of which was portfolio investment and not direct fixed investment.

"Gross domestic fixed investment spending was constrained by a vulnerable balance of payments and a poor level of domestic savings. The latter still exists and will do so until we have wealth creation on a serious scale."

Business SA will seek to counter equity legislation

Renee Grawitzky (166) BD 22/2/96

BUSINESS SA plans to argue that there is no need for separate employment equity legislation as the new Labour Relations Act provides for the establishment of sufficient institutions to address this issue in the workplace.

A member of the BSA task team on affirmative action Christo Pretorius said yesterday that the Affirmative Action Policy Development Forum would meet today in a workshop to finalise discussion on a fifth draft discussion document on affirmative action policy and employment equity.

This document, circulated months ago amongst all the stakeholders, was allegedly leaked to the media this week.

Pretorius said Business SA was of the view that institutions such as workplace forums as proposed by the Act were sufficient for social partners to reach agreement on affirmative action.

The unfair labour practice definition to be incorporated in employment standards legislation would deal with anti-discrimination while such cases could be referred for adjudication to the labour courts.

He said government should not only be focusing on shuffling privileges amongst those already in employment but on "affirming the whole of society".

The Directorate of Equal Opportunities, he said, could act in an enabling role and, taking into account costs, there was no need for additional bureaucracy and legislation.

In an earlier article on this discussion document, the labour department's equal opportunities director Mpho Makwana said the forum, which was established at the request of stakeholders, had provided them with an opportunity to debate such issues before formalised negotiations commenced within the National Economic, Development and Labour Council (Nedlac).

Pretorius said the workshop today constituted the final workshop before the labour department formulated and published a national policy blueprint on employment equity to be tabled in Nedlac next month. He said employers would request the establishment of a multilateral drafting committee (as was the case with the Labour Relations Act) to draft the final proposal to be tabled in Nedlac for the negotiation of a social charter.

The department said the workshop would pave the way for the drafting of a green paper on affirmative action and employment equity.

Phoenix fraud task team

Cosatu relaunches old constitutional battle

Star 22/2/96 (166) (162)

By Patrick Bulger
Political Correspondent

Cape Town – The Congress of South African Trade Unions yesterday relaunched the constitutional battle it fought and lost in late 1993 over the right of employers to lock workers out of factories during strikes

In a submission to the Constitutional Assembly, which is hoping to draw up a new constitution before May 9, Cosatu said most constitutions "do not include the right or freedom to lock out" and that there could be no question of a trade-off between the right to strike and the right to lock out as proposed by the NP and the DP.

During the negotiations on the interim constitution nearly two years ago, Cosatu lost its battle to have lockouts excluded from the Bill of Rights

Cosatu also held talks yesterday with the NP and its alliance partner, the ANC, in Cape Town The NP said it would study the Cosatu submission and agreed to open a channel of communication with the union federation.

The ANC said its meeting was "constructive and informative" but gave no indication that it would take up Cosatu's demands in the CA deliberations

The ANC added that the meeting "revealed a high level of agreement between the organisations on most issues relating to the constitution"

Cosatu said it wanted the right to picket included in the new constitution, and the constitution's limitations clause to say that the Bill of Rights should not preclude legislative and other measures permitting trade unions and employers from concluding trade union security agreements.

Cosatu said it did not want a property clause in the new constitution and wanted greater accountability of public enterprises to Parliament. Management of these enterprises "sometimes become a law unto themselves".

Cosatu took a strong line on central government powers over areas such as education, labour, policing and local government, and said it wanted a unitary state and the rejection of "fragmentation and an ethnic-based state".

"Provincial powers should not include the power to determine conditions of employment of public servants or any industrial relations powers," said Cosatu

It added that it wanted majority rule at all levels of government and rejected "enforced coalitions" It also called on the state "to promote freedom and diversity of media".

It said it was taking legal advice and could return to the CA at a later stage with more concrete formulations

Cosatu: Entrench right to strike

CT 22/2/96

(166)

THE Congress of SA Trade Unions has formally urged the Constitutional Assembly to include the right of workers to strike in South Africa's final constitution and to exclude the right of employers to lock-out

In a lengthy written submission to the CA just before Tuesday's deadline for public submissions, Cosatu also strongly reiterated its opposition to a property clause in the final constitution and urged that the right to picket should be written in

The organisation put its views to the ANC and NP in separate bilateral meetings at Parliament yesterday morning.

Cosatu general secretary Mr Sam Shilowa said at a press conference afterwards that labour relations were the centrepiece that would determine to what extent labour would support the final constitution

They were issues "we are prepared to mobilise our members on"

The meeting with the ANC had been fruitful but that with the NP "somewhat disappointing", Shilowa said

Further meetings would take place with both

Cosatu assistant general-secretary Mr Zwelinzima Vavi said that as the constitution-writing process "hotted up", the organisation would have a string of bilateral meetings with any political party it needed to

But in view of Democratic Party leader Mr Tony Leon's attitude to workers' rights "we really have nothing to share with the DP we do not intend to give a lifeline to a party like the DP who are irrelevant"

Cosatu spokesmen said they viewed the DP as simply representing big business

In its submission, Cosatu also calls for a limit to be placed on multiple voting by property owners in local government elections and for provincial powers not to undermine the central government's ability to effectively implement national policy — Sapa

akgoba and others about the way in which

'Treat right to strike, lockout equally'

(166)

ORGANISED South African business strongly urged the Constitutional Assembly (CA) yesterday to ensure workers' rights to strike and employers' rights to lockout were treated equally under South Africa's final constitution.

This is in marked contrast to Cosatu, which urged the CA this week to include the right to strike but omit the right to lockout.

In its submission to the CA, Business South Africa — an umbrella organisation representing 18 affiliates including the South African Chamber of Business (Sacob) and the Afrikaanse Handelsinstituut — says both should be included, or excluded.

The business groups have also stressed the importance of the final constitution protecting property rights. Cosatu has urged that there be no property clause.

And Sacob is also in favour of an option being left to a future government to restore the death penalty as part of a "package" of anti-crime measures. — Sapa

CT 23/2/96

Employers lose control of benefits

(166)

Business Editor

ARG 24/2/96

EMPLOYERS will no longer have it all their own way in deciding on employee benefits for their workforce once the new Labour Relations Act comes into force

According to Jenny Richter, consultant with Old Mutual Actuaries and Consultants, the new law will be a turning-point for employee benefits

Employers' power to make decisions on pension, provident and medical aid funds will be reduced because of greater employee participation through representative trustee boards and workplace forums, she says

Greater transparency is also on the way. Stronger information disclosure requirements in the Act will give employees better access to information, enabling them to compare benefits between funds and to influence decision-making

The Act may also herald a significant shift towards industry-based funds, Ms Richter says Centralised collective bargaining over employee benefits issues is likely to be reinforced.

She urges employers to take early action rather than waiting to see the effects of the new legislation on employee benefits.

Early action could remove the potential for dispute over employee benefits issues, leaving employers and unions free to concentrate on issues with more direct workplace impact, Ms Richter says.

Business says no to shorter working week

(166)

FRANÇOISE BOTHA AND JAMES LAMONT

CT (BR) 15/2/96

Cape Town — Business leaders have rejected the government's call to reduce the working week to 40 hours, saying it will reduce productivity and be inflationary

The proposal was in the government's Green Paper on new employment standards released earlier this week. It recommended an initial reduction to a maximum of 45 working hours a week, which would come into effect on January 1 next year A further reduction to a 40-hour work week was suggested for the following year.

The move would push wages up by 3,7 percent if employees continued to work a 45-hour week and the additional 5 hours was paid at an overtime rate of time-and-a-third

Sacob and the Small Business Development Corporation (SBDC) have requested that small and medium-sized businesses be given the freedom to create jobs within the economy.

In response to the Green Paper on labour legislation, Gerrie Bezuidenhout, Sacob's director of labour affairs, warned against snaring business with unnecessary legislation

Bezuidenhout recommended that negotiation over the Green Paper might make "flexibility the norm rather than heavy legislation in the labour market"

He said employers and employees should be allowed to come up with their own solutions

Though unable to comment on the details of the paper, Jo Schwenke, the managing director of the SBDC said that central bargaining and closed-shop legislation would erode the job creating abilities of small- and medium-sized businesses if made universal.

Many of the advantages of small business over big plants would be swept away should collective bargaining legislation be applied, he said, insisting on a separate deal for small enterprises

He said trade unions and business needed to talk about ways of encouraging employers to employ more people, not less.

NEWS FOCUS

Concern grows over Act's ability to achieve job creation

(166) BD 26/2/96

Renee Grawitzky

THERE is growing concern, even in ANC quarters, that the Labour Relations Act passed through Parliament last year will not create a climate conducive towards achieving governments' objectives of job creation and economic growth.

The Labour Ministry's Green Paper on employment standards tabled in the National Economic Development and Labour Council (Nedlac) last week has begun to elicit similiar concerns

Employers have already begun expressing reservations on the content of the proposals, which include a reduction in ordinary working hours combined with greater flexibility in their implementation. Labour Minister Tito Mboweni says they are intended to enhance the quality of work, "especially as regards the need to eliminate extreme forms of labour exploitation"

South Africans are faced with far tougher choices than ever before, with rectifying past injustices being seen as damaging SA's ability to operate in the global economy The temptation is to avoid making "tough choices" if the political price is too high — but how much higher if by 1999 lack of delivery is still the order of the day.

Business claims its opposition is not based on its desire to attack or diminish existing labour standards However, increasing standards and ensuring compliance could raise the entry barriers to both the formal and informal labour markets

The forthcoming debate will test labour and the Labour Ministry's commitment to dealing with unemployment and economic growth. The Green Paper appears to reflect the tensions between job creation and advancing the labour standards.

There are those within business who question whether the document merely pays lip service to these government concerns and objectives without thinking through more carefully the full impact of the proposals.

Business has indicated to Mboweni that if unit labour costs increase retrenchments would follow

The general secretary of the National Union of Metalworkers of SA, Enoch Godongwana, argues it was purely a right wing agenda to attack labour by claiming a correlation between employment standards and employment levels Worldwide trends have shown no such correlation. Instead, unemployment "is a function of changing production processes," he says.

Are initial business concerns justified and will the proposals raise employment costs and prevent the unemployed from becoming employed?

UCT economist Nicoli Nattrass says if real flexibility is established and if the measures designed to protect employment standards act as a spur to increase productivity and output — this could be a win-win situation for labour and business.

The Green Paper claims as its basis the concept of "regulated flexibility" which proposes, amongst other options, the negotiation of private agreements which could override certain clauses of legislation to provide for the "variation of employment standards". Flexibility, it argues, could also be achieved through sectoral employment standards in unorganised sectors, exemptions or through individual employment contracts. Business SA however, rejects this notion of "regulated flexibility" and claims it is really a double edged sword as the proposals will create regulated but not flexible labour markets.

Flexibility

Business argues that flexibility can only be achieved within the framework of bargaining councils. Should not workplace forums play a role in this regard and in agreements on flexible working arrangements at plant level?

In initial comments, labour has indicated it is concerned by the continued use of the word "flexibility"

Cosatu says it accepts the "right of trade unions and employers to negotiate binding agreements outside the legislation. We however feel there should be binding minimums as basics, with no agreement allowed to interfere with them."

Business, in contrast, argues that the proposals merely attempt to entrench and further compel parties to enter centralised bargaining arrangements — wage determinations or sectoral standards could be implemented even in unionised sectors where collective bargaining takes place but where no bargaining council exists.

The Green Paper, in a move towards removing disparities in employment standards, proposes that farm and domestic workers should be covered by sectoral standards while provision is made for public sector workers to be covered by legislation.

There is concern that the intention is to exclude the public sector from large portions of the legislation.

This is partly based on provisions allowing the public sector management to exclude the sector from proposals.

The Public Service Ministry says it welcomes in principle the protection being granted to public sector workers.

However, the financial implications would have to be scrutinised.

If the intention is to exclude public sector workers, government is going to have to explain why it wishes to impose standards on the private sector which it has no intention of extending to the public sector

Attempts to ensure some level of regulation over what has been termed "non-standard" employees such as part-time workers, temporary employees, labour contractors, dependent contractors and those paid on a piece work rate to prevent exploitation have also been criticised.

Business argues for some protection for these workers, but objects to them being described as "atypical". Worldwide trends have shown such workers are becoming the norm, and full-time workers becoming the "atypical" Less flexibility, business argues, will result in the elimination of a sector with the potential of being a major employment generator Reducing hours of work, the move towards a 40 hour working week coupled with introducing working time arrangements "for the more productive use of working time, skills and equipment" could prove to be one of the more contentious issues under negotiation.

Reduced hours

The proposed nominal one hour-reduction in weekly working hours from 46 to 45 hours in the case of shift workers, was met with some surprise by business which anticipated a far greater reduction.

The implications of a sharper reduction in working hours for security workers from 60 to 48 hours are not yet clear, while concern has been expressed by mining houses as to the effects of a reduction from its current 48 hours plus 1 hour travelling time.

Labour has expressed disappointment in the failure to move to an immediate 40 hour week.

The Green Paper argues that an actual reduction in hours of work with the accompanied reduction in the working of overtime — achieved by increasing overtime rates from time-and-a-third to time-and-a-half could lead to employers increasing their staff complement.

An incentive to both business and labour — a 40 hour week for labour and flexibility for business — is the proposal to couple the introduction of flexible working arrangements with a 40 hour week.

Godongwana says the impact of such a move — which could include the introduction of three shift arrangements — would have to be determined by industry and the parties would have to examine those industries where a positive spin-off was possible.

Both these approaches could be effective except, business argues, no incentive is created for working flexible arrangements to run an additional night shift. For example, employers would still have to pay a 20% night shift allowance.

This would have to be coupled, the Green Paper argues, with compensation to workers for introducing reduced working hours In addition, the removal on the Sunday work restrictions has not been coupled with the removal of premium pay for working on Sundays.

Godongwana says the amount, quantums and premiums paid should not be an issue covered by legislation, but should be left to the result of collective bargaining in specific sectors.

Negotiation could prove far tougher than the negotiations on the Labour Relations Act as business and possibly even elements within the ANC oppose measures which they believe if implemented, could increase production costs and lead to further retrenchments

New Labour Relations Act could hamper work creation

(166) CT(BR) 27/2/96

BY JOHN SPIRA

The proposed Labour Relations Act militates against the creation of jobs

So maintained Brian Bleazard, a partner at Werksmans Attorneys, in an address delivered at a Cozens Recruitment Services breakfast in Johannesburg last week

He said one of the fundamental aspects of the new legislation that had been largely ignored was its reference to employees who were not employees

"This is totally new in terms of the act and will introduce into our litigation claims which were previously excluded."

Under the old act, for the Industrial Court to entertain a claim there had to be an employer-employee relationship

In terms of the new act, Bleazard explained, an employee was more than an employee because an employee was defined to include "an applicant for employment"

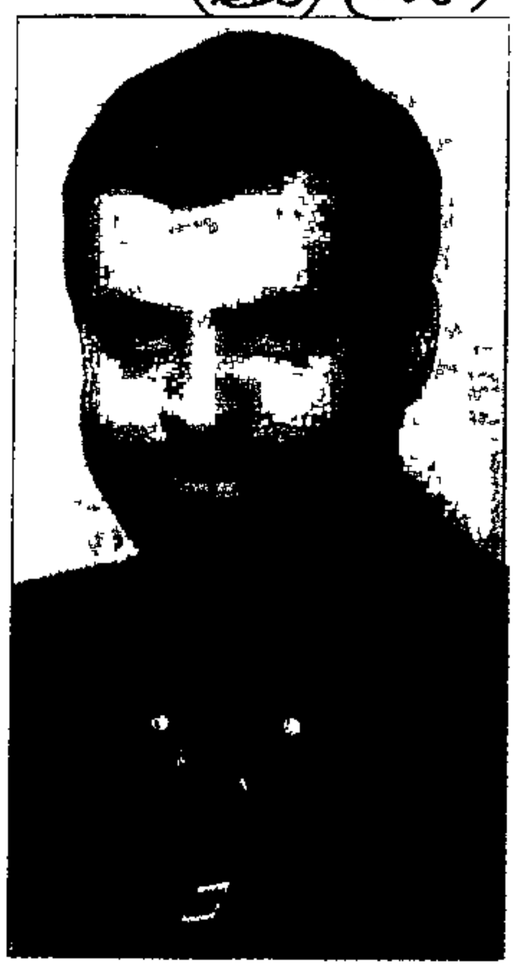
His reading of the relevant clause was that any applicant for employment who alleged that he had been discriminated against would be entitled to refer the matter to the Commission of Conciliation, Mediation and Arbitration

If it was not resolved at that forum, he could apply to the labour court for adjudication.

"The effect of this is to introduce into the new act anti-discriminatory legislation which in many other countries is included in specific anti-discriminatory legislation."

The effect was that companies recruiting employees had to ensure that their advertising of job vacancies was not discriminatory.

"This may at first glance appear to be fairly straightforward However, there have been cases overseas in terms of which publication in a particular journal aimed at a particular group of individuals would constitute discrimination on the grounds that it is aimed at one group only



HARD WORK *Brian Bleazard, a partner at Werksmans Attorneys*

"There have even been suggestions that the concept of head hunting without first having openly advertised the vacant position could constitute discrimination"

Bleazard believed that even more crucial was the job interview

"The interviewer cannot ask any questions which may have the effect of discriminating against the potential employee in respect of the particular vacancy

"In other words, it could, in my opinion, be regarded as discriminatory in terms of the new act for an interviewer to ask a female employee if she is pregnant or intends to marry or even if she is married, divorced or has children

"The small talk which surrounds interviews will therefore have to be excluded and the interview limited to the specific requirements of the particular job"

A passing question, even in jest could result in legal action being taken against the company

Bleazard said that in terms of the new act employees had the right to strike provided they had referred the matter to the commission and had given 48 hours' notice of the commencement of the strike However, no ballot was required before the strike

"I believe that this is undemocratic and puts the ability to call for a strike fairly and squarely in the hands of a union official

"Believe it or not, under the old act a number of ballots were held and the workers decided (contrary to the view of the trade union) not to participate in a strike

This meant that the power of union officials in such situations would be enhanced

The reasons given by the drafters of the legislation for abolishing the ballot was that it would avoid technical objections

"I do not accept this and I believe the true reason has been to enhance the power of the unions"

Bleazard expected the legislation to go the way of "other socialist legislation"

He said that in time it would be tempered and toned down by the reality of economic factors

"In the interim, however it is incumbent on the employers to do as much damage control as possible" he said

Govt submits improved wage increase proposals

BD 29/2/96 (166)

Renee Grawitzky

GOVERNMENT has advised public sector unions that its proposals relating to wage increases — incorporated in a new grading system phased in over three years — could amount to a minimum of 7,5% to a maximum of 40%, depending on job categories.

This formed part of discussions during the third day of negotiations within the central chamber of the Public Service Bargaining Council, sources indicated yesterday.

These estimates constitute a marked increase from the initial proposals tabled by government last year where minimum increases were calculated at 4,25% upwards

Debate and discussions have continued within the chamber around government's other core proposals tabled which form part of an overall package related to right-sizing, voluntary severance packages and pension benefits.

Sources close to the negotiations claim because government was restricted by monetary constraints its only option to granting reasonable wage increases was to renegotiate previous agreements reached regarding the utilisation of pension money.

On the other hand, union sources claim, labour itself faced certain constraints and had to come to terms with agreeing to wage increases knowing it would be doing so at the expense of its membership facing retrenchments.

Labour, was also trying to achieve a common mandate. This could prove difficult as the 20 or so unions within the public service have different political allegiances.

Public service ministry spokesman Thandeka Gqubule said talks were still in the preliminary stages. She said reported claims of unrest looming in the public sector had no basis.

Tito denies punitive quota system is set to be law

(166)

ARG 29/2/96

ur Minister Tito Mboweni

VASANTHA ANGAMUTHU
Political Staff

LABOUR Minister Tito Mboweni has denied he was on the verge on legislating quotas which would mean that companies would be fined if they did not employ more black staff

Speaking during a mini-debate on affirmative action quotas yesterday, Mr Mboweni denied that a document leaked to the press last week – which sets out a fine of half a million rand for companies not heeding the quota – was intended as policy

Mr Mboweni was responding to questions from the Democratic Party which demanded to know whether the Labour Ministry was intending to introduce a quota system

Mr Mboweni said "The document referred to is a discussion document and does not reflect the Ministry of Labour's policy I have not approved the document"

He added that his Department was actively engaged in formulating policy on affirmative action and employment equity with a view to dealing with apartheid based workplace discrimination and to prevent this from happening in future

"Employment Equity is facilitating workshops with stakeholders at national and provincial levels Ideas and views gathered at the workshops are captured in draft discussion papers for further development"

A green paper on affirmative action and an Employment Equity Bill should be ready during the second session of Parliament this year.

Mr Mboweni also attacked the DP for tabling the debate, saying: "It is extremely pretentious on the part of those who have benefited from job reservation, special Christian National Education and other policies to come before this House and say that a democratic government must not do anything to reverse those policies.

It is pretentious to say leave everything to the market when those policies distorted the historical development of our country"

DP leader Tony Leon said any attempts to introduce a punitive quota system would fly in the face of equality policies as expressed by President Mandela.

1651002

Big business gets tough on labour

ST (BT) 3/3/96 (166)

By SVEN LUNSCHE

BIG business this week embarked on an aggressive campaign to ease the grip of labour market controls on the economy.

Trustees of the SA Foundation, which represents the country's 50 largest companies, lamented that they had "compromised far too much" in drawing up the Labour Relations Act, which they say will "do nothing for job creation"

The campaign by the SA Foundation is likely to lead to clashes with the union movement over pending labour legislation on employment standards and affirmative action

Leslie Boyd, chairman of Anglo American Industrial Corporation, warned that business would be taking a much firmer line at Nedlac on future labour law negotiations

"The LRA is a messy compromise and big business in South Africa will be less accommodating in the debate over the Department of Labour's proposed laws on employment standards and affirmative action targets" Mr Boyd's concerns were echoed, albeit more diplomatically, by other trustees such as SA Breweries chairman Meyer Kahn, Anglo chairman Julian Ogilvie Thompson and Standard Bank chairman Conrad Strauss

Reform of the labour market via a low-wage strategy is one of the key proposals in the SA Foundation's "Growth for All" economic strategy, launched this week

It is part of a range of recommendations, including rapid privatisation, tax reforms, fiscal stringency and combating crime

However, the labour market proposals are by far the most contentious The document warns that even if an annual growth rate of 3% were achieved from now until 2004, the jobless rate would continue to soar to 8-million — 40% of the economically active population

"The SA labour market is among the most rigid in the world and, at 33%, has the highest unemployment rate on record We clearly don't have a healthy labour market," says Old Mutual economist Dave Mohr, one of the document's drafters

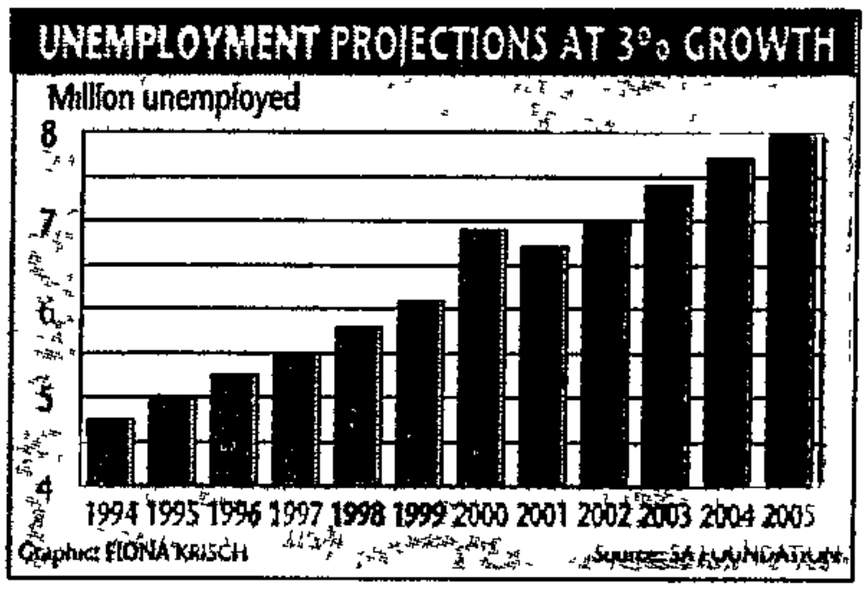
The plan recommends a two-tier labour system, the existing system as well as a second tier which would require only the maintenance of minimum labour standards, such as health and safety regulations, and the elimination of a minimum wage standard

It also calls for the elimination of extensions of the industrial council agreements to non-parties, a major complaint by small business

The Foundation says with wages at a proposed R700 a month, compared to an average minimum of about R1 400, more than 5,5-million people would be lifted out of poverty within three years by the creation of a million jobs.

"Because unskilled workers are priced out of the job market, two thirds of poor households receive not a single cent in wage income. The net result is a perpetuation of an unequal society," the report says.

Jayendra Naidoo, executive director of Nedlac, said the council would this week convene a meeting of all parties to thrash out a strategy for economic growth and job creation He describes the SA Foundation's report as "far sharper than anything we have seen from business in the past"



ILO's conventions 'important for region'

(166)

By James Lamont CT(BR) 4/3/96

Johannesburg — South Africa's interests would be well served if neighbouring states followed the government's lead of ratifying the International Labour Organisation's conventions, Shireen Singh, the spokesman for the labour ministry, said yesterday.

Amid industry fears that companies were relocating factories to countries where labour was less organised and wages were lower, Singh said the organisation's conventions governing workers' rights to freedom of association and collective bargaining would be important.

She said they were significant "when we look at developing a regional economy and labour policy".

South Africa signed the conventions last week

The departments of trade and industry, and labour have commissioned a report on the regional labour market and migratory patterns

The report would be released at the end of June, she said

However, she said many countries that had signed the conventions did not adhere to them

But this was not the case in the South Africa

"We've committed ourselves as a country," she said "The trade unions have won these rights through years of struggle"

The conventions on freedom of association and collective bargaining are in line with the new Labour Relations Act, which comes into effect in May this year

The organisation described the signing as "an explicit symbol of South Africa's determination to destroy the last vestiges of apartheid and to set a course towards greater social justice for all its citizens"

South Africa rejoined the Geneva-based organisation in June 1994, 30 years after its withdrawal over attacks on its apartheid policies.

Malaysian model holds some lessons for SA labour architects

BD 14/3/96 (166)

Renee Grawitzky

PENDING "employment equity" legislation and a social agreement on affirmative action in SA again raise the questions of labour market flexibility and deregulation

Malaysia has often been held up as a useful model for study on these subjects, and a new look at the Malaysian experience provides a timely contribution to the SA debate and resolutions

Ian Emsley, author of the recently published book The Malaysian Experience of Affirmative Action — Lessons for SA (Human & Rousseau Tafelberg, R49,95) and Malaysian lawyer Karim Raslan, who wrote the foreword, acknowledge it would be difficult for SA to follow the route adopted by the Malaysian government in the 1970s, given SA's history

However, there are lessons to be learned and, at the end of the day, they argue, empowerment of the people comes about as a result of economic growth — "political rights mean nothing if you do not have anything to deliver"

The outbreak of riots in1969, Karim says, became the turning point in Malaysia's history

The root cause of the riots emanated from the "economic backwardness and deprivation of the Malays" at a time when the Chinese community dominated the Malayan economy

In 1970, the Malaysian government shifted its public policytowards "a greater pursuit of Malay interests", Emsley says The national economic policy was aimed firstly at reducing and then eventually eradicating poverty by raising income levels and increasing employment opportunities for all Malaysians

Its second intention was to accelerate the process of restructuring Malaysian society to correct economic imbalances, and thus in turn to reduce and eventually eliminate the identification of race with economic function

Programmes to achieve this ranged from reducing poverty in rural areas, where the majority of poor Malays lived, to shifting educational opportunities away from the Chinese and Indian communities to the Malays to such an extent the government refused to grant permission for the building of a Chinese university

This, Karim says, was one of the government's biggest mistakes as it fostered a high level of resentment

The reduction of rural poverty, Emsley says, enhanced the position of the Malays, or Bumiputra as they are known locally, and went a long way to reducing ethnic income disparities

Rural poverty was addressed by various mechanisms to increase rural productivity, including cultivation of land in "virginal tropical forests"

In addition, the government implemented a national education drive in rural areas together with a health improvement drive

Attempts to increase the number of Malay professionals have had limited success, however

So, too, have efforts to reduce ownership disparities, despite the imposition of quotas and targets in relation to equity ownership Such measures were also introduced in terms of government contracts

The attempts to shift ownership and equity to the Bumiputra were partly successful, says Emsley

However, the "equity shift has been both highly skewed to the benefit of the richer Bumiputra and has offered only very indirect control over the corporate sector"

Initiatives to increase job creation included the establishment of export processing zones (EPZs) and an initial growth in the public sector via job quotas for Malays

By the 1980s, the public sector had to be streamlined, but as a result of growth in the private sector, workers were able to find alternative employment

The Malaysian authorities are not coy about the statement "economic growth at all costs"

In Malaysia an authoritarian government is in power, and political and human rights questions have taken second place to economic growth

Karim says growth has to be the central theme of government, and everything else must be subservient to that

Misleading

He describes Malaysia as being "open economically, but closed politically"

Examined closely, this statement could be slightly misleading The establishment of free trade zones contributed largely to what he calls economic growth and the creation of jobs

However, numerous incentives and quotas were imposed to ensure the development and prominence of indigenous Malaysians in business at the expense of the rest of the population

How "free" was this?

Emsley argues that economic policy was not always based on economic rationality, and could have had different economic ramifications if the country was not experiencing high levels of economic growth

This philosophy, allied to a politically suppressed environment, resulted in an 8% growth rate over the past 10 years, full employment to the extent that now the country has an oversupply of jobs, and reduced poverty and racial imbalances between the more wealthy Chinese, Indians and the poorer Malays or Bumiputra

Any manifestation of opposition to the government is dealt with under state of emergency regulations

In Malaysia today, detention without trial still exists, but it is apparently used very sparingly

Karim, in his foreword to the book, says Malaysia and SA "share a potential for racial violence and strife the differences in wealth, education and income between the various communities are stark and shocking"

Malaysia, he says, has escaped the "vortex of destruction" through the implementation of the national economic programme, its affirmative action project

Over a 20-year period, the country attempted to achieve an "ethnic restructuring of the labour market" and subsequent economic growth

It should be noted that the economic turnabout occurred prior to the intensification of global competition for capital in recent years, while strong trade unions and political opposition did not exist

It has been argued that Malaysia's "success story" was based on the introduction of an affirmative action programme which spearheaded economic growth

But Emsley insists Malaysia's economic programme could not have succeeded without economic growth — "growth is indispensable to successful affirmative action."

The establishment of EPZs contributed to a high level of job creation — but it needs to be asked what kind of jobs were created. Emsley argues against the notion that wages in EPZs are very low and that workers are being exploited

"It is a myth that companies in EPZs are trapped with a low wage work force." He says wages of workers in EPZs doubled since they were first established in the 1970s, with the minimum pay packet now around R1 000 a month

Emsley says affirmative action can be considered in two ways what he calls "broad affirmative action" as introduced in Malaysia, which sought to reduce disparities by creating "equality of opportunity", compared with "narrow affirmative action" as implemented in the US.

The latter form of affirmative action, he argues, "tends to create equality of outcomes within organisations" and leads to the redistribution of existing assets "in a static strategy that would result in economic damage and political instability if pushed too far"

Ultimately, those involved in policy formulation and drafting legislation on the labour market and the economy should give equal weight to improving efficiencies and reducing inequality and unemployment, as Guy Standing of the International Labour Organisation says

Reducing inequalities cannot be achieved only by introducing employment equity legislation, but does require a restructuring of the economy to ensure the poor are raised above the poverty line

Companies set to rethink their recruiting practices

(166) BD 14/3/96

Renee Grawitzky

SA-BASED companies are gearing themselves up for changes in their recruitment practices in view of provisions in the Labour Relations Act which will grant internal and external applicants the right to demand the reasons for their non-selection

Carolyn Williams of FSA-Contact said yesterday that previously applicants could not query their non-selection for a particular position

Williams said "in future, if it is felt that the selection process was discriminatory, unsuccessful applicants could institute action against the employer"

This, she said, did not preclude employers from implementing affirmative action policies, although positions could not be advertised as "affirmative action" positions

The right of an applicant to query reasons for non-selection would force employers to apply an "objective system and criteria" for appointments

The implementation of an objective system and criteria, which would apply also to internal promotions, had to measure the applicant's "abilities, qualifications and experience against pre-selected criteria determined as necessary for a particular job"

Business' labour fears exploited

(166)

CT(BR) 18/3/96

By Shirley Jones

Durban — Fly-by-night operators in the highly competitive labour relations arena are exploiting businesses' fears of the new Labour Relations Act to gain market share

Les Owen, a Durban-based labour consultant, said recently that many one- or two-man bands whose sole purpose was to fight unions were attracting attention in business circles, but acting against the best interest of business in the long run He said he knew of at least 25 operators in the Durban area.

"We are concerned that commentators on the act are placing too great an emphasis on negative features and are losing sight of its potential to open up a new era of more mature co-operative industrial relations practices.

"These scare tactics are driving parties to scan the act in great detail, looking for potential loopholes and ways round its provisions This narrow, legalistic approach is unlikely to be of to be of any long-term benefit," he said

Owen said that the greatest areas of concern were the provision of information to unions and the inclusion of workers in key decisions through the establishment of workplace forums

"Management is confronted with the option of keeping their heads low for as long as possible and waiting for that fateful knock on their doors some months or years (later) Even then there will probably be a host of ways in which parties will be able to frustrate the establishment of these forums and delay the day even further.

"An alternative route may be to address the issue of workplace forums in a constructive and transparent manner," he said

Owen said legitimate operators that tended to look at macro issues and strategic labour relations were more likely to guide business leaders towards a pragmatic path

"Companies and unions must realise that they are in the same lifeboat and need to row in the same direction Co-operation is the key to increasing productivity," he said

Owen said he was going to Europe this week to investigate the handling of key issues by companies and unions in Belgium, The Netherlands and Sweden

Aware of the differences in the workforces, particularly when it came to education, Owen said the visit would be invaluable because new South African legislation had been modelled on Western European examples

Taiwan to train SANDF personnel as instructors

Susan Russell

(179) (254)

A GROUP of 27 SANDF personnel leaves SA for Taiwan this week to undergo training as instructors for the Taiwanese sponsored R146,4m Vocational Training Centre which opens near Pretoria later this year.

The trainees, four of them women, will complete a three month instructor's course which includes basic computer training, garment and shoe making, driver training, architectural drawing, electrical work and maintenance to industrial electronics.

Another five senior members of the SANDF's Service Corps, led by Col S Potgieter, will leave for an 11-day visit to Taiwan at the same time, to see an established vocational training centre in operation.

Republic of China embassy spokesman Charles Chen said yesterday that the training programme was part of an agreement between the SA and Taiwanese governments signed by President Nelson Mandela and ambassador I-cheng Loh in December.

Chen said the training centre, which would open during the second half of this year, offered hope to thousands of unemployed people. It would initially accommodate 220 trainees.

He said when the centre was fully operational by mid-1997 it would be able to train 1 500 people simultaneously in 31 different fields, such as wiring, carpentry and high-tech subjects like computer aided drawing. The centre wouldeventually be able to train about 5 000 people a year.

BD 18/3/96

Body will enable Labour Act

Renee Grawitzky

(166)

BD 18/3/96

THE jury is still out as to whether the new Labour Relations Act will come into effect on May 1. However, the Commission for Conciliation, Mediation and Arbitration, is doing everything in its power to establish the necessary structures for effective delivery.

A governing body has been appointed and will oversee the effective running of the commission. An establishment secretariat was also appointed to drive the process and to "deliver the institution".

At the helm is Charles Nupen, special adviser to the International Labour Organisation (ILO) Swiss Project — the long title is attributed to the fact that the project to establish the commission is funded by the Swiss government but managed by the ILO.

Nupen said the commission "can only deliver on dispute resolution responsibly if partnerships are forged between this institution, bargaining councils and accredited agencies".

The committee had identified 106 tasks needed to be undertaken to deliver on the institution.

The starting point in the process to establish the commission began, he said, when the committee drawing on ILO expertise had designed an organisational structure, operating methodology and a broad project plan.

Research

To ascertain the proportion of the institute and manning levels, research was conducted to determine estimated case load.

This was based on conciliation board applications over the past five years and potential case load as a result of new workers being incorporated into the legislation and new disputes likely to arise, he said.

It has been estimated the commission would need 244 commissioners with a case load of 30 000 a year, 65% of which could be as a result of unfair dismissal cases.

In view of time frames, Nupen said, it had been decided that in the "start-up" 120 commissioners be trained and deployed to various regions. The commission has advertised for more than 60 full-time commissioners initially and use would be made of part-time commissioners The fee structure of part-timers had yet to be agreed upon by the governing body

Nupen said professional and support staff had to be recruited, trained and deployed

Secondly, offices had to be secured, designed and equipped once the governing body had approved the locations of these offices. Finally, people had to be matched with the offices and operational systems

Labour department spokesman Shareen Singh said the ministry was still working on a target date of May 1 for the enactment of the legislation She said both labour and business had been waiting for a long time for the new legislation to come into place and "if we do not set a target date it could go on forever".

Mboweni meets mining delegation

(166)

Renee Grawitzky

BD 20/3/96

LABOUR Minister Tito Mboweni defended the Labour Relations Act yesterday as being flexible

Following a meeting between representatives of his ministry and a presidential delegation from the Chamber of Mines led by its president At du Plessis, Mboweni said "anyone who says the LRA is inflexible has a major problem".

Mboweni was responding to questions relating to big business's approach to the LRA in light of the SA Foundation's "Growth for all" document. He said the individual who indicated the LRA was a "miserable compromise" subsequently conveyed to him that business would stick by the LRA agreement.

Mboweni said May 1 was still being targeted, but a number of practical plans had to be worked out and preparations completed. "We may still be on time to do a number of things on May 1."

The meeting between the ministry and the presidential delegation formed part of the normal interaction of government ministers which normally took place at the time of the opening of Parliament

The parties briefed each other on the state of the mining industry and the need for a mining summit, processing around the LRA and the green paper on employment standards.

Mboweni told the delegation that everyone would be afforded the opportunity to comment on the green paper. He indicated that the chamber's briefing on the state of the mining industry related to production processes, the industry's contribution to foreign earnings and the difficulties the industry faced in terms of increased costs.

The chamber indicated that increased costs could be a result of levies, taxes and new legislation.

Employment green paper debate begins

BD 26/3/96 (166)

Renee Grawitzky

DEBATE on the employment standards green paper starts today — and could be overshadowed by the broader debate on economic policy for growth and job creation.

The green paper was published before the release of government's growth and development strategy and the SA Foundation document titled "Growth for all".

The executive director of the National Economic, Development and Labour Council (Nedlac), Jayendra Naidoo, said yesterday that discussions would be at a general level. Labour, government and business would present their goals and objectives in relation to the green paper

From this, he said, "we will get enough of an idea of where the battle lines are"

The labour ministry's green paper, intended to contribute to the drafting of an employment standards Act, was released on February 13

It has elicited strong concerns from business, while labour has broadly welcomed the proposals

Naidoo said he did not expect the discussion to be an easy one In contrast to the Labour Relations Act, where the issues were mainly procedural, the proposals on employment standards were more concrete and "one can see clearly what it means"

Depending on the discussions at today's meeting, he said, the parties would agree on a process which would guide the discussions on the green paper

Naidoo said several parliamentarians had been invited to attend today's meeting, so as to facilitate closer interaction between the Nedlac process and Parliament

EMPLOYMENT STANDARDS

RAISING BARRIERS

The Labour Department's Green Paper on proposed employment standards foreshadows important legislation affecting the labour market, whose inflexibility, according to business and the National Productivity Institute, is the main reason for our high unemployment

So the crucial question is whether the proposals — to reduce the work week to 45 hours, increase leave to three weeks and raise the rate for overtime — will lower barriers to formal employment

Business doubts it, fearing that the unit costs of labour will be driven up and the economy's labour absorption capacity reduced — to the detriment of the jobless, who number about 4,6m or 33% of the economically active population

The Green Paper is intended to replace the Basic Conditions of Employment Act and the Wage Act in one new statute It is a discussion document and will be debated and refined at Nedlac before going to parliament It forms part of Labour Minister Tito Mboweni's five-year plan to change the world of work based on the need to increase employment

Mboweni hopes in five years to reduce the work week to 40 hours, in line with International Labour Organisation guidelines His advisers would argue that long working hours could mean less productivity and, like excessive overtime, be an impediment to job creation

Anglo American's Les Boyd, who presides over Business SA, says "There are some good aspects, such as the child labour ban, protection for women and lifting the restriction on Sunday work But we need more flexibility, not less The new Labour Relations Act was not necessarily good for job creation and further restrictive legislation, like reduced working hours and more leave, is not what SA needs to create more jobs "

Mboweni and the drafters of the document are acutely aware of labour market needs, the imperatives of global competition and of combating unemployment through growth

Much emphasis is placed on flexibility The term "regulated flexibility" is used, which, applied to working time, for instance, leaves open options for a "compressed" work week and "averaging" the 45 hours over longer periods

On overtime, a possible trade-off is proposed whereby overtime is paid at the normal rate in exchange for longer time off Flexibility includes provision, within limits, for private and union agreements to override or vary certain clauses

In its proposals to the department, Business SA says it has tried to define a way of reconciling the protection of labour standards among the employed, with the extension of formal employment opportunities to the unemployed

Hence the organisation favours "phasing in application of the Act in respect of youth (who constitute the bulk of the unemployed), novices and pioneer industries, which would all contribute to greenfield wealth and employment creation "

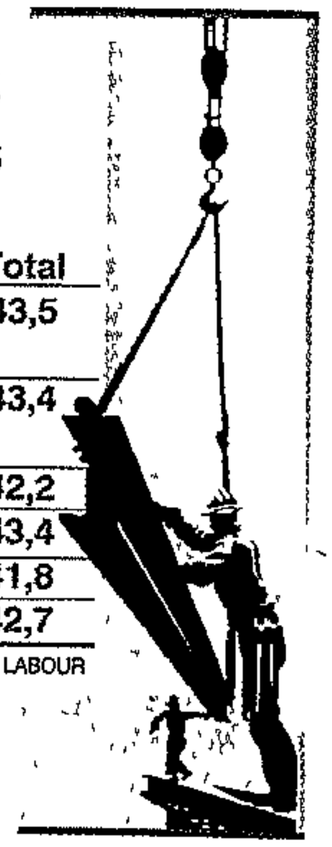
Some employers say rising standards of compliance could lead to a switch towards labour-saving technology Cosatu, by contrast, "believes the reduction of working hours will force the bosses to employ more workers and create more jobs " ■

NO SWEAT SHOPS

Working hours by industry – employees and production workers – 1995

Industry	Production workers			Employees		
	Standard	Overtime	Total	Standard	Overtime	Total
Metals, Engineering	43,5	5,6	49,1	41,7	1,8	43,5
Textiles, garments	42,2	4,0	46,2	42,0	1,4	43,4
Chemicals	42,8	5,2	48,0	41,0	1,2	42,2
Food processing	44,4	4,0	48,4	42,0	1,4	43,4
Paper & Printing	41,0	7,5	48,5	39,9	1,9	41,8
Other	43,7	4,1	47,8	41,9	0,8	42,7

SOURCE DEPT OF LABOUR



Labour standards issue revived by Group of Seven

(166) BD 3/4/96

LILLE — The Group of Seven (G-7) rich nations, reviving one of the more explosive issues in world trade, had noted the need to improve core labour standards worldwide, officials said yesterday.

The Group of Seven consists of the US, Canada, Britain, France, Italy, Germany and Japan.

A draft statement still under discussion stressed the importance of core labour standards, which cover child and forced labour, trade union rights and discrimination. A chairman's statement was due to be delivered late yesterday by the French hosts after a G-7 ministerial meeting on jobs.

But countries appeared to be divided on the exact wording of the final statement, with Japan urging caution in linking trade with labour standards, saying this could create disguised protectionism.

The draft statement called on trade ministers to maintain the momentum on trade liberalisation through the World Trade Organisation (WTO) at a WTO ministerial meeting in Singapore in December.

"We noted the importance of enhancing core labour standards around the world and examining the links between international trade and working conditions in the appropriate forums," it said.

European delegates said they were confident the reference to core labour standards would be included in the final statement. Several countries, notably the US and France, ran into fierce controversy when they tried to make a linkage between trade and forced and child labour in the GATT world trade agreement signed in Marrakesh, Morocco in 1994.

Developing countries opposed the idea, saying it aimed to provide an excuse for protectionist barriers in the more open competition under the treaty. Delegates said the G-7 ministers stopped short of calling for trade sanctions, but stressed the importance of putting the issue onto the agenda.

"The US position has consistently been to work towards core labour standards inside the WTO, and to the extent that there is language here which affirms our interest in core labour standards, that's certainly a step in the right direction," US Labour Secretary Robert Reich said. Delegates said the legal status of any direct G-7 attempt to push the issue onto the WTO agenda was still being finalised.

"Progress has been step by step, but there has been progress when you think that in Marrakesh, even putting such words into a statement was difficult," European Economics Commissioner Yves-Thibault de Silguy said.

European Social Affairs Commissioner Padraig Flynn told ministers that the European Union should seek to find incentives rather than sanctions to encourage respect of labour standards.

"We don't want protectionism of any kind and we don't want any imposition of western or European standards across the board," he said. — Reuter.

G7 alarm over world labour standards

(166)

Lille, France – The Group of Seven rich nations, reviving one of the more explosive issues in world trade, has noted the need to improve labour standards worldwide, officials said yesterday.

A draft statement still under discussion stressed the importance of core labour standards, which covered child and forced labour, trade union rights and discrimination.

A chairman's statement was due to be delivered late yesterday by the French hosts after a G7 ministerial meeting on jobs

But countries appeared to be divided on the exact wording of the final statement.

Japan urged caution in linking trade with labour standards, saying this could create protectionism.

European delegates said they were confident the reference to core labour standards would be included in the final statement. – Reuters.

Star 3/4/96

Lenco chief calls for new labour law

(166) CT (BR) 16/4/96

By Françoise Botha

Cape Town — In a bid to stimulate the manufacturing base of the country, the Labour Bill should be restructured, minimum wages removed and the number of unions represented at a business limited to one, said Douglas de Jager, the executive chairman of Lenco Holdings

Speaking at the inaugural meeting of the Industrial Forum of the Cape Chamber of Commerce and Industry last week, De Jager said that though it was clear that job creation would alleviate many of the country's problems, no clear strategy was forthcoming

De Jager cited German legislation which allowed for only one union at each operation and said that by comparison, some South African plants had as many as four unions representing their workforce

"If we want to have a meaningful and constructive relationship with workers, this problem will have to be addressed," he said

With regard to export promotion, De Jager said that more jobs could be created by encouraging beneficiation of raw materials and producing for the local market in an import-substitution drive

"It doesn't help to give assistance to exporters and ignore the domestic market No exporter can survive without domestic support If we believe in free-market forces, then we must free everything You cannot allow one party to be advantaged at the cost of another

"Retailers are able to source products from the lowest-cost producers in the world Manufacturers, on the other hand, cannot do so because of exchange controls

"For the Reserve Bank to indicate that they will consider each application on its merits and allow the manufacturer to relocate his plant is not acceptable," he said

De Jager called for other measures to tackle the problems being experienced by local industries including a reduction in and simplification of tax legislation and the ring-fencing of all tax evasion schemes.

"Why do some of the major banks pay an effective 6 percent tax? Simple, be inventive, trade with preference dividends and not interest, do lease-backs etcetera Pay to Caesar what is due to Caesar, but don't let Caesar become become too greedy," he said

HEALTH CARE ISSUES UNDER THE MICROSCOPE

Ant Lester ... New Labour Relations Act sets the scene for a shake-up

New LRA set to change pension and medical aid management

(166) ARG 18/4/96

The new Labour Relations Act (LRA) will place retirement funds and medical schemes firmly on the negotiating table – at both plant and industry collective bargaining levels.

According to Ant Lester, assistant general manager at Old Mutual Employee Benefits, revisions the act will bring to the collective bargaining process will result in significant changes to the design and management of retirement funds and, to a lesser degree, medical schemes.

"The act sets the scene for a shake-up in which sectoral funds, spanning and industry or industries, could be given a significant boost, with clear implications for employer-based benefit funds."

Lester added that the joint decision-making is required in terms of Section 86 of the new act which stipulates that employers consult and reach consensus with a workplace forum on changes to the rules of any employer-controlled pension, provident or medical aid scheme.

At the same time, the powers and functions of Statutory Councils and Bargaining Councils – new bargaining forums which will operate at sectoral level – include the ability to set up and run pension provident and medical aid funds for the benefit of their members.

"With trustee boards representing both employers and trade unions in a sector of the economy running retirement funds, the influence of individual employers and unions will be reduced. This could result in a number of changes to industry practice as we currently know it," said Lester.

He commented that although the last few years had seen the emergence of negotiated funds, most retirement schemes are either union or employer-driven. In future, funds jointly established for a sector or industry are likely to find favour.

Old Mutual's 1995 Health Benefits Survey, which is based on feedback from a sample of the country's top 500 listed and private companies, reveals that the trend towards greater union involvement is reflected in the way in which medical schemes are managed. Although a management committee remains most common (55%), 29% of funds now have a board of trustees (20% in 1994) on which union and pensioner members have greater representation.

Only 11% of employers had experienced medical-aid related industrial action, but well over half believed that the introduction of non-negotiated changes would result in such action.

Kobus Hanekom, senior manager (legal consultancy) at Old Mutual Employee Benefits said that in dealing with labour disputes, the Act introduces workplace forums at plant level. With the intention of preventing unfair labour practices from developing, it prescribes greater employer disclosure, consultation and joint decision making with these forums.

He added that the more effective resolution of labour disputes would also be facilitated by laying down minimum criteria of what constitutes a fair labour practice in respect of critical issues like unfair dismissals, strikes and lockouts.

"The act replaces the Industrial Court with the Commission for Conciliation, Mediation and Arbitration and the Labour Court requires that all disputes first be conciliated," said Hanekom.

"Only if this process is unsuccessful, may it be referred to arbitration which, in most cases, will be final and binding. Only in a small number of cases can issues be referred to the Labour Court for a decision."

Kobus Hanekom ... New act prescribes greater employer disclosure

this direction since, during September last year, the Cabinet took note of the multitude of control responsibilities scattered among the various departments and issued an instruction to the trade and industry minister to recommend rationalisation of control and resources As a result, the conventional arms control committee is considering delegating more powers to the lower levels of control to expedite certain approvals.

In conclusion, a number of legitimate concerns arise with regard to the timing, content and thrust of volume 2 of the Cameron commission report:

- Why the wide mandate given to the commission when the cumulative general findings were clearly predetermined?
- Why was no policy framework provided within which the Cameron commission could conduct its investigation?
- Why did government not stop the commission before it embarked on its second volume if it did not intend following its recommendations or waiting for its policy recommendations?
- How much did the commission cost the taxpayer, particularly since the hearings in Cape Town did not substantively affect the content of the second report?
- Why was the second report released only about four months after completion and not closer to the time that government had announced its own system?

But there is hope There can be little doubt that, taken as a whole, the commission has made an important contribution to cleaning up the defence industry and even its second volume does provide, to an extent, a "checklist" against which to measure arms export control measures.

Apart from the fact that SA foreign policy is in limbo and defence policy equally undefined, apparently ".. one of the tasks of the national conventional arms control committee will be, in good time, to devise a policy on the defence industry This policy will provide for matters such as strategic national interest and effective cost-performance by the industry so as to reduce unit costs for items required by the national defence force."

Perhaps this is exactly where we should have started in the first place BD 23/4/96

□ Cilliers is executive director of the Institute for Defence Policy.

25 govts ready to adopt IMF standard

LONDON — About 25 countries have indicated that they wish to subscribe to the IMF's special quality standard for economic statistics, set up to help prevent financial crises such as that which afflicted Mexico in late 1994 and early last year

The initiative sets standards for the coverage, frequency and timeliness with which 17 categories of economic data are reported

Countries aspiring to the standard are required to pre-announce release dates, to describe the methodology of calculation, to provide full public access to the data, and to say when government ministers see the numbers in advance

IMF policy development and review director Jack Boorman said at the weekend that he hoped the standards would help governments and the financial markets to identify economic strains before they developed into full-scale crises.

Countries meeting the standards will be identified on an electronic bulletin board This will open on August 31, followed by a 26-month transition period during which countries can subscribe to the standard even if they are not able to meet it fully

IMF deputy director of statistics Carol Carson said not one country had yet met all requirements

Officials and financial market participants welcome the scheme, but foresee problems when countries fall short of the standard

The IMF says: "To serve the purposes for which the standard is designed, it will be necessary to signal if a subscribing member is no longer fulfilling the expectation that it is observing the standard." This will be done by removing the country's entry from the bulletin board

However, Boorman concedes that removing a country — or even the rumour of its removal — could help trigger the sort of crisis which the scheme is intended to guard against.

Removing a country will be a lengthy and complicated process. An underperforming country will first discuss its problems with the fund.

In the event of "severe and persistent non-observance", the IMF board would probably consult a panel of independent statistical experts while giving the country an opportunity to argue its case before deciding whether to remove it

"The way we have thought this through, we would hope we would never get to a situation where we would have to think about the 'atom bomb approach'," he said

But Salomon Brothers in New York chief economist John Lipsky said this would pose problems· "Inevitably the fund would get drawn into the question of whether it was vouching for this data"

The IMF's hope is to provide information from which financial market participants can draw their own conclusions. Failures to produce particular pieces of data on time will not be flagged specifically on the bulletin board, for example, but left for market participants to infer

"But I do not think in practice that this will exempt the Fund from some sort of implicit vetting issue," Lipsky warned. — Financial Times.

Nafcoc opposes 'short week and high wages'

BD 25/4/96 (166)

Theo Rawana

THE National African Federated Chamber of Commerce (Nafcoc) said yesterday it was opposed to a 40-hour week and "an excessively high minimum wage" as these would have a negative effect on black business

Cosatu reaffirmed this week its commitment to campaigning for a 40-hour week, as one of the demands to be taken up in negotiations on the green paper on employment standards

In a document prepared for discussion at Nedlac, Nafcoc says "While we accept that workers should not work unduly long hours, we have serious reservations about the proposed 40-hour week This we think would have a negative impact on many labour-intensive businesses and would discourage investment in tourism and the retail sector in which small businesses are involved in great numbers We propose there should be a 45-hour week "

Nafcoc general secretary Mashudu Ramano said at its release in Johannesburg "While we also accept that there should be no wage and salary exploitation, an excessively high wage combined with a shorter working week will have a significant impact on labour costs and may cause job losses "

The organisation held that SA's labour standards should be appropriate to its situation and not modelled on standards of economies far more advanced than its own

Nafcoc recommended that government's promised cash flow basis of taxing small business should be implemented, and that the VAT registration threshold be increased to R500 from the current R150, in line with the impending Small Business Enabling Act

Government should appoint a task team to look at making the tax system more "friendly to small business"

Nafcoc, a member of the National Economic Consortium which is to make a bid for Johnnic, said government, big business and black business should establish a Black Economic Empowerment Fund, so mobilising funds to enable blacks to move into the mainstream of the economy

Ramano said the bid should be made "any week now"

Employment standards green paper talks begin

(166) BD 30/4/96

Renee Grawitzky

THE implementation of a 40-hour week, and the extent to which collective bargaining agreements could override statutory minimums, emerged yesterday as possible issues labour, government and business could disagree on during negotiations on the employment standards green paper

Negotiations started within the labour market chamber of the National Economic, Development and Labour Council yesterday, with all parties indicating that significant process had been made to ascertain areas of agreement and disagreement, with general consensus that the process had got off to a good start

Labour department minimum standards director Lisa Seftel said that the parties had committed themselves to a programme of intense negotiations over the next month.

Business SA spokesman Adrian du Plessis said that the meeting would serve to clarify the parties' various positions

Labour spokesman Peter Dantjies said the exploratory meeting set out processes in order to meet a target of mid-June

Seftel said the parties agreed that the scope of legislation should apply across the board, but discussion would take place over provision for certain variations (exemptions) for certain categories of workers.

The parties agreed to examine the effect of extending each employment standard to each category of non-standard employment, and to the establishment of an employment standards commission.

No disagreement appeared to exist on mechanisms to ensure the variation of employment standards.

However, differences did arise over the relationship between collective bargaining agreements and statutory standards.

Seftel said labour and government committed themselves to a 40-hour week, however, both labour and business rejected the proposal of a national framework agreement to ensure the implementation of a 40-hour week.

General discussion took place around the cost implications of increases to annual leave and other standards

New labour laws fully operational by August

(166) Star 30/4/96

By Justice Malala
Labour Reporter

South Africa's new era labour legislation, designed to lessen strikes and create better worker-employee relations and tentatively scheduled to be made law tomorrow, will become law in total only in August

Labour Minister Tito Mboweni said yesterday the setting up of the cornerstones of the new Labour Relations Act (LRA), a commission for conciliation, mediation and arbitration, a new labour court and a labour appeal court had not been completed. This would be done by July or August at the latest.

"We are looking at August for many, if not all, of the aspects of the new law to be operational. Only then will we be approaching the president to sign it into law," Mboweni said

The LRA is the first of SA's new laws to go through the negotiation process that involves business, labour and the Government in the National Economic, Development and Labour Council (Nedlac)

After clashes and compromises by all parties, the law heralded a new era of co-operative relations between workers and management based on German models

Mboweni said the processes followed in establishing and implementing the structures of the new law were consultative and involved the social partners at Nedlac

"While we have moved with great speed and efficiency, certain processes which were beyond our control have resulted in some difficulties being experienced along the way.

"Decisions at Nedlac such as nominations for members to the various bodies took much longer to be finalised than anticipated and delayed crucial policy-making and planning with regard to these institutions," Mboweni said

The Labour Ministry had hoped to have the LRA signed into law tomorrow – a day recognised internationally as Workers' Day – as a tribute to the struggles of South Africa's workers

New labour law not yet completed

(166)

SOUTH Africa's new era labour legislation, designed to lessen strikes and create better worker-employee relations and tentatively scheduled to be made law tomorrow, will only become law in total in August

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The new LRA is the first of SA's new laws to go through the negotiation process that involves business, labour and Government in the National Economic, Development and Labour Council – *Sowetan Correspondent*

Sowetan
30/4/96

Labour Minister Tito Mboweni, flanked by Cosatu assistant general secretary Zwelinzima Vavi, right, and Nafcoc representative Joe Hlongwane, addressing a news conference on the substantial progress made in establishing the institutions necessary to implement the Labour Relations Act. Picture ROBERT BOTHA

Moves to phase in new labour Act

BD 30/4/96 (166)

Renee Grawitzky

THE labour department was moving in the direction of a phased-in implementation of the new Labour Relations Act with the hope that many, if not all, aspects of it would come into effect by August this year, Labour Minister Tito Mboweni said yesterday.

Addressing a news conference yesterday ahead of May 1, the date originally speculated on for implementation, Mboweni said that before the Act could be implemented, crucial institutions had to be up and running

The Act was being implemented "as we go along" and "from specific dates various things will happen"

Cosatu assistant general secretary Zwelinzima Vavi said labour would have liked the Act to be in place years ago However, "we have come to realise that it is not possible to target May 1". He said it was important that the Act came into effect when the necessary institutions were able to provide the required services.

Institutions crucial to implementation included the commission for conciliation, mediation and arbitration, a new labour court, a labour appeal court and other structures including the essential services committee and the registrar of labour relations which would receive applications for establishing statutory councils.

The International Labour Organisation's special adviser to the commission's establishment secretariat, Charles Nupen, said its governing body had given a target date of July 1 to ensure the commission was up and running The Act could not be implemented until it was operational.

Mboweni said "While we have moved with great speed and efficiency, certain processes which were beyond our control have resulted in some difficulties being experienced along the way" These included the time taken to get nominations from the respective parties within the National Economic, Development and Labour Council for members of the various institutions and the delays incurred as a result of the tendering process

Despite these difficulties, he said, the parties had done "remarkably well in setting up much of the infrastructure needed for the implementation" of the Act. The new Labour Court, headed by Judge President John Myburgh and Deputy Judge President Justice Froneman, was being established while the essential services committee was expected to be established by mid-May

Draft legislation on mine safety approved

BD 2/5/96

Tim Cohen

CAPE TOWN — The National Assembly's mineral and energy affairs committee has approved draft legislation aimed at improving mine safety, scrapping a controversial clause which would have shifted the onus of proof onto mine owners to prove they were not responsible for mine accidents

Committee chairman Marcel Golding said he was "delighted" agreement had finally been reached on the Mine Health and Safety Bill after three months of negotiations. Golding, who has worked on the issue of mine safety both while in the trade union movement and as an MP for more than a decade, said the legislation would be debated by the National Assembly on May 9

Golding said the disputed "onus clause" had been dropped in favour of a much more balanced clause which reflected a fair set of responsibilities for government, employees, managers and owners

The Chamber of Mines and mining houses strongly objected to the "reversal of onus" which they claimed was unconstitutional because it overturned the presumption of innocence The committee opted for a formulation which would not shift the onus on to mine owners, but which would reduce the burden of proof required from "beyond reasonable doubt" to "on the balance of probabilities", thus making conviction easier to obtain Golding said the legislation provided for a new regulatory framework, a new set of rights and obligations and an enhanced safety inspectorate.

He said the new legislation would not on its own save lives A "beefed up" safety inspectorate would be critical for the success of the new system Golding said he did not expect the application of the legislation would lead to substantial cost increases to mining houses He said the Bill attempted to promote a culture of health and safety in the mining industry and encourage training in health and safety through co-operation and consultation between all parties

The legislation still requires the assent of the Senate mineral and energy affairs committee, although no substantial changes are expected.

Mboweni hits at critics' call for flexible labour law

(166) Star 21/5/96

By Patrick Bulger
Parliamentary Correspondent

Cape Town – Labour Minister Tito Mboweni yesterday hit back at critics of his labour market regime, saying the flexibility demanded by his opponents amounted to a perpetuation of "the apartheid labour market regime"

Mboweni, speaking in the National Assembly to introduce the debate on his labour budget, said "the uncritical call for labour market flexibility, in the absence of measures to eliminate extreme forms of labour exploitation and labour abuse, is tantamount to a call to perpetuate the apartheid legacy in the labour regime"

"We remain convinced that new forms of labour market flexibility should be grounded in a social environment that respects the worth of human beings, hence the new initiatives in employment standards being promoted by the department"

Mboweni has been accused of promoting a labour market system that is inflexible and that makes demands on small and medium-sized business that could force them to close

Democratic Party leader Tony Leon repeated these criticisms. He said the department's employment-standards green paper forced employers to choose between higher labour costs and production cuts. It would negatively affect small, medium and micro-sized businesses He also criticised the minister's relationship to the Congress of South African Trade Unions

The National Party's Armiston Watson also criticised the Government's relationship with Cosatu, alleging that Cosatu secretary-general Sam Shilowa was the de facto president of the country

Mboweni told the debate that the Labour Market Commission was in the process of finalising a draft report The commission would propose a framework for labour market policy and would address the relationship between macro-economic policies and labour market policies and trends

> "Tantamount to a call to perpetuate apartheid legacy"

"It has proceeded to recommend an industrial strategy as the basis for boosting the demand for labour and thus enhancing employment absorption, and has pondered on various policy options pertaining to wage determination and productivity enhancement"

It would also make proposals on a social plan, a social accord, the promotion of employment equity and the management of labour migration into South Africa

Progress had also been made in setting up the Commission for Conciliation, Mediation and Arbitration envisaged in the Labour Relations Act, which is being implemented in stages The Labour Court and Labour Appeal Court were also being set up Another initiative was the establishment of directorates of minimum standards and of equal opportunities

Among the initiatives proposed were the protection of workers in atypical or non-traditional forms of employment, the reduction of weekly working hours and regulation of overtime, better maternity benefits, the creation of an employment standards commission and the elimination of child labour

A green paper on human resources development strategy was also being drawn up in conjunction with the National Training Board

Replying to the debate, Mboweni said there was a deliberate attempt to destroy the ANC-Cosatu-SA Communist Party alliance He said there was a political alliance but that the Government interacted with the three trade union federations equally through Nedlac

Watchdog for labour policies

166

By Khangale Makhado

LABOUR Minister Tito Mboweni has appointed a drafting team to be charged with putting in place the Employment Equity Bill

The move follows the approval this week by the Cabinet of the appointment of the 11-man team charged with the task of eradicating all forms of discrimination in the labour market

The team is made up of lawyers, labour law experts, senior government officials in the labour department and other academics

The Ministry said yesterday that once passed, the Bill would aid in the process of achieving social justice in the country and would form part of the laws initiated by the Government.

According to the Ministry, once in place the Bill would be the first intervention "to do away with all forms of discrimination in occupation and employment"

The 11 members of the drafting team are Ms Urmila Bhoola, Dr Caroline White, Ms Thuli Madonsela, Dr Guy Mhone, Mr Mpho Makwana, Ms Lucia Rayner, Ms Valerie Amos, Mr Sipho Madlopha, Dr Neva Makgetla, Professor Paul Benjamin and the State Law Adviser

Sowetan 24/5/96

LRA bias clause puts employers in a fix

(166) Sowetan 27/5/96

By Abdul Milazi
Labour Reporter

THE NEW Labour Relations Act's discrimination clause will place employers in a dilemma when recruiting people

According to Advocate Marié Bean (subs note this name is right) of People Dynamics, the LRA's definition of discrimination is such that employers will not be able to specify required candidates in their advertisements for new employees

Beän says although the new LRA has broken new ground in ensuring a society free of discrimination, employers will have to exercise extra care when recruiting "as an act of discrimination can easily be committed without the intention to do so"

He points out that the LRA's definition identifies about 16 forms of discrimination that could occur at the workplace and distinguishes between fair and unfair discrimination, either direct or indirect

Bean, however, warns that indirect discrimination is difficult to define, and therefore caution should be the key when employers recruit.

"For a company's human resources department, it is of the utmost importance to be fully aware of the implications of the discrimination clause, as even an applicant for employment will be entitled to claim against a company for discriminatory requirements and selection," he says

In a situation where it could be argued that differentiation is justified, he says, discrimination will be termed fair. "An example is when a physically demanding job can only be done by a younger person"

Discrimination, he argues, whether direct or indirect entailed the failure to treat people equally "It is to assign to an individual characteristics which are generalised assumptions about groups of people"

Indirect discrimination

"Direct discrimination may be interpreted as when an employee is treated less favourably on some irrelevant ground," Bean said

Indirect discrimination is often encountered in the recruitment and selection criteria where particular groups are singled out

"It is also often found that stipulated criteria which are neutral on the face of it may be discriminatory when applied," Bean said

Bean says the clause makes it even difficult for a company to discriminate between males and females or between any groups, unless there is an agreement to the contrary

"In other words, men and women will be able to demand the same retirement age," he says

Beän argues that the clause also has implications for pension funds with regard to the way they are structured, their profitability and ability to sustain people for longer periods after retirement

"Employers should investigate the philosophy and budget of their pension funds and check whether they are in line with the new clauses in the new Constitution and LRA," Bean said

He says affirmative action is one of the most positive tools built into the Constitution, if used properly

"According to the new law, once an employee has been appointed to a specific position, that person is entitled to all the training and education needed to fulfil the requirements set for that position," says Bean

A clear and well-defined job description and grading, he says, will ensure that no discrimination takes place while at the same time will support an accurate affirmative action policy and economically viable appointments

"The LRA extends the same rights to an applicant for employment as to the person already employed Employers and human resources departments should therefore handle recruitment with care," Beän says

Employment standards under the spotlight

CT (BR) 5/6/96 (166)

A Green Paper on employment standards was released by the Department of Labour this February and has been tabled in Nedlac for negotiation

The green paper looks at setting minimum employment standards in both organised and unorganised places of work with the aim of drafting an employment standards statute

According to the Labour Market Chamber, the statute would set minimum standards for leave, working hours, overtime, maternity leave, notice periods and unfair dismissals

The green paper contains proposals on these types of issues in order to facilitate a debate on appropriate standards that would balance basic rights for all workers with the need for employment creation

The Labour Market Chamber has established a special committee for the purpose of negotiations on the green paper

Agreements concluded in Nedlac will form the basis of a draft employment standards bill

The chamber noted that the Wage Board, which investigates employment conditions and wage levels in various sectors and makes determinations setting minimum wages, was not functioning despite an urgent need for investigations in certain sectors

"Further, the long-term future of the Wage Board was uncertain pending new legislation and the findings of the Comprehensive Labour Market Commission," it reports

The chamber lists six items as key issues to be considered in the coming year They are a green paper on employment equity, a White Paper on human resource development, the Comprehensive Labour Market Commission report, occupational health and safety, social benefits and public holidays

TALKING SHOP *Tito Mboweni, the Minister of Labour, at the summit*

project in Soweto earlier this week. The money is to help in the area. Housing MEC Dan Mofokeng, top right, hands

Pictures ROBERT BOTHA

Progress made in talks on employment paper

Renee Grawitzky (166) BD 5/6/96

NEGOTIATIONS on the employment standards green paper are continuing behind closed doors despite problems at the outset which resulted in the missing of a provisional deadline of the end of May

Parties have reported some progress has been made and negotiations will hopefully be finalised by the end of June. However, the major stumbling block remains an agreement on hours of work and the introduction of a 40-hour working week as proposed in the green paper and supported by government.

The paper attempts to promote "regulated flexibility" but discussions on the reduction in working hours expose the divide between labour and business on the balance between regulation and flexibility

The labour ministry has supported the green paper's proposals for an initial reduction in working hours from 46 to 45 and to ultimately achieve a 40-hour week. As opposed to a legislated 40-hour week, the ministry favours a national framework agreement between the parties to achieve this

The green paper tries to promote reduced hours coupled with flexible working arrangements.

Labour is still demanding a 40-hour week with indications that consideration would be given to phasing this in over five years but appeared opposed to certain flexibility arrangements under discussion including a compressed working week.

Business is opposed to a 40-hour week, but was prepared to consider certain flexible arrangements Comments by business on the green paper reflect that it was opposed to the introduction of a 40-hour week by "means of a national agreement, because circumstances differ too radically from one industry to the next for this to be realistic".

Areas of possible disagreement extend beyond the chapter on hours of work and also relate to overtime rates Sunday work and the premium paid on Sunday leave provisions, and how employment standards could be varied.

Concern over cut in labour body's budget

(166) BD 5/6/96

Renee Grawitzky

CONCERN has been expressed at the reduction in the conciliation, mediation and arbitration commission's budget allocation from R110m to R73,9m

The cut in the commission's budget occurred following the labour department's recent budget cut.

This move has now raised concerns about whether this will have an effect on the commission's effectiveness and the role it is supposed to play in terms of the provisions in the new Labour Relations Act

International Labour Organisation special adviser to the commission's establishment secretariat Charles Nupen said yesterday certain constraints had been placed on the commission's governing body following indications from the department that the original sum allocated had been reduced

Nupen said the governing body would have to budget accordingly in particular areas in order to accommodate this change

National Council of Trade Unions assistant general secretary Mahlomola Skhosana said this cut in the commission's budget could either cause a further delay in the establishment of the commission, or would affect its work and lead to backlogs as experienced by the Industrial Court

The labour department, spokesman Shareen Singh said, had allocated about R110m for the settlement of disputes. However, because the department was still running parallel systems — with the old Labour Relations Act still in place and the process under way to introduce structures in terms of the new Act — money had to be set aside for existing dispute resolution structures, she said

The Industrial Court and conciliation boards received approximately R36m in order to settle those cases which were being processed under current legislation

The department was, she said, in the process of seeking additional funding from its savings to finance one-off capital expenditure incurred in the establishment of the commission

Although the Industrial Court's budget had been cut from R31m to R26m, the intended work of the commission exceeded by more than twice as much the workload of the court, with the new Act outlining its wide-ranging functions

The work of the commission extends beyond dispute resolution, to a wider range of issues than contemplated by the court It is also intended to provide advice and training on collective bargaining structures, the establishment and functioning of workplace forums, workplace restructuring, and many other issues

Serjeant AT THE BAR

Decisions pave way for applying new LRA

(166) M+G 7-13/6/96

Three recent rulings have suggested a seamless, relatively painless transition from the old labour legislation to the new will happen

THE recent Cosatu stayaway, friction between labour and business at the National Economic Development and Labour Council and the imminence of the new Labour Relations Act, all combine to focus attention on employees' rights in South Africa, especially where these concern collective action

Strikes are a criminal offence under the current Labour Relations Act unless an onerous and tricky set of formalities is first complied with There is, in fact, no "right" to strike in South Africa at most, if the formalities are complied with, no crime is committed Stayaways in support of political demands are always criminal acts

Protections for participants in strikes have thus had to be fashioned by the courts For many years they held that illegal strikes could not be protected because public policy frowned on such behaviour, and workers dismissed for striking came to court with "dirty hands" (in other words, they were not blameless)

The most recent edition of the *Industrial Law Journal*, however, contains three superior court decisions that illustrate just how far these protections have been developed

The Appellate Division case concerned 108 workers dismissed from the employ of three mines for participating in a stayaway in 1988 against amendments to the Labour Relations Act made in that year Not all the participants were dismissed. The mines applied a "progressive discipline" and gave them all a warning for absence from work Only those with two previous warnings (the 108) were dismissed

Judge Nestadt, speaking for the whole court, said that the stayaway was illegitimate, designed to harm the mines because of a grievance against the government, was in breach of both undertakings given and an order of court and was also a form of absenteeism

However, he held that it was unfair for only this small group to be dismissed because their previous warnings had related to acts of individual conduct, not to a collective stand on a matter of principle For this reason, he ordered their reinstatement.

The other two cases came from the Labour Appeal Court in Johannesburg and both originated in the 1992 industry-wide strike by members of the National Union of Metalworkers of South Africa (Numsa)

The facts in these cases are remarkably similar Both companies gave ultimatums to their striking employees to return to work at around the time that the employer's federation, the Steel and Engineering Industries' Federaion of South Africa, obtained an interdict against the strike on the grounds of a technical fault that rendered it illegal. The workers did not comply with the ultimatum and both companies dismissed them Soon thereafter, Numsa advised its members to return to work, which they did Of between 80 000 to 100 000 participants in the strike, only about 2 000 were dismissed.

Judge Myburgh (the president designate of the new Labour Court) found no good reason for Boart MSA to have dismissed its striking employees before the outcome of the interdict was known He emphasised that the strike was a legitimate weapon to coerce Boart into capitulating to the workers' demands and held the technical illegality of the strike to be no obstruction to reinstatement

Judge Nugent similarly ordered the company in the matter, VNR Steel (Pty) Limited, to reinstate those strikers that it had dismissed

These decisions, taken together, are most significant because they focus the judicial inquiry away from the formal illegality of the workers' conduct and towards the substance of their actions and the employer's response In doing so, they anticipate the less technical approach to industrial action embodied in the forthcoming LRA and so pave the way for a seamless, relatively painless and natural progression from the old to the new

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New Labour Act changes cause delay

19/6/96

CAPE TOWN – The long awaited implementation of the Labour Relations Act on August 1 would be delayed for six months if certain amendments were not promulgated before then, a labour department spokesman said yesterday.

Government hoped the amendment Bill, brought before the committee on labour yesterday, would be passed through both houses this week, before recess.

However, the NP said it was not prepared to vote on the Bill because chief whips had agreed last week it would not be steamrollered through, nor would it be debated before the winter recess.

The committee then agreed to adjourn until today so the matter could be clarified. Members mooted the possibility of technical amendments being finalised and only holding over more controversial amendments.

A spokesman for the department noted outside the committee room that key mediating institutions could not begin work unless their rules of operation during the transition period between the old and new Acts were promulgated.

Labour director-general Les Kettledas also noted that if the definition of "sector" was not changed, it could lead to confusion and potentially break up existing bargaining arrangements.

Most amendments were technical and had already been agreed to by Nedlac. But on others there was not consensus, Kettledas said

The first concerned maintenance workers. The Act allowed employers to subcontract maintenance work, and denied employees of the subcontractors the right to strike. The Bill provided for disputes involving these workers to be referred for arbitration.

Secondly, in terms of the Act all employees who were not members of the union were obliged to pay agency fees, but the amendment proposed that only those non-members who qualified for membership should have to pay.

Unity is 'the way'

Report says accord will not have to replace collective bargaining

Waghied Misbach
Political Reporter

SOUTH AFRICA'S HIGH levels of poverty, unemployment and wage inequality can be countered by a special accord between business, labour and Government, according to a study by the Labour Market Commission.

The 250-page report called "Restructuring the South African Labour Market", which was initiated by the Labour Ministry, calls for more cooperation at company, industrial, regional and national level between the three parties and other stakeholders in the economy

Such working together "should encourage investment and productivity growth".

The report is a product of the LMC's research on the labour market policy.

An accord for employment and growth will allow the balancing of business' needs for profits and competitiveness, labour's quest for secure and good pay, while also considering society's need for a rapid increase in jobs, the commission says.

Expansion of 'agenda'

It recommends an expansion of the "agenda" of the National Economic Development and Labour Council (Nedlac). The new Nedlac will bring together business, labour and government, with other parties, including non-governmental organisations.

However, the commission says it is "under no illusions" about the difficulties it will face in building the kind of trust, cooperation and mutual compromise among the social partners for the accord to succeed.

It has already noted, "with deep concern" the fights between labour and business, which "threaten to erode existing levels of confidence in the South African economy, both domestically and internationally"

The commission says that this tense situation forms the basis of their recommendation for an urgent "Presidential Jobs Summit" of all the social partners. "The summit should be used to urge both business and labour to renew their commitment to social partnership in economic affairs."

Workers can moderate their wage demands in return for Government support of training at the workplace

Sowetan 20/6/96

Economic stakes are "sufficiently high" to warrant a thorough investigation into means by which cooperation can be found.

"In essence, accords are exercises in gain sharing and sacrifice. If either business or labour enters the accord under the illusion that they will receive all the gain or simply share it between themselves, the accord will collapse."

While other countries have formed accords to fight inflation — the general price level – South Africa's low inflation rate means the accord needs to be structured around a different crisis, although it should include fighting inflation.

"The South African social accord will only gain the widespread support upon which its success depends if it is seen to respond directly to the crisis of unemployment."

The commission argues that the Government cannot fight inflation only through harsh monetary policies because this means jobs can be lost in the short-term and this can drive up interest rates, which affect crucial issues like housing delivery.

"The better strategy is for Government to work with its social partners to moderate inflation via negotiations" It adds that the accord should not be controlled through legislation but should rather be "self-policing"

The accord can only be successful if business, labour and Government enter into a "serious discussion of wages, prices and investment at national level".

But this does not mean that the pact will replace collective bargaining councils at company or workplace levels, or that it will determine individual product prices.

The commission says that labour and business cannot negotiate real wages because industry level bargaining cannot control the prices that determine the worker's cost of living

This means that Government will have to be involved in wage negotiations at national level. Government can bring taxation and welfare spending policies to the table.

Workers can then moderate their wage demands in return for public commitments to increase spending on public works programmes or on government support for training at the workplace.

Reduce taxis

Business can also bring to the table a commitment to increased spending on investment, research and development, or workplace health and safety if Government agrees to help with the cost by reducing corporate taxes.

The Accord will mean employers and workers can safely negotiate without the uncertainty of what the Government, or the rest of the economy, will provide. "This uncertainty ties the hands of the negotiators and encourages a hardline stance"

Government will also benefit because it will then gain a degree of "breathing space for its macro-economic strategy, knowing that the offs of an inflationary response are much reduced".

Sweeping labour reforms on cards

REFORMS: Mr Tito Mboweni

FAR-REACHING labour reforms which could pave the way for a shorter working week, minimum wages for domestic and farm workers and a dole system were released yesterday by the Labour Market Commission

Labour Minister Mr Tito Mboweni stressed that the commission's proposals were not yet government policy, but they would be examined by a small team of experts in his department to enable him to make policy recommendations to the cabinet by the end of the year

● See Page 13

(106) CT 20/6/96

BAN OF LAND SALES TO FOREIGNERS PROPOSED

— Page 5

Employers must be forced by law to give information

ARG 20/6/96 (166)

LABOUR legislation should be tightened if necessary to force employers to provide workers with better information on retrenchments, the Labour Market Commission recommends

The unions should use the channels provided by the Labour Relations Act to secure disclosure of information by employers But where this is not sufficient, the law should be strengthened, the Commission says

Reluctance to provide information, it warns, will intensify the unions' view that employers are "insensitive and uncaring" about structural change and mass redundancies

The Department of Labour should be informed of planned plant closures and redundancies where, say, more than 20 percent of the workforce is involved, the Commission says

A disturbing new law is rushed through parliament

(166) ARG 24/6/96

In their haste to pass the Gender Equality Bill, political parties went along with provisions which are contrary to the rule of law writes **COLIN DOUGLAS** parliamentary affairs manager of the South African Institute of Race Relations

PARLIAMENT has just passed a bill which will give a state-appointed commission the power to investigate, search and interrogate citizens who are not accused or suspected of breaking any law

The bill, innocuously named the Commission on Gender Equality Bill, was supported by every party except the Democratic Party and the African Christian Democratic Party even though members of the larger parties were opposed to some of its key provisions

The bill, which now requires only President Mandela's signature before it becomes law, will give the commission the power to investigate law-abiding citizens and organisations whenever it believes there is a "gender-related issue" at stake

During the course of its investigations, the commission may search persons, enter and search premises, seize property and summon persons to appear before it

The commission may also "monitor and evaluate policies and practices of private businesses, enterprises and institutions, in order to promote gender equality" and then 'make any recommendations that the commission deems necessary "

The South African Institute of Race Relations has argued since the bill's inception that to arm anyone with investigative powers so broadly defined is repugnant to the rule of law

When the senate added the search of persons to the commission's list of powers, the Institute said this was further cause for concern

Mr John Kane-Berman, chief executive of the institute commented when the bill was first introduced in Parliament "Since the human race is divided into two sexes and since most offices, factories, farms and homes have both men and women in them, it is very difficult to think of any issue which cannot be twisted into being 'gender-related' "

Mr Kane-Berman added "In free societies private citizens and private institutions are free to do as they please provided they do not break the law, but we seem to be moving into a society which is governed not by law but by the latest trends in political correctness "

Many parliamentarians agreed with the institute s objections, or at least some of them

Mr Johnny de Lange, chairman of the portfolio committee on justice and an African National Congress MP, said he would seek to have the searching of persons provision removed

So did Mrs Sheila Camerer, the National Party's justice spokesman, who said the provision was "entirely inappropriate "

Between them, the ANC and the NP could easily have amended the bill to remove its worst elements, but they did not

Instead, the bill was rushed through the national assembly on June 21, the last day before parliament's winter recess, apparently because the ANC was under pressure from its Women's League to avoid delaying the appointment of the commission

It was odd that some parliamentarians voted for provisions which they knew were inappropriate and which they knew they could probably have removed if they had held the bill over, for a mere six weeks, until parliament reconvenes on 12 August

The least that voters should be able to expect from their representatives is that they will vote for what they approve of and against what they oppose

What makes the commission's search and entry powers so much more problematic than those bestowed on the police, is that a policeman will obtain a warrant to enter and search premises only if there is some likelihood that a crime has been committed

The Commission on Gender Equality, in order to obtain such a warrant, will have to show merely that a "gender-related issue" exists

And, to my knowledge, the power to search persons is a new innovation that will be unique to the commission

Some of the bill's supporters have responded to criticism by saying that the commission's powers of investigation, search and seizure would rarely be used

Their basis for predicting the future is not clear, but if these provisions are of so little significance, then why include them in the bill at all?

Discrimination on the grounds of sex is as irrational and unfair as is racial discrimination

If parliament wishes to promote gender quality, then it can pass legislation that, within the terms of the constitution, outlaws particular kinds of sex discrimination

People who continued to practice these kinds of discrimination could then be prosecuted But rather than drawing up such legislation, parliamentarians have left it to the commission to decide what constitutes a "gender-related issue" and to investigate whomever it chooses, whether or not they have broken any law

The bill creates the possibility that the commission will abuse its power, and the certainty that citizens will be unable to predict in advance which acts will fall foul of the commission and which will not

The NP, the Inkatha Freedom Party and several ANC members were uncomfortable with the bill's investigation provisions, and Justice Minister Dullah Omar acknowledged in the senate debate on the bill that "the fear of abuse of power (by the commission) is a genuine one'

Yet none of these people opposed the bill for fear of being seen to be against gender equality

Are South Africa's political leaders incapable of saying that they wholeheartedly support worthwhile goals such as gender equality, but firmly oppose unjust means to attain them?

If so, supporters of human rights will have to be vigilant in the years ahead

Sheila Camerer, former deputy minister of justice and National Party spokesman on justice. She described the search powers in the bill as "entirely inappropriate", yet like critics of the bill in the African National Congress and other parties, she voted for them.

Labour law 'to stay contentious'

BD 24/6/96 (166)

Susan Russell

THE effect of constitutional provisions — particularly those embodied in the Bill of Rights on labour law and industrial relations — should not be underestimated, Rand Afrikaans University labour professor Marius Olivier has warned.

Writing for the July issue of the attorneys' journal De Rebus, Olivier said since last year there had been about 15 reported cases dealing with the effect of the Bill of Rights on labour and labour-related issues.

Looking at these judgments, Olivier said, left no doubt that labour law was an area which would be the subject of continual constitutional challenge

He pointed out that these cases covered a relatively wide range of issues such as the verticality/horizontality debate (that is, whether the constitution applies only between the state and citizen or also extends to relationships between private individuals or juristic persons) and the effect of the Bill of Rights on the industrial court and the way in which it functions

Other issues raised in these cases included administrative law developments with a bearing on labour related issues, the constitutionality of restraints of trade, and the way in which some of the constitutionally entrenched rights operated in the context of labour law.

Referring to one case, Standard Bank of Bophuthatswana vs Reynolds and others, Olivier said scope for judicial review was extended significantly in judgment last year. In that case the court decided that the more restricted criterion of "gross unreasonableness" should be replaced by a less stringent test of "unreasonableness"

"This finding was arrived at not only on account of the modern approach to judicial review," Olivier said, "but also on the basis of the fact that the Bill of Rights was binding on 'all legislative and executive organs of state at all levels of government' and was applicable to 'all law in force and all administrative decisions and acts performed'."

Olivier said this decision might have important implications for review of decisions by public bodies working in the labour sphere, and review applications from public servants or their representative bodies.

Wide powers wanted for new labour commission

(166) BD 28/6/96

Renee Grawitzky

THE Commission for Conciliation, Mediation and Arbitration will have to become equipped to resolve wide-ranging disputes which could even extend to sector or enterprise-level disputes about privatisation or restructuring.

Speaking about progress made in setting up the commission, ILO special adviser Charles Nupen said the Labour Relations Act contemplated a wide range of functions to be performed by the commission which went beyond conciliation and arbitration.

Nupen outlined the extensive progress made during the last four months in putting the systems in place to ensure that by mid-August the commission could be up and running

He said the commission was not the sole reason for the delay in the implementation of the Act. The Labour Court still had to nominate members while the technical amendments to the Act would be passed only during the next sitting of Parliament.

Nupen said besides facilitating the establishment of statutory councils and workplace forums, a large portion of the commission's work would relate to dispute prevention

Over time the commission would seek to engage the social partners in discussion over possible areas of dispute that could arise and to find ways of "nipping these flashpoints in the bud"

The Act's intention was to provide an institution which would over time decrease the level of industrial action, Nupen said. He said the commission needed time to test its systems and if this was given, the expectations of the partners would be met

Research indicated that in any one year the commission could be faced with 30 000 referrals, the majority of which would relate to traditional unfair dismissal cases

When the commission opened its doors, it would have a staff complement of 370 employees which would rise to 435 by next year, Nupen said.

Bid to meet Bill deadline

Reneé Grawitzky (166)

THE National Economic, Development and Labour Council (Nedlac) outlined an agenda yesterday whereby labour, government and business could finalise negotiations on employment standards legislation to ensure the parliamentary deadline was met.

Nedlac executive director Jayendra Naidoo said the management committee had approved an agenda which would ensure settlement of this issue within the next few weeks.

He said "we are hoping that this agenda could be completed within the next three weeks, in good time to allow Parliament to consider the Bill before it goes into recess."

The parties were supposed to have finalised discussions by the end of July. However, government was in the process of circulating a revised draft Bill to the parties by Monday. The parties would have two weeks to study the draft and submit their responses.

BD 1/8/96

Companies use contract labour to slip council nets

ST(BT) 4/8/96 (166)

By CIARAN RYAN

THOUSANDS of companies are using contract workers rather than paid employees to circumvent the restrictive clauses of the Labour Relations Act, according to the Confederation of Employers of SA

For many small businesses this is a way to escape the clutches of industrial councils, which set minimum wage and working conditions for workers in different industries There are roughly 90 industrial councils, made up of trade unions and employers from the larger companies

Cofesa says the industrial council system "protects the interests of about 24 500 employers against outside competition and about 850 000 workers against 6-million unemployed"

Small businesses complain that industrial councils are stifling competition by allowing larger firms and trade unions to impose onerous costs of compliance on smaller firms

"As a result of these anti-competitive practices, businesses are less willing to take on new employees, and many are now switching to contract labour," says Cofesa director Hein van der Walt. "We are inundated with calls each day from businesses being harassed by bureaucrats from industrial councils If the government is looking for reasons why job creation is not happening, it should start with the industrial council system "

In a case of "petty bureaucracy gone mad", Van der Walt says the Industrial Council for the Iron, Steel, Engineering and Metallurgical Industry summonsed Russian immigrant Yefim Monastursky to appear before a magistrate for non-payment of pension fund contributions on behalf of a worker for a period covering 11 days in 1994 The amount in question was a few hundred rands Monastursky's company, Day Motion, manufactures sports equipment, including table tennis tables Despite repeatedly advising the industrial council that the worker had left his employ in 1994, the council refused to withdraw the summons

When approached by Business Times, David Levy, general secretary of the council, said he would not be pursuing the case "For the cost of a phone call (as opposed to the cost of an attorney) your tormented employer could have called or faxed me or any of my managers and the problem would have been resolved Anyway, bearing in mind that the poor chap didn't have the funds to pay his employee a minimum wage, I presume his attorney is providing his services on a pro-deo basis, so apart from tying up the resources of the council and the Department of Justice, at least the viability of his ping-pong table line is not under threat "

Monastursky says he is far from finished with the industrial council

He plans to bring an action against it for damage caused to his business. Two years ago Monastursky was successfully prosecuted by the industrial council for non-payment of R7 000 in unpaid registration fees and the contravention of the industrial council's official agreement. Monastursky now has a criminal record for this violation. Day Motion was not a party to the industrial council's agreement, but was nonetheless bound by it.

Tom Cawood, managing director of the award-winning company Annies Creations, closed his East London business after a long battle with the local industrial council for the clothing industry, despite winning a court case against the council in which it was determined that the council's agreements did not apply to Annie's Creations

Cofesa says it brought the arrests and detentions of employers to the attention of President Nelson Mandela who ordered an investigation by the Department of Justice It also launched an international awareness campaign to alert South Africa's trade partners to the continuation of the old apartheid practice of "job reservation".

Now it plans to bring a case before the Constitutional Court on the grounds that industrial councils violate freedom of economic activity and association "With the industrial councils in place, no labour-intensive industries will get off the ground in South Africa," says Van der Walt

Workplace rights divisions — poll

BD 6/8/96 (166)

Reneé Grawitzky

SOUTH Africans remained divided over the right to strike and lock out, a survey conducted by Markinor shows

The vast majority of white SA respondents rejected the right to strike but on the other hand indicated overwhelming support for the right of employers to lock out

The survey of 2 000 respondents, conducted in June this year in the major metropolitan areas, showed that 24% of South Africans supported the right to strike but 29% supported the right to lock out

In both cases overwhelming rejection of the right to strike and support for the right to lock out came from white South Africans

Surprisingly, the survey showed that unemployed respondents were more in favour of the right to strike than were those respondents who were employed.

Markinor found that 24% of South Africans supported the right to strike, with only 6% of the whites surveyed supporting such a stance

In contrast, 43% of whites were of the view that workers should not have the right to strike and that all strikes should be considered illegal

Markinor found that 29% supported the right to lock out The majority of support for this approach came from whites (50%), followed by Indians (30%), coloureds (27%) and blacks (18%).

Finally, Markinor found that 26% of South Africans were of the view that workers had the right to strike but that employers did not have the right to lock out striking workers

In this case 41% of black respondents supported, this as opposed to 1% of whites

Coercion will not aid employment equity programme

JD Verster (166) BD 7/8/96

WHILE the recently released green paper on employment equity rejects set quotas, it nevertheless introduces an element of coercion into the labour relations field

All companies will be required to conduct audits to provide information on possible discriminatory practices in areas such as hiring, promotion, training, pay benefits and retrenchments and submit this information regularly to the labour department.

Larger companies are required to submit equity plans which, once approved, they would be legally obliged to implement. Companies failing to submit plans would face fines, and a departmental inspectorate will police the system.

If a company is not genuinely committed to introducing employment equity (for whatever reason), regulation is unlikely to change its attitude and approach, and there is a danger that affirmative action in such a context may become a sham

To coerce or bribe companies into adopting affirmative action measures is not in line with the underlying objectives of equal opportunity in the workplace The green paper unfortunately places the emphasis on compliance with government regulation rather than with achieving employment equity and non-discrimination.

Government regulation might create more representative-looking boardrooms, management and other senior employee categories, but it is unlikely to create optimal human resource development in a discrimination-free environment. While the elimination of overt discrimination by employers is a legitimate aim, burdening employers with reducing inequalities not caused by discrimination is unacceptable.

The issue is not whether special measures should be adopted but how best such measures will work in practice and whether the long-term objectives will be achieved Firms should pursue their equity employment obligations with the seriousness and commitment that is required

Rather than submitting to regulation, companies should be encouraged to opt for assistance and advice on a voluntary basis from specialist agencies or government bodies geared to facilitate the introduction of employment equity programmes.

A situation in which voluntary practices and processes develop and are implemented will lead to genuine affirmative action appointments rather than window-dressing. Organisations that opt not to implement such plans or programmes would, over time, given the current skills shortage, become uncompetitive and unprofitable

These market realities, rather than coercion in the form of regulation, are much more likely to create effective employment equity programmes

□ **Verster is a labour lawyer with legal firm Webber Wentzel Bowens.**

not attend

BD 14/8/96

Labour Bill approved

(166)

THE Labour Relations Amendment Bill, which will pave the way for the 1995 Labour Relations Act, was approved by the National Assembly's labour committee yesterday and would be debated on August 20, committee chairman Godfrey Oliphant said

Provisions in Bill rejected

Renee Grawitzky

THE SA Commercial Catering and Allied Workers' Union (Saccawu) yesterday categorically rejected the maternity leave and working hours provisions in the draft Bill on employment standards.

The draft Bill was discussed in a meeting between labour, government and business negotiators on Tuesday Labour requested more time so that parties could negotiate the crucial clauses

The union said the draft Bill proposed four months of maternity leave while labour was demanding six months of paid leave The draft Bill does not specify that such leave would be paid

Saccawu and labour as a whole have demanded that a minimum standard of a 40-hour week should be legislated It has also rejected the suggestion that workers could work up to 12 hours a day on ordinary time, if a compressed working week was implemented to create flexibility It was also opposed to the averaging-out of work time

BD 16/8/96 (166) ([redacted])

LABOUR RELATIONS ACT

Bosses can expect wave of litigation

(166) ST (CM) 18/8/96

MANY employers are still dangerously naive or ignorant about the new labour legislation and its myriad implications, says industrial relations and labour law consultant Neil van Zyl

And the former attorney predicts a lot of "unfair discrimination" cases as employees and unions explore the outer limits of the new Labour Relations Act

"We can expect a lot of well-publicised litigation, which will assist employers in getting their houses in order There are still many employment imbalances in this country, in terms of pay, gender and other arbitrary discriminatory practices, all of which will be addressed by the new labour court"

The concept of unfair dismissal is still alien to some employers, says Van Zyl "But they'll have to get to grips with the new labour laws. Failing to do so could be an expensive mistake, especially as job applicants will now also have the right to challenge unfair discriminatory practices"

His firm, Van Zyl & Associates, operates in the corporate sector and handles such clients as Metropolitan Life, Makro, Dion, Murray & Roberts and First Bowring

They prefer to be called in *before* the stuff hits the fan, says Van Zyl.

"We try to obviate litigation with pro-active intervention, to catch the situation before it gets out of hand"

Van Zyl and colleague Barney Jordaan, a professor in labour law at the University of Stellenbosch, have designed and hosted a series of employment equity workshops aimed at familiarising delegates with the relevant legislation, and focusing on discriminatory practises

They tackle fundamental rights in terms of the Constitution, the new Labour Relations Act, equal opportunities legislation (taking in affirmative action legislation and employment equity), and recruitment and selection procedures (including job advertisements).

Some sample case studies on discriminatory practices.

● Stockbroking firm ABC (Pty) Ltd is adapting to the high-tech computer environment of the new Johannesburg Stock Exchange It selects a team of young dealers for training on the computer system on the basis that the younger staff members have a greater aptitude for computers, explaining that "you can't teach old dogs new tricks"

One of the old dogs then challenges the selection process on the basis of age discrimination.

● Time Warp Inc specifies a minimum educational qualification of matric for all its employees. Is the company acting within its rights?

● Grunge & Co's recruitment officer rejects an application for employment from Mrs Van Zyl, a single mother with two babies at home, on the grounds that mothers with small children are unreliable

● Mrs Jones is overlooked for promotion as the new job would require her attendance at protracted meetings out of town and require her to stay overnight at least twice a month Since she's a single mother with toddlers, she can't do that Are her employers acting unfairly?

● Ganya (Pty) Ltd have asked a "new born Rastafarian" on their staff to have a haircut because his new dreadlocks do not accord with the image of the organisation He refuses, contending that it is part of his religion to have a Rasta hairstyle. The company decides to terminate his services.

● A hospital has a policy of "equal pay for equal work" However, a pay differential of 10 percent exists between male and female orderlies The hospital explains that the male orderlies are required for a few additional duties and carry out the heavy and dirty work Are they breaking the rules?

● Mr Smith applies for a job as sales assistant in the Perky Prints dress shop and is turned down on the grounds of decency and privacy, the firm pointing out the job would require him to work in fitting rooms with women clients Does he have a case?

● Mr Hoffman, a quadriplegic, applies for a position as a computer programmer with Quasi-State Utilities (Pty) Ltd While he is suitably qualified, he is turned down as the office facilities (ramps and toilets) are not appropriate for his disability Is he a victim of discrimination?

● A male nursery school teacher with 25 years' service has paid an admission of guilt fine for soliciting a male prostitute. The Board of Governors rule against having a "promiscuous" homosexual in contact with school children and dismiss him. Are they being discriminatory?

ALAN DUDGEON

LABOUR LAW AND YOU

Lunch isn't part of work hours

QUESTION: Is a lunch break counted as part of the working hours?

ANSWER Not in terms of the law If you work from eight to five, and take an hour for lunch, that is considered to be an eight-hour day Look at your own letter of appointment — many companies specify an eight-hour day, including lunch.

□□□

QUESTION: Can companies force employees to become a member of a pension fund?

ANSWER: It is often a requirement that when you join a company, you join their pension scheme As such it is a condition of employment and will be specified in the letter of appointment Once you accept the conditions by signing the letter and/or starting work, the money may be deducted from your salary

Our labour expert will answer general questions about the laws controlling your working life, but cannot help with individual labour problems. Write to Labour Law and You, Sunday Times Metro, P O Box 1742, Saxonwold 2123, or fax (011) 280-5150/1

Immoral means advocated to achieve supposedly moral objectives

(166)

Ewald Wessels

THE labour department's policy proposals for a new employment and occupational equity statute are ambitious. They envisage nothing less than a complete elimination of statistical inequalities of income and status among SA's population groups. The critical question is, will they work?

In their present form they probably will not, and the short time allowed for public comment (comments will be accepted only until the end of August) raises the concern that the necessary consultation and revision will not take place in sufficient depth

The proposals fail to take the dynamics of the economy into account and two features in particular have the potential to do more harm than good.

The more serious is the proposal to reverse, with respect to any accusation of unfair discrimination, the time-honoured legal assumption of innocence unless guilt is proved.

The second is the focus on racially defined groups to the detriment of individual human rights.

The policy proposals, prepared by a task force appointed by the labour minister and incorporated in a green paper published recently by the labour department, point at serious problems.

They articulate goals that no reasonable person would disagree with These start with the objective of eliminating all forms of discrimination in employment Discrimination is reasonably defined as the use of any "irrelevant personal characteristics instead of work performance or merit" in the making of decisions about employment

The intentions are expressed not to reinstall an oppressive classification system, but to increase the economy's efficiency and expand employment.

Having stated these intentions, the proposals then do an about-turn with the recommendation that all employers be forced to classify their employees by race, gender and disability status.

Employers would be required to supply the department with statistics broken down into these classifications. The potential for oppression is created by a disturbing combination of measures.

To start with it is proposed, contrary to the minister's instruction, that one form of discrimination is permitted: discrimination will not be considered unfair when an employer is explicitly aiming to overcome a disadvantage arising out of past discrimination What this will mean in practice is made clear by the statement that measures "to accelerate hiring, promotion and training will be directed at three disadvantaged groups: black people, women and people with disabilities".

Measures are proposed that will oblige employers to ensure that applicants for any appointment include representatives of these three groups; anyone who, on the basis of gender and skin colour does not fall in one of these three groups will clearly not have a right to equal opportunity in the selection processes that follow. Any discrimination against them, whether "fair" in the usual sense or not, could always be justified with the argument that the purpose of the discrimination was to overcome the effects of past discrimination

To enforce its proposals, the task force promotes a principle that has a history of disastrous consequences. immoral means are advocated to achieve a supposedly moral objective

It is proposed that any employer who is accused of unfair discrimination be held to be guilty until proved innocent.

The onus will be on the employer, if accused of unfair discrimination, to prove that "non-discriminatory procedures" had been followed and that "where required" employment equity planning requirements had been fulfilled

The proposal continues its deviation from accepted concepts of justice when it proposes extending the right to bring such accusations to anyone, not only the individuals directly affected

It is explicitly suggested that "a union or other group would have standing to argue that an employer is discriminating"

It is further proposed that class actions be permitted, in other words that anyone should be permitted to accuse any employer of unfair discrimination against some abstract group of people.

In its discussion of the possible discriminatory effects of various selection criteria, the green paper illustrates the difficulties employers will encounter in attempting to justify the appointment or promotion of anyone not belonging to one of the three favoured groups.

For example, psychometric tests are called into question and even the fairness of appointing family members to family-owned companies

It is clear that if the recommendations of the green paper make their way into law, recruitment and promotion will become uncertain and hazardous and it is naive to imagine this would not take a toll on the economy BD 22/8/96

The opportunity extended to anyone to target any employer with accusations will inevitably result in the victimisation of innocent employers Many employers will react by ceasing any form of hiring or promotion. A huge amount of entrepreneurial effort would be diverted from the development of the economy to ways of navigating the sea of uncertainty created by the legal environment envisaged by the green paper, or to escape entirely from the country

There is a significant risk that the end product would be a small elite from among the ranks of the "formerly disadvantaged" defending positions of new privilege in a shrunken economy while the vast majority remain disadvantaged

SA's long-term problem is a need for development that it shares with the rest of Africa. The Sahara desert isolated most of the continent until relatively recently, in historical terms, from the flow of trade and conquest that spread literacy and technology around the Mediterranean and along the overland routes across Asia

In its lengthy analysis of inequalities in this country, the green paper blames the entire development problem here on past discrimination, thereby laying the groundwork for the unusual and punitive recommendations that follow. It completely ignores the initial differences that existed, because of the impersonal facts of geography and history, among SA's disparate ethnic groups when they first came together

Because it casts the data it presents into groups defined by skin colour to start with, the green paper obscures the fact that large income and status differences exist among the different ethnic components of the "white" and "black" groups. Had the task group that wrote the proposals analysed these differences it would have found that they correlate closely with the industrial and commercial heritage each ethnic group brings to the SA economy It is necessary only to study the large inequalities of income and status that persist among the ethnic components of the "white" group to realise that the transition from a rural to an industrial tradition is more difficult than many apparently imagine

The skills and knowledge of SA's existing corps of managers and entrepreneurs represent the only significant resources available for the development of the country's rural and recently urbanised groups The way to harness those resources is not to alienate a large part of this corps of people by depriving them and their sons of civil rights, as the green paper proposes, but by promoting genuine fairness and equity

Labour department officials defend their proposal to reintroduce skin colour into law by asking how else they could monitor progress in eliminating discrimination

The answer lies in the argument that defeated the attempt, in the early part of this decade, to build protection of "group rights" into the new constitution "Defend the rights of the individual," it was said, "and the rights of groups will be protected automatically." This principle is as valid now as it was then If the rights of individuals are protected in accordance with the accepted principles of justice, and individuals are assisted to obtain this protection, then progress will be measured as progress in eliminating any other legal offence is measured by analysing the frequency of complaints and convictions.

□ Wessels is chairman of the boards of two companies, Cape Manufacturing Engineers and Debex Cape. He was a member of the Old Mutual/Nedcor professional economic panel. This article is written in his private capacity.

COMPANIES

Goodyear ready to roll if Consol splits

(166) ST (BT) 25/8/96

By ZILLA EFRAT

CONSOL appears to be considering splitting its packaging and tyre businesses into two separately listed companies in a move which could see US group Goodyear reinvest in SA

Consol group managing director Piet Neethling declined to comment, saying decisions could be made only when Consol reached agreement with Goodyear over the rationalisation of its tyre production

The talks, which could be finalised before year-end, involve reducing the number of sizes and types made by Consol's tyre plant in Uitenhage

To benefit from economies of scale and reduce costs, greater numbers of a more limited range of tyres will be produced, with the excess being exported to meet Goodyear's international requirements Sizes no longer produced locally will be imported from Goodyear plants in other countries to satisfy market need

Neethling confirms that the possibility of Goodyear buying back a stake in Consol's tyre operations arose during the talks Goodyear, which sold its tyre interests to Consol when it disinvested in the late 1980s, has done an audit to explore opportunities for rationalisation Delegations from its international operations have also visited South Africa

Analysts say splitting Consol's interests would be in line with parent Anglovaal's moves towards unbundling Anglovaal is re-organising its mining interests and is considering splitting Grinaker Holdings' construction and electronics interests

Like Grinaker, Consol has been viewed as an odd mix of company — a factor which analysts believe has helped dent its ratings After the announcement of its results this week, Consol's share price fell to a year low of R37 on Thursday It bounced back 100c on Friday, but was still down on the R40,25 price after last year's announcement and 1994's R56

Although it is listed in the packaging sector, about half of Consol's businesses are linked to its tyre operations and these have been plagued by "uncontrolled" imports and poor market conditions One analyst rates tyre businesses on a price earnings ratio of 8 and the packaging concerns on a ratio of 14

The difference in the performance of Consol's two businesses was highlighted in this week's results for the year to end-June Despite rising competition from imports and lower volumes following a slowdown in the second half, its packaging operations enjoyed a 16% rise in turnover and a 22% increase in operating profit The rubber business, which is also involved in tyre retreading and distribution, improved its sales by 8%, but operating profit was up only 7%

Taken together, the group's turnover was 11% up at R3,3-billion and operating profit grew 15% to R389,3-million But Consol suffered a 52% jump in its net financing costs, the result of an extensive capex programme — especially in the glass division — aimed at making the group globally competitive

Allowances for this capex resulted in the group's effective tax rate falling from 30,1% to 23,7% As a result, Consol's earnings before exceptional items were up 17% at R229,5-million or 357c (306c) a share for the year — well above analysts' expectations A dividend of 102c (88c) a share was declared

Neethling does not expect conditions to improve in the current year July and August have been sluggish and he expects further rises in the interest bill as the glass division continues its capex programme

He nevertheless hopes that Consol will turn in earnings growth of 10%-15% in the current year This could come via cost savings programmes and a general improvement in efficiencies The weakening of the rand will also offer some protection against low-priced imports

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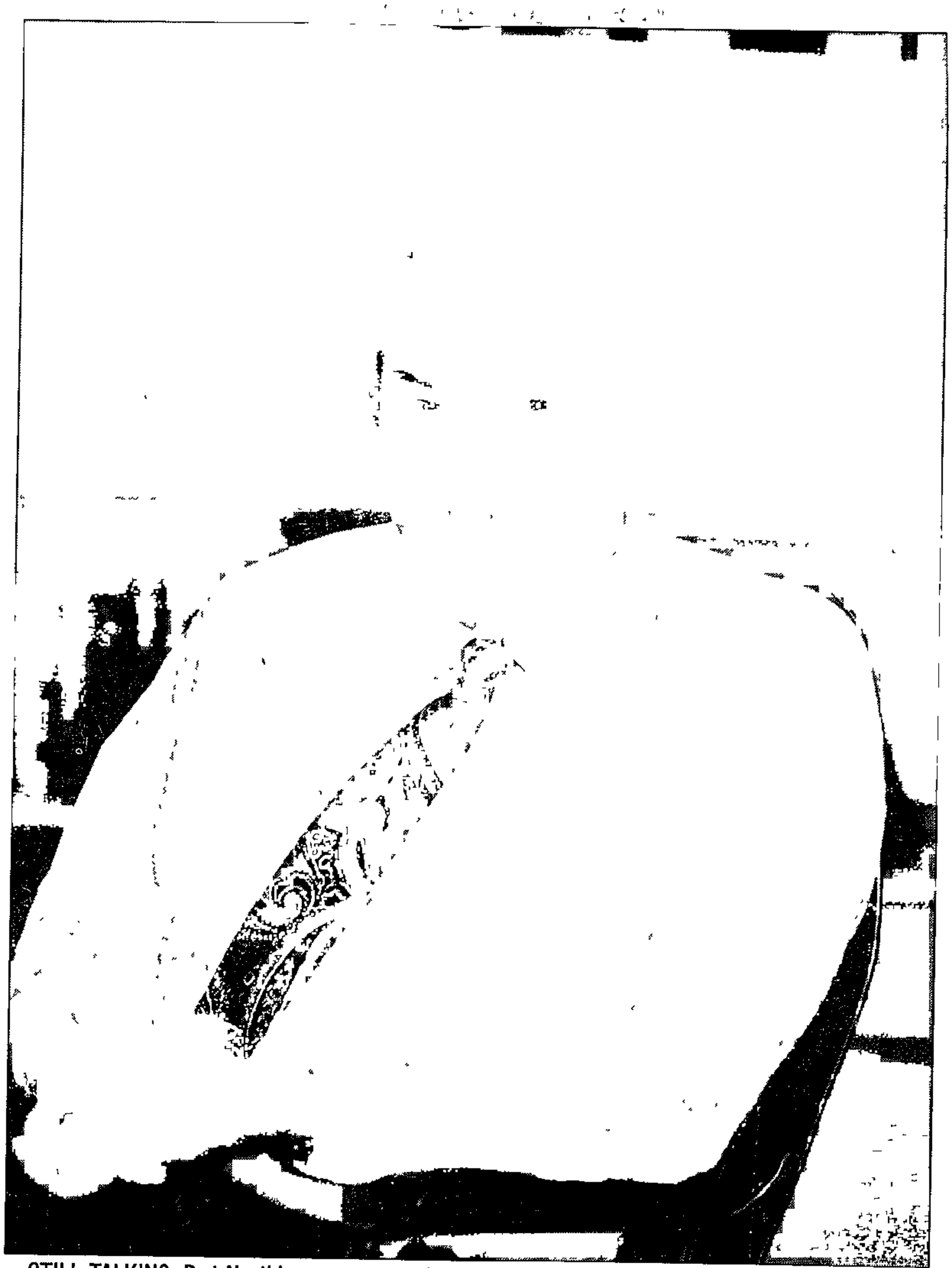


STILL TALKING: Piet Neethling, managing director of Consol, is hopeful about growth prospects

LEGAL DIGEST

Mboweni's 'bab

Business, union midwives

THE NEW LABOUR RELATIONS ACT, TO BE LAUNCHED IN THE NEXT TWO WEEKS, WILL CHANGE THE FACE OF NEGOTIATIONS BETWEEN EMPLOYERS AND TRADE UNIONS IN SOUTH AFRICA LABOUR REPORTER ESTELLE RANDALL SPOKE TO MINISTER OF LABOUR TITO MBOWENI ABOUT THE CHANGES

Some people feel the Ministry of Labour is doing too much, too quickly

"They say there's too much new information coming from us and that we should remember we have a five – not a two – year plan," jokes Mr Mboweni

He concedes that a lot is happening at the same time, but insists these "are all strategic"

"We're trying to be systematic about changing the labour environment"

What this will mean is outlined in the ministry's five-year plan, published in 1994.

The plan is based on the belief that extending democracy to the workplace is closely related to economic progress.

Sustainable economic progress should be measured by the ability to create jobs and to produce goods and services to meet local and international demands.

Employment creation is at the heart of creating a democratic and prosperous society, and labour should not be viewed as a cost to be minimised.

It should be regarded, rather, as an asset whose full potential should be realised

Democracy could not be attained if sectors of the population did not have access to employment at adequate wages and in acceptable working conditions

Labour relations is a vision underpinned by regulated flexibility and joint decision-making in workplaces, specific sectors and the wider economy

It needs a labour movement capable of disciplined bargaining

It also presupposes a labour movement that will become stronger on the shopfloor and as a partner in the sophisticated negotiations on which joint decision-making depends

The new Labour Relations Act (LRA), centrepiece of the five-year plan, entrenches organisational rights and provides the framework for joint decision-making between business and labour, instead of the familiar adversarial positioning

For the first time, workers who strike legally will be protected from dismissal New mechanisms also will speedily resolve labour disputes and so avert strikes.

The LRA will provide the overall framework, but a barrage of other new laws and policies wait in the wings

To help the labour movement boost its capacity for engaging with the new labour relations vision, the Department of Labour is making about R6 million available for broad union leadership training

An Employment Standards Act will replace the current Basic Conditions of Employment and Wage acts and extend protection of new basic working conditions to employees previously excluded

These include domestic and farm workers, temporary, contract and part-time workers and home workers

Due for release in October is a green paper on human resource development which addresses workplace training needs of employees.

This will make real the ministry's belief that economic competitiveness should rest on a highly-trained, motivated workforce capable of taking part in economic decision-making

A draft bill on employment equity is to be tabled in early 1997

The legislation will be a first for South Africa and will put in place a range of measures to promote affirmative action at the workplace

Major changes to the Unemployment Insurance Fund (UIF) are also in store for next year So far, the formerly separate UIF funds have been integrated

But, a task team to restructure the existing fund will make far-reaching recommendations in February.

Increasing unemployment-related benefits and the possibility of some of these being paid out as a lump sum instead of the current monthly instalments over a maximum of six months are some of the likely changes

"But, we don't just want to bring cold laws," says Mr Mboweni, "we want discussion first Through discussion, attitudes change and new ways of doing things start to emerge"

This has been his approach to the far-reaching recommendations of the Comprehensive Labour Market Commission which tabled its report in June

Its recommendation that labour, business and government negotiate a social accord on wages, investment, prices and jobs generated much excitement at the time

The accord, to be launched at a presidential jobs summit, would ensure that benefits of higher productivity would be shared between consumers, workers and business

It would not replace wage bargaining, nor set prices for particular products, but it could set upper and lower limits for wages, while business could make commitments about prices and the government could bring tax and social welfare spending policies to the table

Mr Mboweni has been cautious in his response to these recommendations

"If you're in public office you don't make decisions in the heat of the moment You wait till you've cooled down"

He has appointed a team from within his department to scrutinise the recommendations and prepare a report and action plan for him

Once he has approved this, he will make recommendations to the Cabinet in early February next year

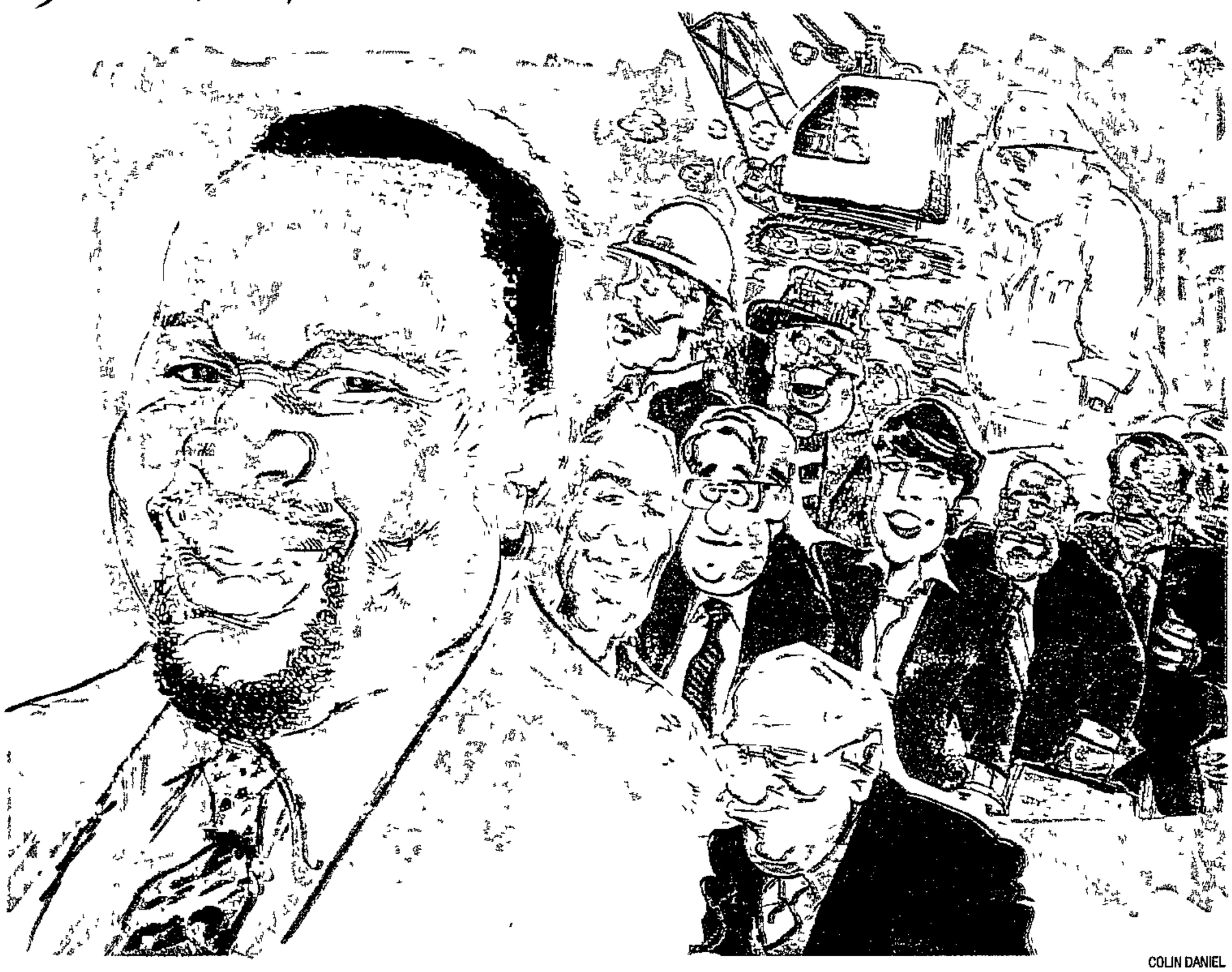
"If we were to have a jobs summit, we'd need a lot of preparation

"The summit must come with concrete results and, for this, the partners (business, labour and government) will have to provide details of what they can do, audits of where they are," he explains

set for delivery

tand by for the big event

.6) ARG 16/9/96



COLIN DANIEL

Leading the way: Minister of Labour Tito Mboweni seeks the co-operation of labour and management in implementing the new labour law

The term "accord" doesn't sit well with him

"It doesn't convey the sense of a dynamic concept I prefer social agreement and that agreement will say that if production rises to x, then workers' share in wages will be x and the remainder will go to accumulation "

Although the government has not yet formally taken on board the commission's recommendations, aspects of these are taking root

Except for the national clothing industry strike, there were no other major wage strikes this year. Mining, auto and engineering, traditionally strike-prone, have all settled.

In these sectors, there are also attempts to go beyond the traditional wage talks agendas

Issues of training and regrading and greater worker involvement in production are emerging more strongly

"The larger sectors could provide the lead," Mr Mboweni speculates, "but it's not cut and dried

"You can't be too dogmatic No one thinks it will be easy, but things are moving in that direction "

Much of the shifts can be attributed to the creation in 1995 of the National Economic Development and Labour Council (Nedlac) "which has made an impact in the way people make decisions"

Nedlac has allowed labour, government, business and community organisations to agree to a common approach to issues while retaining their independence

> ***'We don't just want to bring cold laws. Through discussion, attitudes change and new ways of doing things emerge.'***

"But, it needs to sort out what its priorities are, to divide up the issues it is confronted with in terms of information that simply needs to be shared, information on which consultation is necessary and information that needs joint decision "

He is firm that government does not need agreement on all issues with its business and labour social partners before it acts

An example is the government's macroeconomic policy unveiled in June

"There are some things in the macroeconomic policy which require agreement with social partners," says Mr Mboweni

These include the idea of a payroll levy for training and what government's approach should be to salary and wage moderation

"But the fiscal deficit is not one of these In your own household, if you're in debt, you can't have discussion where one person may decide to sell the car, some furniture and so on to get out of debt, while another says "No we won't sell anything, in fact let's buy some more things which we need " You need to make firm decisions to get out of debt So, we can't have a discussion about our fiscal deficit

"Some things which the government is going to do may be uncomfortable with one or other group, but the government has to govern It must grasp the nettle."

While much is changing, he recognises that business and labour still slip into their stereotypes

"Business takes chances They don't always say what they mean or mean what they say "

It's a problem, he feels, that labour is caricatured as a spoilt child "It shouldn't be so But, they seem to get lots of publicity when they oppose things and much less of a mention when they come out in support of something "

Labour should cultivate the correct image of itself and ensure this is seen and heard, he believes

"For a change, they could march in support of something they approve – such as the new LRA "

National bargaining council plan now ready

Reneé Grawitzky

(166)

BD 26/8/96

THE basis for an agreement to establish the first national bargaining council as envisaged by the proposed new Labour Relations Act, which still has not come into effect, was reached last week between chemical employers and six unions.

The parties said that they now had the basis of an agreement which would be drafted by September 6.

Chemical Workers Industrial Union general secretary Muzi Buthelezi said that once the agreement was signed, a constitution would be drafted, hopefully by the end of September. It had taken the union four years of struggle to get to this point, he said.

Employer spokesman Fanie Ernst said the process showed that if parties were committed to finding answers to complex problems, these could be resolved through a serious commitment to collective bargaining.

He said he hoped that "this is the first step towards a new relationship between labour and business that will promote economic growth".

The agreement would provide for the establishment of a national bargaining council covering more than 150 000 workers and seven sub-sector chambers. Although the council would be established in line with the Act, the difference lies with the agreement by the parties to establish these sub-sectors.

These sectors would apply to industrial chemicals (such as explosives , fertilisers, speciality chemicals and surface coatings); petroleum; rubber; plastic converters; pharmaceuticals; glass and fast-moving consumer goods.

It is believed that the parties were unable to agree on the sector pottery should fall into. This would be referred to Nedlac as a demarcation issue.

Labour courts 'delayed by govt incompetence'

(166) BD 18/9/96

CAPE TOWN — Labour Court Judge President, Judge John Myburgh, launched a scathing attack yesterday on the justice and public works departments, saying their inefficiency was helping to delay labour courts being set up

A dispute between the Judicial Service Commission and the National Economic, Development and Labour Council (Nedlac), both of which are to make recommendations to President Nelson Mandela on the appointment of judges, had remained unresolved for seven weeks, causing further delays, Myburgh said

He was appearing before the National Assembly's labour committee

He had sent many letters to Cabinet ministers, the directors-general of several departments and their deputies requesting that the problems be sorted out

The letters had been ignored, and subsequent meetings also failed to yield any conspicuous results.

A justice department official responsible for ordering books for the courts had not done so This meant the order had been put on hold for several months, Myburgh said

There had also been delays in securing computer equipment and software

Persetel, the company contracted by government to provide the necessary computer systems, had "proved itself incapable of delivering anything on time"

The court's rules board, which had drawn up rules under which the courts would operate, had referred them to the justice department on July 23, Myburgh said Nothing had been heard on this matter since then.

The judge also expressed concern that court registrars were not remunerated sufficiently and there was a danger that they would resign

The justice department had ignored his queries about this

Problems had also been experienced in securing premises

The court, which is based in Johannesburg, had found ideal premises in Braamfontein and had taken occupation on June 27, Myburgh said.

The public works department had been responsible for securing a lease and seeing that appropriate renovations were carried out, but had not done anything

"The courts won't be ready by the date of their implementation, but they will sit anyway," Myburgh said

The labour courts, which are being established in terms of the new Labour Relations Act following the dismantling of the erstwhile Industrial Court, are also planned for Durban, Port Elizabeth and Cape Town —Sapa

ARG 19/9/96 (166)

Act entrenches worker rights

Business, labour reach a milestone

History is in the making with the promulgation of the new Labour Relations Act, which marks the coming-of-age of organised labour and business.

REPORT

ESTELLE RANDALL

From next month the new act will entrench basic rights for which the labour movement has fought for decades – including the right to belong to a trade union without being victimised and for labour law to protect all workers The Act also entrenches the collective bargaining which has characterised major sectors of the economy since the 1980s

By enshrining these principles in law for all workers, the new Act aims to provide an enabling environment to promote economic development, social justice, labour peace and workplace democracy. For unions organising in traditionally difficult sectors such as agriculture, the advances are welcome

Said Edward Jackson, Western Cape secretary of the SA Agricultural, Plantation and Allied Workers' Union "Before 1993, farmworkers weren't covered by any labour legislation Now we're part of the labour movement at last It's exciting for us that for the first time farmworkers will be treated like other workers "

The act specifically protects the right to freedom of association, without fear of victimisation Every employee will have the right to join or take part in forming a trade union or trade union federation and every member of a trade union will have the right to take part in the lawful trade union activities Employers will have the same right to form and join employers' organisations

The Act prohibits anyone from discriminating against employees or work seekers on the basis of their union membership

For example, no-one may

- Require a workseeker or employee not to become a member of a trade union or to give up membership of a trade union
- Prejudice a workseeker or an employee because of past, present or anticipated membership of a trade union and participation in its lawful activities (including legal strikes)
- Promise to advantage, or disadvantage, a workseeker or an employee in exchange for that person not exercising a right in terms of the LRA

Unions' organisational rights are also enhanced The old LRA required trade unions to first prove they had majority support before they got any rights In practice this meant recruiting workers outside factory premises, under difficult conditions

Now a union will only have to show it has "sufficient" representation before it gets basic rights Companies will now also have to implement stop-order facilities for members of a registered trade union, even if the union doesn't have majority membership at the workplace

Even for established unions such as the SA Clothing and Textile Workers' Union (Sactwu), the largest union in the Western Cape and the third largest in the Congress of SA Trade Unions, these new rights are important

"It will make it easier for us to unionise virgin sectors or industries," said Andre Kriel, Sactwu's national education officer

Although Sactwu has unionised between 80 and 90 percent of clothing and textile workers, some employers have succeeded in keeping the union off the shop floor

An example is a group of companies in Diep River, owned by the Euchus family, where Sactwu has tried – and failed – to secure a presence for the past 10 years

In 1994, Sactwu took legal action when one of the companies was placed under provisional liquidation The industrial court ordered that the retrenched workers be reinstated because "the primary reason, if not the only reason, for having instituted the liquidation proceedings was the deliberate intention to frustrate efforts in attaining majority representation and recognition"

The new Act outlaws such conduct by employers

"The new LRA gives us greater protection and more rights," said Mr Kriel, "and we will be notifying the companies of our intention to exercise these "

Once trade unions achieve majority membership, members may elect representatives to represent and assist employees in grievance and disciplinary procedures, monitor employers' compliance with provisions of the LRA and collective agreements concluded with the employer, and to report alleged contraventions

Union representatives will be entitled to "reasonable" paid time off during working hours to perform the functions of the union or for union training

Besides its entrenchment of organisational rights, the LRA aims to provide a framework to promote joint decision-making in the workplace, collective bargaining in sectors of the economy and effective resolution of industrial disputes It is also designed, for the first time, to protect workers on a legal strike from dismissal

An important provision in levelling the bargaining playing field is the employers' obligation to disclose all "relevant" information that will enable unions to perform effectively and engage in effective collective bargaining

At the shopfloor level, new workplace forums allow for joint decision-making about the introduction of new technology and work methods, changes in the work organisation, plant closures, mergers and transfers of ownership, job grading, criteria for increases or discretionary bonuses, education and training, product development plans and export promotion

Initially, workplace forums were not welcomed by trade unions, who feared they would undermine the existing network of shopsteward councils at organised factories But the LRA now states that workplace forums can only be established at the initiative of representative trade unions and there are significant barriers to non-union members putting up candidates to serve on workplace forums

Mr Kriel said the act would also make it easier for established unions to enforce industry-wide working conditions

Beyond the workplace, bargaining and statutory councils will make it attractive for employers' organisations and unions to bargain at broad national sectoral level

Such councils will conclude collective agreements and enforce these, prevent and resolve labour disputes, establish and administer a fund for resolving labour disputes, promote and establish training and education schemes, establish and administer retirement fund, medical aid, unemployment and other schemes, and develop proposals on policy and laws that affect their sector

"But ultimately the strength of the unions is still on the shop floor and we should use these enhanced rights as a stepping stone to strengthen our presence there," Mr Kriel warned

New labour relations law in November

ARG 19/9/96

(166)

ESTELLE RANDALL
LABOUR REPORTER

The long awaited new Labour Relations Act (LRA) will be implemented on November 11, Minister of Labour Tito Mboweni announced today.

Mr Mboweni described the act as the most "dramatic overhaul of labour relations since 1924"

In 1924 the Industrial Conciliation Act extended trade union rights but only to white workers.

In 1979 the Wiehahn Commission extended these rights to black workers but large numbers of workers such as farm and domestic workers were excluded

"The new act ushers in a new era It introduces one law for all employees for the first time. It gives unions substantial organisational rights

"We want to see strong unions and these provide a counter balance to employers' strength " said Mr Mboweni. The new act was the product of consensus between government, labour and business, he said.

He pleaded guilty to claims that the act favoured labour but said there was no need to apologise for this

"We felt the need to give all workers rights which many others have already won We wanted to level the playing fields Strong unions are signs of a healthy democracy and a precondition for industrial stability

"A well-trained, well-treated work force is an asset not an albatross "

He said the act was "blowing the whistle" on unprocedural action. While it made it relatively easy to embark on legal strikes, it offered little protection for unprocedural action

The police and essential services, still to be defined, are excluded from strike action.

The act stipulates that dispute and grievances among police and essential services workers must be resolved through arbitration rather than industrial action.

See page 7

EDUCATING THE WORKFORCE *With the imminent promulgation of the new Labour Relations Act, Cosatu has begun training its membership about the act's interpretation in the workplace*

Cosatu to train 1,5m workers on new act

(166) CT(BR) 19/9/96

By Guy Oliver

LABOUR EDITOR

Johannesburg — Cosatu, South Africa's largest labour federation, began a trickle-down campaign yesterday to educate its 1,5 million members of the ins and outs of the soon-to-be promulgated Labour Relations Act

Sam Shilowa, Cosatu's general secretary, told Business Report that the timing was tight because an announcenment on the promulgation was expected to be made today or tomorrow by Tito Mboweni, the labour minister

About 1 500 shop stewards attended the workshop at the Chris Hani Memorial Hall, near Nasrec It was organised in less than four weeks, a feat that was not thought possible, Shilowa said afterwards

Though Cosatu has already held labour training workshops for union organisers this year, the federation intends to train about 6 000 of its about 30 000 shop stewards who would then be responsible for training other shop stewards and workers on the shop floor

The stewards' training has been assisted by high-quality educational material partly funded by the National Economic Development and Labour Council and includes a comprehensive, easy-to-read manual and six videos which covers topics such as organisational rights and the institutions and procedures of the act The training material was produced by the education department, in conjunction with the Centre for Democratic Communications

The federation has also teamed up with the African Growth Network Companies which subscribe to the network will be able to tune in next month for a perspective on the act and provide management and workers a phone-in forum to speak to directly to Shilowa

But the education campaign around the act, which Shilowa described as a milestone for the emancipation of South Africa's economic citizens, has also provided a platform for Cosatu to reorganise

"I am very excited about it because I see it as part of helping Cosatu rebuild its own structures," he said

Shilowa said the starting point of the new act was not strikes The act provided for shop floor conflict resolution and this would create a smoother workplace

If employers feel scared about a well-educated workforce knowing their rights, then they are "shooting themselves in the foot", Shilowa said

The role of the shop steward will be that of implementing the act on the shop floor

He said enlightened employers would view this as a better approach to train people, instead of having to rely on workers to learn through rudimentary methods

Hundreds of Cosatu shop stewards gathered at Shaft 17, near Nasrec in Johannesburg, yesterday for the launch of labour's eduction programme on the new Labour Relations Act Workers were addressed by Nedlac executive director Jayendra Naidoo, top left, and Cosatu general secretary Sam Shilowa, top right, while delegates Sue Westcott and Masira Inamapena from Numsa look on.

Pictures ROBERT BOTHA

Mboweni to announce implementation date for Act

(166) BD 19/9/96

Reneé Grawitzky

AMID SPECULATION that the new Labour Relations Act will come into effect in the latter part of October, Labour Minister Tito Mboweni will officially announce the date of implementation of the Act today.

Labour Ministry spokesman Zintle Filtane said yesterday that Mboweni would also provide an update on the institutions fundamental to the implementation of the Act

Meanwhile, labour yesterday launched its training programme on the new Act at a workshop attended by 600 shop stewards

National Economic Development and Labour Council executive director Jayendra Naidoo stressed the importance of education of shop stewards He said shop stewards were the source of union strength and it was crucial that they were educated on the provisions of the new Act.

He said labour should aim for a campaign where each workshop had a copy of the education programme, with six videos and a comprehensive booklet on the Act

Also addressing the workshop, Cosatu general secretary Sam Shilowa said that the Act should be used to enhance relations between workers and employers and workers should follow procedures

No end in sight for Lesotho crisis

(167) Sowetan 20/9/96

Project hit a snag last week when 2 500 workers downed tools

By Mzimkulu Malunga

WORK ON THE multibillion rand Lesotho Highlands Water Project could be delayed by up to one month

Groups close to the project say despite utterances by LHPC management that work will resume soon on the project, there appears to be no end in sight for the crisis

The project was hit by a crisis last week when 2 500 Basotho workers on the water transfer tunnel and the hydropower projects in northeastern Lesotho downed tools

Matters came to a head over the weekend when police killed four workers as they evicted the strikers from the premises where the workers were staying. The complex is owned by Lesotho Highlands Project Contractors (LHPC) – a group of five construction companies, one of them South Africa's LTA, contracted to implement the water project.

There is even talk of a national protest action organised by trade unions and non-governmental organisations in protest against Lesotho police's "excessive use of force" Unions and NGOs in Lesotho have formed a crisis committee to monitor the project situation.

Also, the number of people at the St Paul Catholic mission, where the workers had sought refuge from police harassment since the weekend, is said to have increased from 600 to 1000

Workers are still demanding guarantees of safety from police harassment before any strides to solve the crisis and have work resume.

It is not clear what steps the LHPC is going to take after the workers failed to meet its altimatum to collect their wages and service termination pays The company had set Wednesday as deadline for the workers to collect their wages

By yesterday afternoon, LHPC's management was still locked in a meeting in Maseru

The labour crisis has hit the Lesotho water project at the time when the project had reached a crucial stage

Stoppage of work on the tunnel that will ensure that water finally reaches South Africa, has not only raised the stakes for the South African government which is impatient for the completion of the project but also has the potential to nullify the rest of the project.

Sehoai Santho says lack of proper negotiation channels sparked the industrial action in the Highlands Water Project.

The tunnel is supposed to transfer water from the Katse Dam into the Namahadi River in the Free State which feeds into the Vaal River system.

Recognition agreements

Sehoai Santho, a lecturer at the National University of Lesotho and a representative of the NGO-trade union crisis committee says the crisis could not have happened had the LHPC management not undermined negotiating structures which had initially been set up by the Construction and Allied Workers Union of Lesotho (Cawule)

Apparently, the LHPC's management took advantage of the weakening of Cawule's structures when its general secretary Justice Tsukudu went to school in 1994-95 and reneged on recognition agreements and the unions disappeared

"But that strategy has now backfired because now you have 2 500 striking workers who are not organised," he argues

In areas of the highlands project where workers are organised, the problems that are stalling the implementation of this R4 billion project have not resulted in disruptions of work and shootings

Another problem is a complaint of racism where Basotho workers allege that expatriates are treated better than them

Santho also blames Lesotho's ministry of labour of "failing to exercise its responsibility' and anticipate the potential crisis

At no point in the five-month-old dispute between the workers and the LHPC has the ministry tried to intervene or mediate to address the problem

In the meantime work has stopped at the crucial stage and the costs for South Africa in attempts to bring water to its industrial heartland are escalating by the day

Unions hail implementing of Labour Relations Act

(166)

By Goba Ndhlovu

Star 20/9/96

Two major labour unions have welcomed the announcement that the implementation date of the new Labour Relations Act (LRA) has been moved forward

This follows Labour Minister Tito Mboweni's saying yesterday that the LRA would come into effect on November 11 – and no longer early next year as was initially envisaged.

He added that pressure from labour, business and other stakeholders had contributed to the date being brought forward

National Council of Trade Unions deputy general-secretary Mahlomola Skhosana said his federation welcomed the announcement, although they would have preferred an even earlier date

"We shall do our best to amend our constitution so that it is in keeping with the new laws. We may request extensions from the registrar so that our affiliates can have time to change their constitutions as well"

The Federation of South African Labour Unions congratulated Mboweni for the moving forward of the date.

The Congress of South African Trade Unions was not available for comment, spokesman Nowetu Mpati saying they were still discussing the matter

Mboweni, speaking in Johannesburg, said the new LRA meant the removal of discriminatory practices at the workplace and made the previously disadvantaged feel at home Racism and sexism would be uprooted

He said the new LRA would usher in a new era

"Farmworkers and domestic workers have got bargaining rights for the first time in South Africa Teachers, public servants and others would fall into the same framework as other workers," Mboweni added

Date announced for Labour Relations Act

BD 20/9/96 (166)

Reneé Grawitzky

LABOUR Minister Tito Mboweni yesterday announced the new Labour Relations Act will come into effect on November 11 — more than a year after Parliament approved the passing of the Bill

Mboweni's announcement follows months of speculation surrounding possible reasons for the delay in implementation and more recent speculation that it would only come into effect next year

The launch yesterday follows closely on the heels of an appeal made by Labour Court judge president John Myburgh to the public works and justice departments to ensure that they did not delay the establishment of the Labour Courts

Halton Cheadle, head of the drafting team appointed by Mboweni two years ago to draft a negotiating document which formed the basis of the new Act, said that the Act "was a long time in coming"

The Act, hailed as one of the most crucial pieces of legislation drafted under the new government, is intended to "advance economic development, social justice, labour peace and the democratisation of the workplace"

These objectives, the drafters hope will be achieved by entrenching a range of organisational rights which unions have fought for over the last decade, providing the foundation for centralised bargaining and protecting striking workers from dismissal for participating in a "protected strike" - not necessarily from retrenchment for "operational requirements"

At the heart of the Act is the establishment of the Commission for Conciliation, Mediation and Arbitration (CCMA) to facilitate quick and efficient resolution of disputes, the establishment of democratic workplace forums, and developing co-operative relations between labour and business

Both Cheadle and Mboweni stressed the new legislation was a product of consensus between labour, government and business — one not easily achieved

Mboweni said he was not apologetic about the fact that the Act favoured organised labour, "we felt there was a manifested need to level the playing field", to give all workers the rights which many have already won

However, Mboweni said it was not a "one-sided law"

He expressed the hope that the new Act would not lead to more strikes

Charles Nupen, heading up the establishment of the CCMA, said the institution was in place and would be ready to open its doors by implementation date.

Myburgh, said, however, that the establishment of the Labour Court depended on a number of factors including the appointment of the judges and the building of a number of courts.

He said no indication had been received as to when President Nelson Mandela would make a decision and announce the appointment of judges to the Labour Court and Labour Appeal Court

Labour Minister Tito Mboweni announces November 11 as the date on which the Labour Relations Act will come into effect The launch, in Johannesburg yesterday, was also addressed by, bottom left to right, Commission for Conciliation, Mediation and Arbitration head Charles Nupen, drafting team head Halton Cheadle, labour deputy director-general Les Kettledas and Labour Court Judge-President John Myburgh Pictures ROBERT BOTHA

Students protest in Lesotho

Star 25/9/96

Maseru – More than 1 000 students of the National University of Lesotho toyi-toyied along Maseru's streets yesterday to protest against the killing of five workers of the Lesotho Highlands Water Project in Butha-Buthe 10 days ago.

A delegation led by student union president Pitso Pitso handed a petition against the killings to the offices of the prime minister, the Speaker of the National Assembly and the ministers of home affairs and natural resources.

The petition urged the government to ensure that those responsible for the deaths be brought before the courts.

The students also demanded in the petition that all the families of those killed and wounded should be adequately compensated. – Sapa.

THE BIG STORY

Is the Cosatu-ANC honeymo

New Labour Act will force them to start workin

(166)

LABOUR WILL PLAY A MORE ASSERTIVE ROLE IN DEVELOPING THE ECONOMY WHEN THE NEW LABOUR RELATIONS ACT TAKES EFFECT ON NOVEMBER 11 ESTELLE RANDALL REPORTS THAT THIS WILL FORCE COSATU TO DEVELOP AND REFINE ITS APPROACH TO ECONOMIC GROWTH AND RELATIONS WITH THE ANC

The challenge presented by the new labour law comes at a time when there is renewed questioning within major unions about Cosatu's role in its alliance with the African National Congress and the Communist Party

The alliance will be one of the main issues on the agenda this week at the national congress of Cosatu's third largest affiliate, the National Union of Metalworkers of South Africa (Numsa)

At its last congress, in 1993, Numsa called for an end to the alliance in the event of the ANC becoming part of a new government Now, it is understood, some regions of Numsa are pressing for such a break

For Numsa general secretary Enoch Godongwana, being in favour of the alliance, or breaking with it, are both crude positions

"I'm concerned that in South Africa, where we still need to contest rightwing parties masquerading as centre parties, we have not yet consolidated all the progressive forces, or consolidated our position," he says

Those in his union and in other affiliates of Cosatu who advocated a front of socialist organisations need to explain how this would be effective in South Africa, Mr Godongwana believes

He points out that the ANC is a broadly based social democratic party, not a socialist party, and that it enjoys majority support, even among Numsa members

Yet, despite this, rural voters in KwaZulu Natal and most people in the Western Cape had not voted for the ANC

Those in Cosatu who don't want the current alliance retained needed to explain how they would win over people to a purely socialist position

'Won t we become a fringe grouping if we go the pure left route?' he asks

'If there is a need to change the current alliance, why not broaden it? Why break it?

"I believe there are forces out there who are not hostile to the alliance

"I'm not sure we shouldn't be drawing in the PAC and Azapo, for example

"There are also other organisations of civil society who organise around specific issues, such as land

Mr Godongwana admits that attempts to build such unity have failed before, but says the elections have made a difference

"Before, we had a situation where everybody was claiming to represent black people

"Now it's clear there is majority support for the ANC

"This fact could facilitate a proper discussion about broader unity, provided the ANC are not antagonistic towards smaller parties"

Those who want the present alliance retained should be assessing what holds it together, he believes

But what about Cosatu's public clashes over privatisation and the government's macro-economic policy, which some observers see as indications that the alliance is under strain?

For Mr Godongwana and Sam Shilowa, Cosatu's general secretary, these differences are not fundamental

Mr Shilowa said "We don't have to agree on everything That's why we're in an alliance and not one organisation

"The government has the right to develop its own policy proposals, as we had the right to develop our social equity document for growth

"But it's important that we should have the opportunity to discuss these proposals from government before strategies get implemented.

"As Cosatu, we can't just go to them and say we don't like this or we don't like that We have to have concrete alternate proposals"

Mr Shilowa said Cosatu was currently holding such talks with government on the macro-economic policy, based on concrete alternatives the federation was developing

"We have to ask ourselves Is our role to oppose everything which the government raises? Or is our role to say we are in alliance and to engage the ANC on our social and political vision We must make an effort to defend our democracy"

'We need a change in approach where we all step back and say: What are the key issues we're trying to address?'

He said Cosatu's difference with the ANC over reducing the deficit was not about the percentage by which the deficit should be reduced Rather, it revolved on ways to manage debt without cutting back on crucial social services which had to be delivered

Mr Godongwana pointed out that a failure of the ANC-led government would reflect badly on the federation.

"We mobilised our resources for the 1994 general election and the local government elections in 1995 and 1996 A failure of the ANC government will be our failure as well.

"We've chosen to say we are not bystanders and that we must be prepared to get our hands dirty We need to constantly be elaborating a programme which takes us forward

Mr Shilowa said "We also have differences within Cosatu, but the purpose of raising those differences is not to destroy the federation It's to strengthen it

"Our ability to fight for our view and the fact that we're in alliance has benefited us," he added

Several worker-friendly laws may not have been passed if Cosatu had not been part of the alliance

Mr Labour Cosatu general secretary Sam Shilowa defines his organisation's role for the

Examples included the removal of the lock out clause from the constitution, health and safety legislation for the mines, government's acceptance of International Labour Organisation conventions and the worker friendly Labour Relations Act.

But these laws should not make labour complacent.

Mr Shilowa said "If we think the LRA will solve all our problems, we're mistaken Like the new constitutio spaces The LRA opens spa and build the labour movem

Mr Godongwana pointe LRA was a negotiated docur uct of consensus between la ment and business.

"As such it reflected the three parties, not only labou says

A key interest from gover

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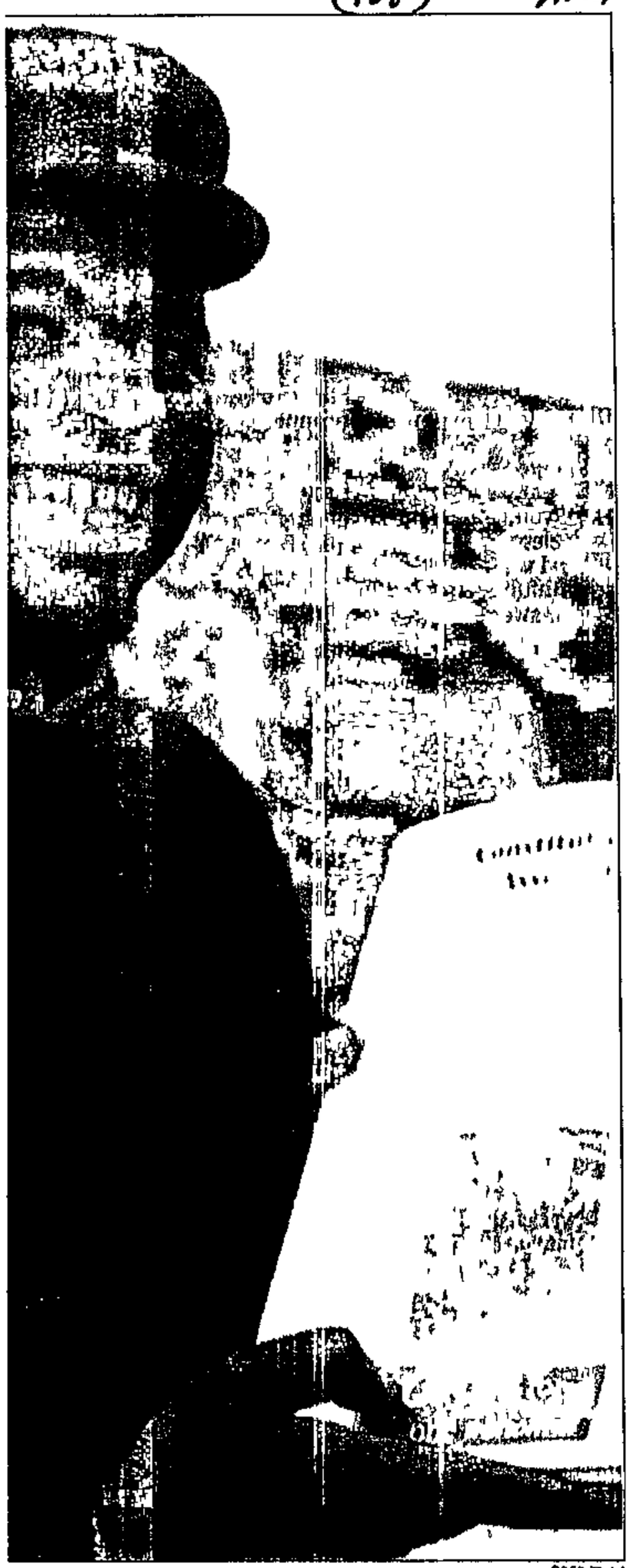
start working on the marriage

(166) ARG 25/9/96



retary Sam Shilowa defines his organisation's role for the future

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Mr Godongwana pointed out that the LRA was a negotiated document, the product of consensus between labour, government and business

"As such it reflected the interests of all three parties, not only labour's views," he says

A key interest from government, which underpins the LRA and other laws still to be promulgated, is to foster joint decision making between labour, business and government and so reduce instances of open confrontation between the parties

Mr Shilowa and Mr Godongwana both believe joint decision-making, leading to national agreement on key economic issues is essential

Already, labour, business and government have tacitly acknowledged this necessity by taking part in the National Economic Development and Labour Council (Nedlac)

"The fact that we're in Nedlac is because business, government and labour agree there are certain things we have to do which needs national agreement," said Mr Shilowa

Achieving this ideal will be a major test in the South African context where adversarial labour relations have been complicated by race, Mr Godongwana believes

"As labour, we want broad policy agreement in Nedlac, which takes account of the things which are worrying our members now," said Mr Shilowa

"The debate is not about whether there should be an accord or agreement It's what is the content, what are the terms and what form would such an agreement take," he added

Rather than aim for a "grand national agreement" on what South Africa's economic direction should be, Mr Shilowa felt greater progress could be made if specific issues were dealt with.

"We need a change in approach where we all step back from our positions and say What are the key issues we're trying to address?

"Job creation is one of these, but I think we have to start addressing such issues from the point which says We had apartheid which was an economic and political system

"Now, we've disentangled apartheid and dealt with the political part of the system, but not with the economic aspect.

"We have to ask how we transform the South African economy so that it complements our new political democracy and is able to create jobs

"If we did that, we could then look at the hard choices facing business, labour and the government. Each of us could look at what we should do and what sacrifices we should make "

But Mr Shilowa despairs that employers aren't in the same frame of mind While accusing labour of having a "culture of entitlement", business has been reluctant to put on the table anything involving cost to themselves

"Business says the issue for discussion is wages, but they won't discuss the wage gap

"They say they want a trained and skilled workforce, but they're not keen to put money into training and skilling In some countries, employers pay a seven percent levy towards training

"Here they said 'no' when we proposed a four percent levy on their wage bill. Are they serious? What are we going to do about these issues? We can't say they're not on the table "

could remove from the car, from the rearview mirrors to the hubcaps and tail-light lenses He had given up replacing them because they were simply stolen again every time

Some time ago, I made a wooden letterbox as a Christmas present for an uncle and aunt. It had their house name and number carved on it and was big enough to contain the magazines and newspapers they received Even if I say so myself, it was a handsome artifact It was stolen from their driveway in less than a week They now use a plain wooden box

A colleague planted geraniums in a large tub outside her front door They looked very colourful and added a bright touch to the street

Of course, they were stolen — tub, soil, flowers and all

All around us criminals are making our homes, our city and our country a little less attractive, a little uglier every day

It's not just our safety that's affected

Bagged!

It's always good to hear about crimes that failed

I read recently about a robber who went into an American shop, drew his gun and announced that it was a hold up He then pulled a brown paper bag from his pocket and slipped it over his face as a mask

Unfortunately he had forgotten to cut eyeholes The shop manager took his gun away from him as he groped about blindly

From Russia with love

We get some quite unusual mail here at the Cape Argus from time to time

A rather poignant postcard arrived from Moscow recently, addressed to "Any Newspaper, Cape Town, South Africa " It ended up on my desk

"Dear Sirs," it says, "Could you please help me poor Russian girl to insert my message in your edition

"Darling, for my 21 years I'm so tired here Please take me away (I am light and fine and won't be a burden) Otherwise I'll go to a cloister or show business Forever Yours "

So, if any Tavern reader wants to get in touch with this light and fine young Russian lass, who has a very neat handwriting, I'll be happy to supply her name and address

How often does one get the chance to rescue a Russian girl from a cloister? Or – a fate worse than death – show business?

Last Laugh

Farmer Koos was on holiday in the big city and was standing at the bar of his hotel one evening, when an attractive young woman approached him and suggested they have a drink

"Well, I'm no Rockefeller," said Koos, "but I'll buy the drinks " After a couple of drinks, she suggested a dance Koos smiled and said, "Well, I'm no John Travolta, but I'll give it a whirl "

Later, she suggested that they go up to her room "Well, I'm no Don Juan," said Koos, "but I'll follow you up there " Afterwards, as Koos was getting dressed, the woman said "What about some money?"

"Well," said Koos, "I'm no gigolo, but I'll take it!"

The Wanderer

Nedlac gives R3-m to labour movement

(166) Sowetan 26/9/96

By Abdul Milazi

THE National Economic Development and Labour Council (Nedlac) has spent R3 million towards education programmes on the new Labour Relations Act (LRA)

The LRA is expected to come into operation on November 11

The money was divided among the country's three major trade union federations and small businesses according to their size

The congress of South African Trade Unions received R1,3 million, while the Federation of South African Labour Unions and the National Council of Trade Unions received R300 000 each

Smooth introduction

According to Nedlac executive director Jayendra Naidoo the investment was made to facilitate the smooth introduction of the LRA

However, he cautioned that employer and worker cooperation were the key ingredients crucial to the success of the Act

"The executive council agreed to promote the concept of each workplace having its own pack of educational and information material for both managers and workers to ensure the smooth operation of the LRA and a more stable industrial relations environment," said Naidoo

Fedsal general secretary Dannhauser van der Merwe said his federation began its education programme in April and had already covered all nine provinces

Doing well

"We have started with training-the-trainer programmes and our shop stewards are doing well The plan is to have all the workers understand the LRA before it comes into effect in November," Van der Merwe said

Van der Merwe complained that there were employers who did not release shop stewards for training

"Workers in some companies have had to take unpaid leave to attend the training"

Nactu general secretary Cunningham Ngcukana said their training programmes were also on schedule

New Labour Act spells end for 'free riders'

(166) Sowetan 26/9/96

By Abdul Milazi

THE new Labour Relations Act is bound to change the face of industrial relations for the better, but workers will soon discover the ironies of democracy in the agency shop agreement clause

The clause is aimed at protecting trade unions against "free-riders", and it entails that workers who choose not to belong to unions will now have to pay contributions equivalent to union members' subscriptions

According to labour and business analyst Joe du Preez, the purpose of an agency shop agreement is to deal with the problem of non-unionised employees benefitting from the fruits of unions' negotiations

"The union and its members spend a lot of time and money on collective wage negotiations, including on occasion the pressures of industrial action to achieve their demands.

"When they are successful, all employees in the bargaining unit whether or not they are union members, will benefit from the negotiated increase," says Du Preez

Another analyst Gavin Weiner says trade unions have bargained for years, proposing that non-union members should contribute towards union activities through the agency shop fee

The concept of an agency fee is an acceptable solution to the argument from non-union members that they have a right to refuse to join unions and freedom of disassociation

"By paying agency shop fee, they will retain their non-union members status but will no longer get a free ride on the union's back," adds Weiner

The LRA stipulates that the money should be paid into a separate account from that of the union However, the account will be administered by the union to use for its activities

In instances where a worker objects to the provisions of the agency shop clause, the employer may be instructed to deposit the money into an account administered by the Department of Labour

Weiner says employers will not be required to get authority before deducting from non-union members. "They have no choice, they have either to pay up or resign from the company"

Labour Relations Act delayed until next year, says Mboweni

(166)

By Goba Ndhlovu

Star 2/9/96

The long-awaited and controversial Labour Relations Act (66 of 1995) will not be implemented until next year, according to Labour Minister Tito Mboweni.

Mboweni told businessmen who attended a workshop at the Johannesburg Chamber of Commerce and Industry at the weekend that the delay in implementing the Labour Relations Bill centred on the nomination of people to participate in the Commission for Conciliation, Mediation and Arbitration (CCMA)

The bill has already been passed by Parliament, but has not yet been signed by the president.

Mboweni said his ministry had already appointed two judges to preside over the proposed labour courts However, while the business sector had already submitted their nominees for the CCMA, the labour sector had not.

He said the labour sector had handed in names but his department had found them unsuitable

"I have advised them to give us new names as those they submitted earlier would not act impartially," he said

He said although there was no fixed date for the implementation of the bill, he would give 10 days' notice before it was to be implemented.

The workshop was held to explain some of the more contentious provisions of the bill to businessmen

Homeland labour laws to be replaced

CT (BR) 4/9/96

The National Economic Development and Labour Council (Nedlac) [illegible] yesterday it had concluded the integration of the former home- [illegible] legislation. Jayendra Naidoo, Nedlac's chairman, said the Integration [illegible] Labour Laws Act followed the integration of the former homelands and other self-governing territories into South [illegible] and the consequent need for one national labour law. He said the legislation would be submitted to Tito Mboweni, the labour minister, for repeal or amendment. —Sapa, Johannesburg

(166)

(166)

Labour Act to be enforced

By Stuart Rutherford

CT(BR) 4/9/96

Durban — Tito Mboweni, the labour minister, said yesterday a date had finally been set for the implementation of the new Labour Relations Act

Mboweni told delegates at the National African Federated Chamber of Commerce (Nafcoc) convention that he had signed a proclamation on Monday that would be handed to the president in preparation for its implementation

"There is a date, and this act should be implemented before the end of the year," he said "You should expect an announcement soon (about) the date of its implementation"

The Labour Relations Act was passed last year, but its implementation has been delayed because of problems in establishing bodies to police the act.

Mboweni said he was confident that by the time the act was implemented the government would have sufficient resources

About 400 commissioners and staff members had already been appointed by the department

He said the Labour Relations Act was crucial for the country as it would ease conflict and extend rights to employers and trade unions to allow them to bargain collectively

IMPLEMENTING *Tito Mboweni, the labour minister*

OUR

Small players not adequately represented by employer bodies

Labour act 'could strangle small businesses'

(166) CT(BR) 5/9/96

By Stuart Rutherford

Durban — The new Labour Relations Act, which has been lurking at the back of the minds of entrepreneurs for the past year, is finally about to be implemented

This week Tito Mboweni, the minister of labour, said the new act would be implemented later this year

Small businessmen will be affected by the new provisions of the act, because they generally lack access to expertise in labour relations and are not adequately represented by employer bodies

Vernon O'Connell, the secretary of the KwaZulu Natal Institute of Directors and a partner at Van Onselen and O'Connell, said there was a threat of closures among small businesses when the act was promulgated

"There are already dangerously high levels of pessimism among the entrepreneurial class Unless they are able to approach this thing positively, the danger is that people will throw up there arms and say 'We can't operate in this environment'"

He said the move to centralised bargaining also contained problems for small business "Collective bargaining inevitably does not contribute towards the creation of employment at the small business level, because small business simply cannot afford the higher wages agreed to centrally"

O'Connell believed small businessmen needed to understand the new act's provisions and become involved in employers' organisations to make sure their interests are safeguarded

He said an important change in the new legislation regarded information disclosure

In terms of section 16 of the act, representative trade unions will have the power to compel employers to divulge information about the business which will help them engage effectively in consultation or collective bargaining

"This may, for example, include information regarding business plans, competitive strategies or even the packages of senior management" The only exceptions are legally privileged or prohibited, confidential and private personal information

The final decision on what information must be disclosed will be made by a commissioner appointed in terms of the act

In terms of the new act, representative unions will be entitled to enter an employer's premises to recruit workers or communicate with members, provided they do not unduly disrupt work or threaten life and property

In addition, the new act legitimises the right to strike in support of other strikers who are striking legally and legitimises picketing outside or inside the premises of the employer

Finally, one of the more radical innovations of the new act is to extend the definition of employee to cover job applicants

"The new act prohibits unfair discrimination, whether direct or indirect, on any 'arbitrary' ground, including but not limited to, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility," O'Connell said

Parliament poised to usher in labour law revolution

(166)

ESTELLE RANDALL
LABOUR REPORTER

ARG 6/9/96

The long-awaited and much-delayed new Labour Relations Act, which will change the face of labour relations in South Africa, will definitely come into operation this year, possibly by next month, director-general of labour Sipho Pityane has promised.

"We have an agreement with the Minister (of Labour, Tito Mboweni) that the act is a priority and will be up and running this year," he said yesterday But a proposed bill enforcing affirmative action was due to be tabled in Parliament only next year.

The new act will provide the framework for co-determination in bargaining between business and labour, instead of the familiar adversarial positioning.

For the first time, workers who strike legally will be protected from dismissal. New mechanisms will also resolve labour disputes speedily and so avert strikes.

The act should have been implemented in May, but technical amendments to the draft which Parliament approved last year delayed its promulgation

"The amendments were a major stumbling-block, but all that now remains is for the president's legal team to verify these," said Mr Pityane

The act will be the first of the new labour laws to come into operation, but several others which focus on specific aspects of labour are due to be tabled soon in Parliament

These include the Employment Standards Bill, which will replace the Basic Conditions of Employment Act and the Wage Act and extend protection of new basic working conditions to those previously excluded, among them domestics, farmworkers and temporary, contract and part-time workers

Labour and business failed to reach agreement on the draft bill in the National Economic Development and Labour Council. But the Government has been holding separate talks with labour and business which it expects will result in settlement over the next two weeks.

Labour's main disagreements are that the bill does not propose legislation for a 40-hour working week or paid maternity leave Labour is concerned about a proposal that working hours may be averaged over periods of four months This will undermine the goal of the 40-hour working week, unions say.

Also to be tabled this year are amendments to the Insolvency Act of 1936 to improve workers' claims against insolvent employers.

The draft bill on employment equity will not be tabled this year. The proposed legislation will be a first for South Africa and will put in place a range of measures to promote affirmative action at the workplace

"We need time to build consensus," Mr Pityane said

There had been about 60 written submissions on the affirmative action bill, but individual companies and organisations had also invited the department to brief them, Mr Pityane said.

"We are hoping to table it in the first session of Parliament in 1997."

Significant changes to the Unemployment Insurance Fund are in store next year

So far, the formerly separate UIF funds have been integrated. But a task team to restructure the existing fund will make recommendations next February

Cosatu concerned over court's ruling

(166) BD 9/9/96

Reneé Grawitzky and Alan Fine

BOTH Cosatu and Business SA have generally welcomed the Constitutional Court's ruling on clauses related to labour issues.

But Cosatu has expressed concern over the court's insistence that individual employers — in addition to employer organisations — should enjoy the right to bargain collectively. The court held that the relevant constitutional principle required that the right be enjoyed by employers both individually and collectively.

The court ruled in an additional two distinct areas on labour issues. As regards business's wish to have the right to lock out included alongside the right to strike, it said that the right to bargain collectively implied the right to exercise economic power against adversaries. However, the principles did not require that the constitution specify any particular mechanism for the exercise of power.

The third labour issue addressed by the court was to rule that the constitution could not shield any statute from constitutional scrutiny, as it attempts to do with regard to the Labour Relations Act. This was because the principles held that the constitution should be the supreme law of the land.

The clause was inserted for fear, among other things, that the LRA may contravene certain rights entrenched in the constitution, including those involving freedom of association and certain economic rights. Addressing these matters would require reformulation.

In its reaction to the judgment, Cosatu welcomed the ruling that the lock out clause did not enjoy the status of a universally accepted fundamental human right, with general secretary Sam Shilowa saying it vindicated the union's position.

However, he expressed concern over the court's ruling on the granting of individual employers collective bargaining rights. This concern stemmed largely from the view that, in giving effect to the court's ruling, the constitutional assembly might swing in the opposite direction and undermine centralised bargaining

He warned employers against attempting to use the "opportunity of the constitution-making process to undermine hard-won centralised bargaining structures"

Business SA welcomed the court's acknowledgement of collective bargaining rights for individual employers and its opposition to the "shielding of the Labour Relations Act from constitutional review"

In regard to the lock-out, it was satisfied that the court had ruled that the constitutional right to bargain collectively implied the "right to exercise some economic power against partners in collective bargaining". Business SA was satisfied that the court did not find the right to lock out unconstitutional

The court said "the right to strike and the right to lock out are not always and necessarily equivalent" It found the right to lock out was not universally accepted and was recognised in "only a handful of national constitutions and is not entrenched in any of the major international conventions"

LABOUI

Business and labour need equal negotiating rights

(166)

Fairness should rule bargaining

CT(BR)12/9/96

By Andre van Niekerk

Most labour lawyers agree that a main purpose of labour law is to create structures through which conflict between employers and workers can be institutionalised That is achieved by collective bargaining, or, as an eminent English academic put it, by "engaging in a struggle in which neither side obtains final victory over the other, (in which they) eventually elaborate rules of the game which both sides become anxious to protect"

Underlying this "philosophy of mutual survival" is an assumption that there is a rough balance between collective bargaining partners That does not mean that their bargaining positions must always be equal, or that their economic strengths need be equal It means that the rules of collective bargaining should permit the parties, in appropriate circumstances, to exercise the economic muscle they can muster, to support their positions

The rules of collective bargaining, and the status of the economic weapons that the parties may legitimately use to support bargaining positions, are established by law In constitutional jurisdictions, these may be the subject of constitutional rights The text adopted by the Constitutional Assembly in May gives trade unions a right to bargain, and workers a right to strike Employers enjoy only the right to bargain, and then only through an employers' organisation

Business was concerned that this asymmetrical formulation of labour rights may lead to an interpretation that the text's drafters intended to exclude an individual employer's right to exercise economic power to further collective bargaining Perhaps that is what the drafters intended However, in the proceedings before the constitutional court their intentions were less relevant than the constitutional principles with which the text had to comply Constitutional Principle XXVIII requires the constitution to "recognise and protect" the rights of employers and workers to bargain collectively

Collective bargaining should allow parties to support their positions

Business challenged the constitutional text because it was concerned that the text would permit labour legislation to establish a disequilibrium in the status of an employer's economic weapons with those of labour The value of many of the weapons that may have been at an employer's disposal have already been eroded by labour legislation. For example, the right to dismiss employees who participate in an unlawful strike is curtailed by the Labour Relations Act The constitutional text, at least on the face of it, did not preclude laws that would deny employers any weapons at all

Business argued that the text failed to comply with the constitutional principle because

☐ it did not expressly confer on employers the right to resort to economic power to further collective bargaining, and

☐ it gave constitutional protection of the right to bargain to employer organisations and not to individual employers

Business did not argue that the right to lockout should be included in the new constitution, nor that the right to lockout was equal to the right to strike The debate between business and labour was not about the right to strike versus the right to lockout Other objectors cast the debate in those terms, but business was careful to seek only a constitutional guarantee of an employer's right to exercise economic power to further its right to bargain collectively The nature and extent of that right, it said, should be fine-tuned by legislation, the labour courts and collective bargaining, whenever that became necessary to maintain a degree of parity in the weapons necessary for collective bargaining What was important for business was that the constitution permit fine-tuning by recognising and protecting an expressed right to collective action by employers to further their right to bargain

The debate is not about the right to lockout versus the right to strike

That is precisely the right that the court upheld Though business had asked for its recognition, the court did not consider this necessary because, in its view, the right to exercise economic power was implied from the right to bargain collectively Furthermore, the right to bargain extended to all employers, and not only to employer organisations

The constitutional text must be amended to reflect the court's ruling If there is any victory in this, it is a victory for those who recognise that power is not an all-or-nothing commodity, and that a functional balance of power is a precondition for effective bargaining If there is any defeat, it is for those who refuse to recognise that collective bargaining is as often about one party securing compliance with its own demands as it is about resisting the other's demands

☐ *Andre van Niekerk is a legal adviser at Anglo American, an adviser to Business South Africa on labour law and an honorary professor in the department of mercantile law, Unisa*

includes an amount of R11 320 received by sub-offices later found to be made up of counterfeit notes

Numerous other cases of potential losses are still under investigation In some cases arrests have been made and various court cases are pending There are examples of warrant vouchers which either were stolen or disappeared These warrant vouchers were then fraudulently presented for payment In a number of instances financial institutions may have wrongly effected payment Hence, in so far as such potential losses are concerned, it is possible that in the end in such cases, there may be no loss The final determination of responsibility in each case needs to be made through investigation and/or court cases

It is not possible at this stage to say what the total cost to the department will be with regard to matters at present under investigation The total amount being investigated in respect of various warrant vouchers is R15 649 594 The actual final loss to the Department cannot be determined, but will be considerably less, if any

False insurance claims

*8 Mr D M BAKKER asked the Minister of Finance †

(1) Whether his Department has any statistics in respect of false insurance claims, if so, what is the amount involved for the past financial year,

(2) whether he will make a statement on the matter?

N1796E

The DEPUTY MINISTER OF FINANCE

(1) The Registrar of Insurance informs me that no statistics are available in respect of false insurance claims

(2) No

Transkeian migrant labourers' lung diseases/ disablement

*9 Mr J J NIEMANN asked the Minister of Health

(1) Whether, in respect of Transkeian migrant labourers, her Department has any statistics on (a) mine-related lung diseases and (b) labourers who are disabled, if not, what is the position in this regard, if so, what is the figure for the past financial year, in each case,

(2) whether she will make a statement on the matter?

N1797E

The MINISTER OF HEALTH·

(1) (a) The Department does not have any statistics on mine-related lung diseases that are region- or area-specific.

(b) The Compensation Commissioner, a branch of the Department of Labour in terms of the Occupational Injuries and Diseases Act, 1993, deals with all labourers' disabilities other than mine-related lung diseases, so I cannot answer that

(2) No

Mxenge murder. case against certain person

*10 Mr A FOURIE asked the Minister of Justice †

(1) Whether the Attorney-General has received any docket on the Mxenge murder in regard to the case against a certain person, whose name has been furnished to his Department for the purpose of his reply, and other persons, if so,

(2) whether the Attorney-General intends to institute any prosecutions in this regard, if not, why not, if so, what are the relevant details?

N1798E

The MINISTER OF JUSTICE

(1) Yes

(2) Yes, the person referred to has already been indicted together with four other persons by the Attorney-General, Pietermaritzburg on a charge of murder and a charge of robbery The case is set for trial from 2 to 13 December 1996 in the Supreme Court, Durban

Mr A FOURIE Mr Chairperson, arising out of the hon the Minister' reply, may I ask him whether there is any chance that the Truth and Reconciliation Commission will intervene in this case, and what the attitude of the attorney-general will be

The MINISTER Chairperson, I am not in a position to say what the Truth and Reconciliation Commission will do Now that the charge is pending, if the trial were to proceed, then it may only be stopped with the consent of the attorney-general I do not know what the situation will be between now and the date of trial itself I am not aware of the process currently taking place in the commission itself, but I am prepared to check up and furnish a reply, if I am asked that question

Business interrupted in accordance with Rule 199 (3) of the Standing Rules for the National Assembly

Labour Relations Act: sections consistent with Constitution

*11 Mr P G MARAIS asked the Minister of Labour †

(1) Whether he or his Department has obtained legal opinion on the question whether the provisions of sections 25 and 26 of the Labour Relations Act, 1995 (Act 66 of 1995), are consistent with the provisions of Chapter 2 of the Constitution of the Republic of South Africa, 1996, if not, why not, if so, what was the content of this legal opinion,

(2) whether he will make a statement on this matter?

N1799E

The MINISTER OF LABOUR

(1) Legal opinion has been sought on whether sections 25 and 26 of the Labour Relations Act, 66 of 1995 are in accordance with the provisions of the new text of the Constitution The content of the opinion is as follows

Sections 25 and 26 of the Labour Relations Act regulate the conclusion of collective agreements that provide for union security arrangements, in particular agency and closed shops

Section 23(5) of the new text of the Constitution specifically provides that the "provisions of the Bill of Rights do not prevent legislation recognising union security arrangements contained in collective agreements"

Section 23(5) of the new text was specifically introduced in order to shield legislative provisions like sections 25 and 26 from constitutional attack on the grounds that these institutions infringe the right to freedom of association (if that right includes the right not to associate) or the right to join trade unions (if that right includes the right not to join trade unions)

In any event the provisions of sections 25 and 26 of the Labour Relations Act were specifically drafted to meet the constitutional objections against union security arrangements that have been made in comparative constitutional and public international law jurisprudence

The important features of the agency shop regulated in section 25 of the Labour Relations Act that demonstrate that the provisions have been narrowly tailored

the trade union or trade unions party to the collective agreement must represent the majority of the employees,

an agency shop agreement is not binding if provisions compel non-members to join the trade union,

the agency fee must be equivalent to or less than the amount of the trade union subscription,

all deductions, including member and non-member deductions, must be paid into a separate account administered by the Union,

the trade union is obliged to provide an annual financial statement and auditors report in respect of that separate account,

no part of the money deducted under an agency shop may be paid to a political party, or contributed to a political party or a person training for political office,

conscientious objectors can request that their deductions be paid to a fund administered by the Department of Labour,

subject to certain time periods, an agency shop agreement terminates if the trade union is no longer able to demonstrate is representivity

The important features in respect of the provisions regarding the closed shop are

before a closed shop may be implemented, there must be a ballot of the employees to be covered by the agreement, and two thirds have voted in favour of the closed shop,

only post entry closed shops are recognised,

the money deducted under a closed shop agreement may not be paid to a political party or paid as a contribution to a political party or person standing for political office,

a trade union is obliged to provide the Registrar with an annual financial statement and an auditor s report on the expenditure of the monies received under a closed shop agreement,

refusals of membership or expulsions from membership must be in accordance with the trade unions constitution and be fair,

it is unfair to dismiss and employee—

who has been unfairly refused membership,

who has been unfairly expelled,

who was in employment at the time the closed shop was introduced and refused to join,

who is a conscientious objector

a trade union not part of a closed shop may apply to join a closed shop if it represents a significant interest, or a substantial number of employees who are covered by a closed shop agreement,

provision is made for periodic ballots to test the support of a closed shop,

if more than 50% of the employees vote in opposition to the closed shop, the closed shop agreement terminates,

The Labour Court monitors the application of agency and closed shop agreements

Even without this shield provided by section 23(5) of the new text of the constitution, the limitations, if they are indeed limitations, on the right to freedom of association and the right to join trade unions, constitute reasonable limitations under the limitations clause

*12 Mr P G MARAIS—Labour † [Question standing over]

Schengen States: visa requirements relaxed

*13 Mr N J J VAN R KOORNHOF asked the Minister of Home Affairs †

(1) Whether there are currently any negotiations with any of the Schengen States with a view to relaxing the visa requirements for South African tourists to these countries, if not, what is the position in this regard, if so, what are the relevant details,

(2) whether any tourists from the Schengen States currently do not need any visas to visit the Republic, if so, which states?

N1801E

The MINISTER OF HOME AFFAIRS

(1) No The South African visa policy will, however, in future mainly be based on the principle of reciprocity Therefore the withdrawal of visa exemption for the Schengen States is currently being considered and recommendations in this regard will be submitted to Cabinet in the near future

(2) Tourists from all the Schengen States enjoy visa exemption

Fisheries Policy Development Working Committee, budget

*14 Mr N J J VAN KOORNHOF asked the Minister of Environmental Affairs and Tourism †

(1) What did the total budget of the Fisheries Policy Development Working Committee amount to,

(2) whether any financial irregularities in respect of the expenditure of the budget of the specified committee have come to light, if not, what is the position in this regard, if so,

(3) whether the Auditor-General is currently undertaking an investigation in this regard, if not, why not, if so, what are the relevant details,

(4) whether he will make a statement on the matter?

N1802E

The MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

(1) Nil for the Working Committee

(2) (a) None,

(b) not applicable

(3) and (4) Not applicable

Appointment of commission for corruption

*15 Mr J W MAREE asked the Minister of Justice †

(1) Whether his Department is currently considering the appointment of a commission for corruption, if not, what is the position in this regard, if so, (a) what will be the purpose of this commission and (b) when will it be formed,

(2) whether he will make a statement on the matter?

N1803E

The MINISTER OF JUSTICE

(1) Yes Legislation which has been prepared by my Department has already been introduced into Parliament and is receiving the urgent attention of the Portfolio Committee on Justice (National Assembly) and the Select Committee on Justice (Senate) The legislation, amongst others, provides for the establishment of special investigating units for the purpose of investigating serious malpractices or maladministration in connection with the administration of state institutions, state assets or public money It also provides for the establishment of special tribunals which will be able to deal with cases arising out of such investigations These tribunals will have the power to adjudicate upon any civil law dispute emanating from an investigation by a special investigating unit, including the power to—

- issue suspension orders or interdicts on application by a special investigating unit or any party concerned, and
- make any order which it deems appropriate so as to give effect to any ruling or decision by such special tribunal

As soon as the legislation has been approved by Parliament immediate steps will be taken to ensure that it becomes operative

(2) No further statement is necessary

Sale of arms to Nigeria

*16 Mr J C N WAUGH asked the Minister of Defence †

(1) Whether his or the South African National Defence Force's attention has been drawn to the issue of the possible sale of arms to Nigeria, if so, what are the relevant details,

(2) whether he will make a statement on the matter?

N1804E

The MINISTER OF DEFENCE

(1) No Neither I nor the SA National Defence Force or Armscor are aware of any possible sales of arms to Nigeria The National Conventional Arms Control Committee has ruled that no arms trade will take place between South Africa and Nigeria in view of the prevailing circumstances in that country

(2) As I replied to a question in this House on 11 September the self-imposed ban by South Africa on arms sales to the military Government of Nigeria is being applied stringently

Pregnant women: deaths

*17 Mrs P W CUPIDO asked the Minister of Health †

(1) How many pregnant women died (a) in hospitals or maternity homes and (b) at home in 1995,

(2) whether she will make a statement on the matter?

N1805E

The MINISTER OF HEALTH

(1) (a) and (b) The Department does not have information in this regard,

(2) Information on deaths due to complications of pregnancy, childbirth and the puerperium (I C D codes 630-676) is available from the registered deaths The latest year for which this information is available is 1993 In that year, 322 such

Mass departure from public service

BD 8/10/96

Linda Ensor

CAPE TOWN — More than 10 000 Western Cape public servants have applied for government's voluntary severance package so far, administration officials said yesterday.

Thousands of nurses, doctors, teachers and school principals, as well as senior administrative staff, have opted to leave.

Some departments, such as environmental affairs and local government, will be left with huge gaps in the administrative hierarchy.

Government has targeted the removal of 100 000 public servants in a bid to prune the bloated sector.

Sources said yesterday that while the mass departure would strip the public service of layers of professionals, it would open the way for more affirmative action. The ANC has complained that affirmative action in the province has been slow.

Of the 10 587 public servants who applied for severance, 2 600 included doctors, nurses and administrative staff in the health sector; 6 679 were teachers, principals and other staff in the education department; and 1 308 were from other departments.

Services body seen as neglected

(166) BD 8/10/96

Renee Grawitzky

THE essential services committee — an important element of the administrative structure of the new Labour Relations Act — has received limited attention in comparison to the commission for conciliation mediation and arbitration and the Labour Court.

This was argued in an article in Contemporary Labour Law, published by Gavin Brown & Associates. The article said "little attention" had been paid to the committee that "will also play an important role in the application of the Labour Relations Act".

The committee, as envisaged in terms of the new legislation, was intended to be established under the commission with the labour minister appointing people. The committee would be responsible for determining whether a service was essential or not. Parties operating in such services would be prohibited from embarking on a strike or lock out.

The article noted that given the fact that the committee had not yet been established it was "highly unlikely that any essential service will be designated as such prior to the Act coming into force".

It was envisaged, the article said, that the committee would be established by now, have conducted investigations and made designations prior to the Act coming into effect

Labour Minister Tito Mboweni on September 18, at the launch of the new Act, said he had not been satisfied with some of the nominations for the committee made by the social partners. Ideally, he said, the committee should have been in operation months ago

He said a three-man committee would be established, comprising one representative from each of the social partners, and would operate for a three-month period. "Thereafter, it will be expanded to the larger committee we had originally hoped to appoint."

Mboweni said that the present definition of essential services could apply for three months from the date of commencement of the new Act on November 11.

The article said that although current legislation spelt out what services constituted an essential service, it was not satisfactory.

Labour standards 'vital to sustain economic growth'

(166) BD 15/10/96

Lukanyo Mnyanda

A SET of minimum and socially acceptable labour standards and redistributive policies did not compromise economic growth as suggested by critics but were necessary for sustainable and long-term success, Labour Minister Tito Mboweni said yesterday.

Mboweni said in a speech read on his behalf at the World Trade Centre yesterday that the Labour Relations Act — which comes into effect next month — recognised the existence of strong trade unions as a precondition for industrial stability.

He called on government's social partners to acknowledge SA had a demanding labour force aware of its rights and vocal about its grievances.

"Let us acknowledge this fact openly as the Act does. A well-treated workforce can become a national asset."

SA Clothing and Textile Workers' Union assistant secretary Ebrahim Patel called for the strengthening of tripartism as represented by the National Economic, Development and Labour Council (Nedlac).

Patel, who is also overall labour convenor at Nedlac, said the body had achieved some success in its aims of finding common interest between diverse groups and was also instrumental in enabling stakeholders to address their differences through a process of "active and formal engagement".

Some of its achievements — which included negotiation of a labour relations Act — were unique and came at a time when the rest of the world was moving away from consensus building. "It is becoming a ruthless age and we need to strengthen tripartism."

Sacob director-general and overall business convenor at Nedlac, Raymond Parsons, said the body had to structure its agenda on the foundations provided by government's macroeconomic strategy and "focus on the implementation rather than on the return to a debate about fundamental economic direction".

It was Nedlac's duty to "match and not renegotiate" the strategy, he said.

Like Patel, Parsons called for the strengthening of Nedlac which he said was the "economic dimension" of reconciliation and nation-building.

"Business remains committed to Nedlac as one key structure to facilitate change and transformation in economic and social policy — and to ensure its proper implementation."

Dawn of new era in labour relations

(166) Star 31/10/96

By Gora Ndhlovu

November 11 1996 will usher in a new era in South Africa when the new Labour Relations Act (LRA) comes into force.

In terms of the new legislation workers can go on legal strike with the protection of the state. All they need to do is to follow the strict rules set out by the LRA, which requires them to seek conciliation with their employers, mediate and go for arbitration if there is still no agreement. A strike is the last resort and workers have to vote through the ballot box to embark on it.

Such a strike is legal and workers who take part in it will have the right not to be dismissed. In the past, while workers had the freedom to strike after following the proper procedures, they could still be dismissed for "operational" reasons – that is, the company could dismiss workers if it feared liquidation or could suffer serious losses. But now workers on a legal strike may not be fired under any circumstance.

Workers will also be able to enjoy picketing without fear of action being taken against them by police or company security guards.

Previous LRAs – 1924, 1956, 1973, 1979 and 1985 – ruled strikes were forbidden, and workers were arrested and jailed for taking part.

Employers can no longer dismiss employees with ease. The new LRA clearly defines unfair dismissals and trade unions can quickly overturn them.

Workers can look forward to more say

Before a worker can be dismissed the employer must ensure he has notified the worker sufficiently and given him the opportunity to state why he should not be dismissed.

There are schedules in the new LRA which render certain dismissals automatically unfair, such as when an employee is fired for supporting an industrial action or refused to do the work of an employee taking part in a legal strike.

Another burning issue of the past was giving information to workers or their representative unions for collective bargaining purposes. Employers have traditionally been reluctant to part with financial details. But now they will have to divulge this.

If the details are regarded as strictly confidential, employers must inform the trade union in writing.

Previously trade unions found it difficult to sign recognition agreements with companies because they were not allowed access to shopfloors for recruiting. All this will change now workers will be playing an important role in running the workplace through Workplace Forums.

Under the new dispensation farmworkers and domestic workers will also enjoy the same protection.

No more 'sweetheart' unions

Chief Registrar has been with department for 34 years, but welcomes change

Labour 31/10/96 (166)

By Goba Ndhlovu

When the new Labour Relations Act (LRA) ushers in changes that will advance workers' interests on November 11, one key figure who will ensure its success is a man who has been with the Department of Labour for 34 years

He is Hennie Slabbert, who has been appointed Chief Registrar of Labour Relations by Labour Minister Tito Mboweni Mboweni has described him as "a great resource of energy and expertise"

Slabbert, who will get into action within the next 14 days, does not see himself either as a "relic of the past" or a "mixture of the new and old" He sees his appointment as a new challenge in his long career and foresees no problems in applying the new LRA after so many years operating under the 1956 Labour Act.

For the greater part of his long service, Slabbert registered both workers' and employers' organisations, gave notice of their intended registration so that whoever objected against such registration could lodge his complaint with the department, and kept a list of all these organisations, their office bearers, total membership and financial statements

New laws ... Hennie Slabbert welcomes challenges

"We are moving into exciting times with the pending changes in labour. Everyone must accept the changes, although there will be hiccups along the way We must have the will and drive to see us through the coming challenges," said Slabbert.

He says he relies on two people who have been with him over the years. They are his assistant, Deon Koen, and Ria Hurter, who looks after the department's finances

Slabbert says South Africa has 388 registered trade unions – "but this figure may fall to 358 because 30 of them belonged to the defunct TBVC states and were affiliated to their South African counterparts"

Other important changes Slabbert pointed out related to the current industrial councils. These councils settled disputes between employers and employees They were divided according to the nature of the industry such as metal or food industrial councils

But the councils failed to resolve disputes on account of the old apartheid system which heavily favoured whites These will be replaced by statutory councils which will be linked directly to the department.

While they will do what the industrial councils did, they will have more authority through the registrar rather than appointees of various industries

Slabbert said the days of the "sweetheart" unions are over because no trade union will be allowed to rely on employers for its formation and administration.

Land court ratifies its first settlement

BD 16/10/96 (271A)

Linda Ensor

CITRUSDAL — The Land Claims Court yesterday ratified its first land claim settlement, the effect of which was to restore ancestral land to the Elandskloof community which was evicted from it 34 years ago.

This was hailed as a victory by Land Affairs Minister Derek Hanekom in a statement read out on his behalf after the court case.

"Elandskloof has made history by being the first community whose land claim was settled by a judgment of the Commission for Restitution of Land Rights," Hankom said. Their claim was also the first land claim from the Western Cape to go before the court.

In terms of the agreement between the community, government and the farmer Piet Smit, government would buy the 3 138 hectares of land in the Clanwilliam district for R4m from Smit and give it to the community which has indicated that it planned to use it for citrus fruit and cattle farming.

In addition each of the 308 families (about 600 people) which eventually settled on the land would receive a R15 000 settlement grant and about R280 000 for planning the infrastructure.

The small court room at the Citrusdal police station was packed with about 100 "Elandsklowers" who came to witness the joyous occasion.

Also present were chief land claims commissioner Joe Seremane and Western Cape commissioner Adv Wallace Mgoqi.

In an informal session after the ratification of the agreement, members of the community were given an opportunity by judges Antonie Gildenhuys and Fikile Bam to recount the history of their protracted battle for their ancestral land in the Clanwilliam district. It was one characterised by repeated broken promises by government officials.

Aletta Titus told how the community felt full of despair when the land was sold by the Dutch Reformed Church and they were evicted in 1962. "Elandskloof was our place," she said.

Community association chairman Jacobus Carolus estimated that 100 families would settle on the land following the occupation date, December 15, with the remainder trickling in over the next few years.

The Dutch Reformed Church acquired the land in 1862 for a mission station for the benefit of the local community In 1960, in need of funds, the church requested government for the restrictive title that the land be held in trust for the community to be scrapped. It then sold the land to Smit's father

Western Cape synod member and financial manager, Christo Alheit expressed regrets about the past

"I feel very heartsore that the dream of the church for a mission for the community and the dream of the Elandsklowers for a piece of land for themselves parted from one another. The church is heartsore over pain suffered by the community and thankful that the court has restored the land to it."

JUBILATION AFTER COURT DECISION

Community gets Elandskloof back

CT 16/10/96 (271A)

CITRUSDAL: Thirty-four years after being forced off the land, the community may now legally return to Elandskloof Staff Writer **MELANIE GOSLING** reports

THE Land Claims Court ordered yesterday that Elands Kloof be returned to the coloured community who were forced off the land 35 years ago — the first judgment ever handed down by the Land Claims Court

There are 10 000 such claims before the Land Claims Commission

There were scenes of jubilation outside the tiny Magistrate's Court in Citrusdal yesterday where about 200 people who formerly lived in Elandskloof in the Cedarberg mountains hugged and kissed after Mr Justice Antonie Gildenhuys and Mr Justice Fikile Bam ordered that the state "obtain and return" the land to the people

The court also recommended to Land Affairs Minister Mr Derek Hanekom that the community be given access to state funds to build houses and other infrastructure

The owner of Elandskloof, Mr Johannes Smit, had agreed before the court case that he would sell the 3 138ha of land to the state for R4 million

The community will take ownership on December 15, when they will become the first community property association in South Africa. Their ancestors had lived at Elandskloof from 1861 when the Dutch Reformed Church had bought the land to establish a mission station

Mr Samuel Carolus, chairman of the Elandskloof Association which brought the action under the Restitution of Land Rights Act, said after the judgment "I can't express what I feel in words We've waited so long for this, when the time finally comes, you just want to stay quiet"

VALLEY RETURNED: Four generations of "Elandsklowers" above the Elandskloof valley in the Cedarberg which the Land Claims Court yesterday ordered be returned to the coloured community who were forced off the land in 1961 They are Mrs Anna Jorg 72 (right), her daughter Mrs Anna Norman, 40 (left), granddaughter Mrs Desire George, 21, and one-month-old great-granddaughter Gushwill *PICTURE GARTH STEAD*

Mrs Anna Jorge, 72, who as a small child had helped gather stones to build the foundations of the tiny school at Elandskloof, said hers was one of the only houses still standing

"We built our house of stone When we were forced off the land in 1961, the farmer demolished all the other houses He planted trees where there was a soccer field He did lots of things but our house he left standing, and the school and the church I am old now, but I still want to go back to my old house

"My mother, my grandmother, even my great-grandmother, lived at Elandskloof, right from the first time that Queen Victoria gave them that land"

She has been living in a shanty on a nearby farm, Allendale

The Elandskloof community is now spread over the Western Cape About 100 families want to return to Elandskloof immediately and others will return in future

The community plans to employ a manager to continue farming Elandskloof, which currently yields a fruit crop of about 1 200 tons a year

They also intend building an agricultural village at Elandskloof

Asked how he felt about the judgment, Smit said "I feel completely normal"

The Dutch Reformed Church held the land in trust for the community from 1861 In 1960, the church applied to have scrapped a title condition that the land had to be used for special public services They then sold it to a private farmer and the inhabitants were forced off the land under squatting legislation Once they had left, it was declared a white area under the Group Areas Act

Said Carolus "Elandskloof has been a history of broken promises Many listened to us, made promises, but did nothing Today we have a promise that cannot be broken"

Asmal likens forced removals to genocide

(271A) Star 18/10/96

East London – The apartheid government's policy of forced removals amounted to genocide, Water Affairs and Forestry Minister Professor Kader Asmal said yesterday

He told the national consultative conference on SA's emerging water law that the dumping of millions of people in pursuit of apartheid policies took place in the full knowledge that areas selected for resettlement were largely without water resources

The forced removals resulted in infant mortality rates of between 250 and 370 per 1 000 births In his book this was genocide, he said Comparative figures showed the infant mortality rate in the historically privileged areas to be 20 per 1 000

Even now, Asmal added, at least 14 million people in South Africa were at the mercy of a capricious water cycle

He described the process of providing the country with new water legislation as a matter of life and death He hoped the new legislation would be in place by November next year –Sapa

Govt land reform grant 'unrealistic' — farmers

(271A)

Louise Cook BD 18/10/96

KIMBERLEY — Farmers at the SA Agricultural Union congress yesterday rejected government's R15 000 a family land reform grant as unrealistic, claiming the grant was a waste of taxpayers' money.

They said the policy would create mass dumping grounds for rural people and was inadequate to establish a prospective black farmer

Agriculture and Land Minister Derek Hanekom said government had to chose between helping more people with a smaller amount, or fewer people with a larger sum. "The R15 000 represents the difference between life and death to some people."

Government had extended the old R15 000 housing subsidy scheme to farmers and anyone who applied for land in terms of redistribution Various land settlement schemes were under way to promote pooling of the grant for groups of families to obtain land.

Hanekom said if land was not provided to the needy, farmers would suffer increasing land invasion. "Effective land reform would also help to stabilise communities and reduce crime," he said.

Natal Agricultural Union member Joyce Lawrence warned the grant was leading to increased communal farming, putting land and water resources under pressure and destroying SA's scarce natural resources "How many families, at R15 000 each, have to be settled to fill a farm that costs R1m?" This could only lead to subsistence farming, she said

Hanekom said that for the 1996/97 financial year, R645m had been allocated to land reform

Land court to approve deal for Sabokwe people

BD 22/10/96 (271A)

Louise Cook

THE Land Claims Commission has facilitated the settlement of a restitution claim by 580 Richards Bay families who are squatting 8km outside the town, providing them with a permanent home on SA Forestry Corporation (Safcol) land.

KwaZulu-Natal regional commissioner Sherryl Walker said the Land Claims Court would rubber-stamp the deal within weeks "The agreement, reached after protracted negotiations, provides for alternative land to be made available to people dispossessed of their land when Richards Bay was established

"Altogether 580 families of the Sabokwe people are involved in the claim; planners are being appointed to draw up proposals for the development of the area," she said.

In terms of the Restitution Act, government can offer to provide alternative land or other forms of compensation in cases where it is not feasible for claimants to get their original land back. It is believed the Sabokwe people agreed to settle on the 43ha site but will try to get additional land in future.

Planning company Metropol Association's GM Theuns Roux said the area was too small to be farmed and additional land would have to be obtained.

Meanwhile, Land Claims Commission spokesman Thys Human said 10 602 claims had been received to date. Of these, 2 348 were in rural and 8 264 in urban areas At the end of September, KwaZulu-Natal had the most claims — 808 — followed by 357 in the Northern Province, 332 in the Eastern Cape and 288 in Mpumalanga The Northwest had 178 claims, Gauteng 138, the Northern Cape 109, the Western Cape 60 and Free Sate 59

"Altogether four claims have so far been referred to the Land Claims Court, one of which was a settlement and was ratified by the court last week."

Human said the restitution process was progressing slowly because the commission had to deal with complicated factors

These included opposing claims by different groups of people on the same piece of land, land owners insisting on unrealistically high selling prices and research into the background of claims taking a while to complete

Sapa reports that Agriculture and Land Affairs Minister Derek Hanekom is to sign an accord with the Moravian Church on land tenure reforms on various mission stations today.

The Moravian mission stations were Pella, Wittewater, Goedverwacht, Wupperthal, Elim, Kousa and Clarkson, a spokesman said

In terms of the accord, the character and cultural, educational and religious way of life of the communities will be respected

The process of reform will enable greater tenure security for mission station inhabitants on privately owned church land on a non-discriminatory basis for all residents.

Land victory for Cape communities

(271A)

COLOURED people living at historic Moravian Church mission stations in the Western Cape are to be given security of tenure in an agreement signed by the government, **BARRY STREEK** writes.

CT 23/10/96

A PIONEERING agreement between the government and the Moravian Church was signed yesterday to give security of tenure for the first time to the predominantly coloured people living at the church's mission stations

The land the Moravian Church now owns could be extended by the transfer of adjacent state-owned land or the purchase of neighbouring farms through the government's R15 000 subsidy scheme, Agriculture and Land Affairs Minister Mr Derek Hanekom said yesterday

The agreement, signed by the head of the Moravian Church, the Rev Wilfred Majikijela, and Hanekom, will give predominantly coloured families security of tenure at the historic mission stations, but each of the communities will have to decide what form of tenure it wants

Water Affairs and Forestry Minister Mr Kader Asmal said he would be granting water rights next year, under the new constitution, to an entrepreneur in the Piketberg area who wanted to develop an environmental education centre as well as grow grapes

This right to water could be extended to the Wittewater and Goedverwacht mission stations on the Berg River, also in the Piketberg area, Asmal said

The agreement is the most significant extension of rural land rights to coloured people since the government of national unity was elected in April 1994

The areas affected are 300ha at Pella with 1 200 people, 5 000ha at Goedverwacht with 2 500 people, 1 500ha at Wittewater with 1 200 people, 40 000ha at Wupperthal near Clanwilliam with 2 000 people, 7 000ha at Elim near Bredasdorp with 1 960 people and 2 337ha at Clarkson near Humansdorp with 1 145 people

Hanekom and Majikijela said in a joint statement that the agreement would give impetus to the land reforms started in 1986

"Rural communities, and particularly mission station communities, were in many ways isolated and poorly serviced by the previous regime, leaving the communities with little or no infrastructure," they said

"The accord will do much to reintegrate the remote and isolated rural communities as full citizens of the South African society

"It is agreed within this accord that not only is a process of land tenure reform set in motion, but also a significant understanding and co-operation between church and state is hereby commenced," Hanekom and Majikijela said

The agreement they signed said tenure security at the mission stations was the central issue that had to be addressed

Tenure security "could be established by way of a range of systems which could be adapted to suit the circumstances of the respective communities" The possible forms of tenure included communal ownership, private ownership, and individual and mixed tenure systems, which could be arranged in terms of the Communal Property Associations Act

Hanekom paid tribute yesterday to "the very important role the Moravian Church has played"

Majikijela said the church was grateful for the opportunity it had been given and the progress that had been made

The chairman of the church task group examining the land reform process, the Rev Martin Wessels, said yesterday's agreement reflected a commitment to remedy the ills of the past

Western Cape Economic Affairs MEC Mr Chris Nissen said the agreement demonstrated the government's commitment to the development of communities

He also said it would pave the way for development projects at the mission stations

Nissen said there were other potential projects, including farming and church-initiated projects to provide employment These could now be fully developed

● The pen used yesterday to sign the agreement is to be given to the museum at Genadendal Moravian mission station

Land rights agreement a way for Government to 'remedy past ills'

(271A) ARG 26/10/96

4 000 families will reap benefit

WILLIAM-MERVIN GUMEDE
STAFF REPORTER

It has been a worthwhile 240km trip to the big city for the representatives of the tiny community from the Wupperthal Moravian mission station.

They were smiling broadly when president of the Moravian Church Wilfred Majikijela and Minister of Land Affairs and Agriculture Derek Hanekom signed the agreement that gave farmers from this church-owned town the legal right to stay on the land

Mr Majikijela beamed "The agreement is the most significant extension of rural land rights to coloured people since the Government of National Unity was elected in April 1994"

'Here each family lives on their own little plot in a thatch-roofed cottage'

Mr Hanekom hailed the accord as a historic first which would serve as a model for other communities living on church-owned land throughout the country

About 4 000 families in Wupperthal will benefit from the agreement

It also gives security of tenure to people living in six other Western Cape mission towns of the church, leaving each community to decide what form of tenure it wants

One reaches Wupperthal, a far-flung town nestled in the hills to the east of Clanwilliam, about 240km from Cape Town, by a narrow, dusty road that winds its way through the mountains to a place where seemingly no habitation exists at all

Founded in 1830 by Rhenish missionaries and called Wupperthal after the river Wupper, on the banks of which the society's headquarters in Germany are situated, it was transferred to the Moravian Church in 1965

Here, the families live on their own little plots in neat thatch-roofed cottages with a stoep

They grow crops such as mealies and potatoes for the family pot, and dry beans, dried fruit and rooibos tea for sale elsewhere The town is also known for its shoe factory, which produces good quality handmade velskoene Prior to the agreement between the Government and the church, the small-scale farmers had no certainty about their rights to their land

Mr Hanekom said investors were reluctant to put their money into the area unless there was some sort of land tenure security

The Moravian Church owns vast tracts of land When successive apartheid governments grabbed the most arable land from black communities to give to white farmers, the church managed to hold on to much of its land

At the ceremony, Water Affairs Minister Kader Asmal noted that Moravian missions had been an area of resistance by communities who, through their church, had managed to retain their dignity in spite of apartheid land policies

Professor Asmal pledged that Moravian communities also would benefit from the government's drive to free water rights

Over the years, the church has assumed responsibility for supplying basic services such as water, refuse removal, electricity and roads on the mission station town

'He said the agreement would generate hope in the community'

The church had even provided health services, but that had now been taken over by the local municipality

The Rev Martin Wessels, chairman of the church's taskgroup which co-ordinated the land reform project, said potential existed for large-scale commercial farming to take off soon

"The farmers will need help with revolving credit funds to provide capital for cash-strapped families to buy seed for their first crops," said Mr Wessels. He added that, because of a lack of access to markets, agriculture extension support and credit facilities, which was denied to coloured farmers by the apartheid rulers, many were forced to rent out their land to white farmers at way below the market price Land Bank and State assistance were also out of reach of the farmers because they had no ownership rights to the land

Mr Wessels said the accord would generate hope in the community and was a sign that the Government wanted to remedy past ills He said the agreement would provide a career path for the young of the town and that it would halt their exodus to the cities in search of work

Mr Hanekom said the greater land security also would result in economic opportunities, job creation, agriculture and infrastructure development and the provision of basic needs such as water and electricity

Mr Hanekom said the community could exercise their right to the land through various options, including private ownership, communal ownership and individual and mixed tenure systems in terms of the Communal Property Associations Act

Mr Hanekom said that in addition to the church, there would be opportunities for communities to access state and private land in terms of the Government's land reform programme

He added that the agreement emphasised the Government's commitment and responsibility towards land tenure reform that would promote development and secure the land rights of more vulnerable people

Cont.

ANDREW INGRAM

Expertise: Johnny Gertse, 66, still helps out in Wupperthal's shoe factory He has been a cobbler since 1946, when he learnt his trade

Rustic beauty school boys jogging home after the day's lessons pass the tiny Wupperthal post office, situated in an old Cape Dutch building

Big breakthrough for District Six victims

ST(CM) 27/10/96 (271A)

By CHARL DE VILLIERS

THE Land Claims Court is to be asked to postpone its historic hearing on District Six tomorrow following a breakthrough accord which could prompt a flood of new claims.

On Wednesday, parties to the claim buried the hatchet and agreed to the terms of the hearing's postponement and the terms of reference for a facilitation process which must be completed by March 14

The court may also be asked to extend the November 30 deadline for District Six claims.

District Six Restitution Front spokesman Anwar Nagia said the accord was a major victory for defenceless people

"Another five to six thousand families may now register claims," he said About 600 claims have already been registered.

Instead of deciding how restitution is to take place, the court — which is sitting in the Foreshore Customs House — is to be asked to postpone its Section 34 hearing to April 1 next year and to endorse a plan that irons out conflict.

"There was much dissatisfaction and it became clear that unless this was not addressed now, the whole process of restitution could be called into question," Land Claims Commission official Elizabeth Davison said.

Land Affairs chief Geoff Budlender said: "The people who were dispossessed should be as fully involved as possible in the design of alternative forms of restitution, including decisions about the manner in which the land should be used and the selection of beneficiaries.

"If these matters are not satisfactorily addressed, it is inevitable that claimants and other people who were dispossessed will feel aggrieved by what will be perceived as a second act of dispossession."

Land claims judge was a victim

ST (CM) 27/10/96 (271A)

By JESSICA BEZUIDENHOUT

WHEN Shehnaz Meer takes up her seat on the Land Claims Court next month, it will be as judge — and victim.

Judge Meer, daughter of anti-apartheid activists Fatima and Ismail Meer, is the first woman of colour to be appointed a permanent judge.

The appointment is close to her heart As a victim of the Group Areas Act, 41-year-old Judge Meer is no stranger to the trauma of land expropriation She was just five years old when the large Meer family were thrown out of their four homes in Ritson Road, Durban

The trauma was compounded by her father's treason trial and imprisonment during the emergency years of the 1960s. Her mother was also imprisoned some years later

Many consider the appointment of Judge Meer another ground-breaking move for women, for mothers and especially for women of colour. She is only the third woman judge in the country.

While finishing her tasks at the Legal Resources Centre in Cape Town where she has been acting national director, Judge Meer is shifting her focus to her new job

"The Land Claims Court has an enormous responsibility to deal effectively with the complexity of land claims," she said

Her sociologist mother, Fatima, said· "Shehnaz is very conscious of the trauma caused by the Group Areas Act When the government expropriated our homes in Ritson Road, the whole family was split up.

"We had a strong family tradition and had spent a lot of time together. After expropriation, our whole way of life changed to one of suffering."

NEWS

Months before final District Six decision

Court orders all parties in case to negotiate an agreement

(271A) ARG 29/10/96

ESTELLE RANDALL
STAFF REPORTER

A final decision about the future development of District Six has been put on hold for at least five months while the Government and former residents negotiate a solution to one of South Africa's most notorious cases of mass forced removal.

The Land Claims Court yesterday agreed to postpone until April an application for District Six to be exempted from being returned to the original owners or their descendants.

It has been argued that the application would have the effect of redressing the wrongs of the removals more equitably by enabling thousands of socially and economically disadvantaged people of the area to benefit.

Fragmented restoration of land to former tenants and landowners would perpetuate the ad hoc development of the city's eastern sector begun by apartheid planners, development authorities say

The Western Cape provincial administration, Cape Town municipality and the Community Land Trust which made the application, want the estimated 44ha of vacant land in District Six developed as a single project, not handed back piecemeal to individual claimants.

The Community Land Trust was formed to hold the land in trust until it is developed into an affordable housing area with former residents as main beneficiaries. Discussion on the integrated development proposal began about five years ago, before the restitution options became available.

Giving back land to some original landowners, who may claim return of specific pieces of land lost through apartheid forced removal would make it impossible to draw up a plan to develop the whole area, the trust believes

Former residents say they also want integrated development but oppose the application because they fear it will remove their rights to the land.

Anwar Nagia of the District Six Restitution Front said it had been a victory to get the Government to understand what reconciliation meant.

"The District Six debate can't be dragged through the courts We support integrated development but victims of forced removal in District Six should be part of this development.

"We know there are only 44ha of undeveloped land but we believe we could bring back 5 000 to 6 000 families Ex residents should get first preference," he said.

John Oliver of St Marks Church in District Six said the agreement to pursue a negotiated settlement was a positive step forward.

Tayib Ogier, who lives in Ummah Close in District Six, said the negotiations could bring everyone on board "People have been shut out of the process through lack of information We don't know how many people want restoration We need a full sharing of information if we are going to reach a full settlement," he said.

In terms of yesterday's Land Claims Court order, all parties to the District Six case will enter into a mediation process to try to reach an agreement which is inclusive and in the public interest of Cape Town.

Wallace Mqoqi, commissioner on restitution of land rights for the Western Cape and Northern Cape, will report to the court by March 14 on progress in negotiations

The negotiations will enable claimants to be informed of the difficulties of simply restoring land, explore other options and ensure they are involved in future redevelopment.

The commission has already received 926 claims of which 446 are from former tenants and 480 from former landowners.

After 1966, when the National Party declared District Six a slum, about 8 000 people were forced out of the area.

Mr Mqoqi said he was a strong believer in alternate methods to resolve disputes and reach compromise

"There has to be negotiation to help all parties accept there is no way that all people who own land there can get restoration if only about 44ha is available.

"Some people will have to settle for alternate land or financial compensation, or for priority funding in the areas where they live," he said.

Mr Mqoqi will meet all involved to get agreement on who should act as mediator

Memory of uprooting still hurts as a community reclaims its past

SHARKEY ISAACS
STAFF REPORTER

Former residents of District Six have attended a historic Land Claims Court preliminary hearing in Cape Town, hoping for restitution 30 years after hundreds of families were uprooted and moved to the Cape Flats under the Group Areas Act

Still vividly recalling the grim past, they sat patiently at the hearing yesterday while submissions were made for a postponement for mediation and for applicants to come forward for restitution.

The hearing was adjourned until April.

Abdul Majiet Latief, whose parents owned four plots in Tennant Street, said even if the hearing was adjourned for five months it would not dampen his optimism.

"We are determined to obtain restitution. It is something we battled and waited for for 30 years so a few extra months won t really matter '

He said representatives of the old Group Areas Board had arrived at their home one day to buy the property for between R8 000 and R10 000 – an amount well below market value "That was the final offer and it was on a take it or leave it basis, so we were forced to sell and move out."

BRENTON GEACH

Apartheid victims. former residents of District Six who attended the preliminary Land Claims Court hearing

Armien May who lived at the corner of Stone and Lewis streets, said he was optimistic about the preliminary sitting because he regarded the court as a light at the end of the tunnel of negotiations for proper restitution and compensation.

"We have patiently waited for this to happen and I believe that it is right and proper that the people of District Six should get preference for housing in the area, as well as proper compensation."

Sedick Cassiem of Tilbury Street said he was optimistic that the time had come for restitution, because his parents had been paid R6 000 by the state for forfeiting their four-bedroom home, which they built in the "Dry Docks" area of District Six below De Waal Drive

Derek Kloppers, formerly of Virginia Street, said his family had lived on one of seven properties belonging to his grandmother, Muriel Kloppers, who had been paid a paltry R16 000 by the government

District Six Civic Association chairman Anwah Nagia, who used to live in Hyde Road, said the court's adoption of the civic association's submissions, including the five-month postponement, was a "victory" for the people

But he criticised delays which led to the hearing starting at 11am yesterday instead of the scheduled 9am.

"About 500 people waited from 8 45am and this had dwindled to about 150 people by the time the hearing eventually started, because people had to go to work.

"Even then, the court's recording equipment broke down, causing a further delay in proceedings," he said.

ANALYSIS

Dispossessed prepare to farm land for profit after 34 years

An interesting experiment in land restitution is set to take place in the farmlands around Citrusdal in the Western Cape, reports **Linda Ensor** from Cape Town

BD 29/10/96 (271A)

PIET Smit has sold his farm for R4m to government, which is to hand it over to the Elandskloof community under the Restitution of Land Rights Act

Smit was unhappy about the sale earlier this month, feeling the price was not as good as he might have won on the open market But he sensed the times had changed and decided to sail with the wind In any case, he had little cause for complaint — considering his father bought the land in 1962 for R34 000 from the Dutch Reformed Church

His decision to sell culminated in ratification by the Land Claims Court of the settlement between himself, the community and government — the first such settlement to be made subject of a court order

When it is legally registered this month under the Communal Property Association Act, the Elandskloof Community Association will be the first of its kind Members move on to the land on December 15

The plan is for the communally owned land to be farmed for profit, which will be used for reinvestment in the farm and community Details of profit-sharing still have to be worked out When Smit, who will be farming the land adjacent to Elandskloof, was in charge the turnover from the fruit — mainly oranges — was estimated to be about R720 000 annually

Through his lawyer Boy Burger, who addressed the court in Citrusdal, Smit said Elandskloof was not for the lazy or a place for retirement, but a place for work He looked forward to the day when the community could surpass his annual production of 1 200 tons of fruit

The 308 families who make up the community are determined not only to match this performance, but better it The day after the court judgment, a decision was taken to appoint consultants to advise on short-term measures to keep the farm in good shape. Elandskloof Association chairman Samuel Carolus said the community might employ a farm manager in the initial stages, on condition he taught them But as most of the Elandskloof community are farm workers in the Cedarberg valley, and many of them foremen, they will bring with them some of the necessary skills

The same determination which drove the community in their 34-year fight to recover their land is apparent in their plans to create a prosperous community on the 3 138ha they now own

The 77 families in the Elandskloof community were evicted in 1962 after the NGK sold it to Smit's father and uncle The church had succeeded in getting government to alter a clause in the title deeds stipulating that the land had to be held in trust by the church on behalf of the community The clause had been included when the church bought the land 100 years earlier for use as a mission station

This was the start of a battle which at one stage saw the community, including mothers and children, set out on foot for Cape Town on September 10 1962, to protest against their loss and ask for government assistance The police persuaded them with promises of a solution to turn back Those who refused to move were prosecuted under squatting legislation and finally forced to leave The Group Areas Act, which had demarcated the farm "white", forbade their return

The community left a thriving village with houses, a school, church, health centre and other facilities, and it now plans to build new ones with funds provided by government and profit from the farm It also wants to build an agricultural village

Community members will be attempting to recreate what in retrospect must seem a lost paradise But for many this will be of more benefit to their offspring than themselves Grandmother Anna Jorge, 71, her face lined and careworn, feels she is too old to enjoy the fruits of the restitution process But she will die knowing that her nine children and four grandchildren have been taken care of "I am so grateful," she said "Now I can be laid under the ground in peace"

Her mother, grandmother and great-grandmother lived at Elandskloof, and she remembers how, as a small child, she helped gather stones to build the foundations for the school building

For the last 34 years she has lived in a squatter camp near Citrusdal, making a living from orange picking

The loss of the land was an act of dispossession so complete that the community, once self-sufficient farmers, became indigent farmworkers whose brick homes were exchanged for squatter constructions. Anna's husband, Johannes, built their stone house himself Today, with its roof gone, it is a derelict reminder of a past age

Anna and Johannes Jorge, both 71, of Elandskloof, outside the Citrusdal Land Claims Court earlier this month. Their community was evicted from its land in 1962 Picture LINDA ENSOR

Stalwart "Oom' Jan January was detained and imprisoned for opposition to the dispossession On his deathbed, he told community members "You must not stop You must continue fighting"

He was not present to witness the ultimate victory, but the community remembered him on that day

The memories of the battles of yesteryear, and the sacrifices and suffering associated with them, will no doubt galvanise them into ensuring that Smit will admire the achievements of his new neighbours when he gazes across his farm fence

JCI director Nick Segal, left, and Labour Minister Tito Mboweni at a debate on labour market flexibility held in Johannesburg on Friday.
Picture TYRONE ARTHUR

Mboweni indicates possible change to new labour law

BD 7/11/96 (166)

Reneé Grawitzky

LABOUR Minister Tito Mboweni has indicated that the new Labour Relations Act could be amended next year to grant him discretionary powers to ask a commission for conciliation, mediation and arbitration commissioner to intervene and assist in resolving labour disputes

Speaking at the launch of the commission in Johannesburg on Friday, Mboweni said he would like to see a situation where the minister could ask the commission to help to resolve a dispute in a situation where the parties had not approached the commission and there was the potential of huge disruptions if the dispute was not resolved

In terms of the new LRA, the commission will play a crucial role in statutory dispute resolution

Business SA representative Bokkie Botha said the establishment of the commission could not have come at a more auspicious time Commission director Charles Nupen said it was committed to conflict resolution so that the country could prosper

Talks on labour law 'difficult'

(166)

Renée Grawitzky

BD 4/11/96

THE green paper on employment standards was proving to be a far more difficult piece of legislation to negotiate than the Labour Relations Act, Labour Minister Tito Mboweni said at the weekend.

Speaking at a debate on labour market flexibility organised by Business Map, Mboweni said the negotiations on employment standards raised the real conflicts between labour and business

National Union of Metalworkers of SA local organiser Leonard Gentle questioned government's strategy which on the one hand proposed legislation that attempted to improve workers' quality of life, while on the other hand committed to an economic policy restricting quality of life.

He said government's commitment to reduce its deficit would surely require cutbacks of crucial services to communities.

JCI director Nick Segal said employers were unhappy about the cost implications of the proposed new employment standards legislation

He said the capacity of employers to respond to a sudden move from a 45- to 40-hour week and maintain a competitive edge could hardly be very high

Wesco Investments chairman and Toyota vice-chairman Elizabeth Bradley said the main problem was that labour was used unproductively Productivity was a feature of management and education, she said

Gentle said it was not possible to get workers to agree to wage moderation without a proper social welfare network in place

CLASS ACT *Elizabeth Bradley listens as Tito Mboweni defends his position*

PHOTO JOHN WOODROOF

Mboweni defends new act

CT(BR) 4/11/96 (166)

JONATHAN ROSENTHAL

Johannesburg — Tito Mboweni, the labour minister, defended the new Labour Relations Act (LRA) on Friday against accusations that it would "choke business to death" and destroy jobs.

The act is due to come into force next Monday.

Elizabeth Bradley, the chairman of Wesco Investments and the vice-chairman of Toyota, attacked the LRA in a public debate between business and labour representatives and the minister on Friday, saying that by making life difficult for medium-sized business, the new LRA would destroy jobs.

Mboweni said that though the new legislation could introduce new cost factors, these would be outweighed by the greater benefit of speedy conflict resolution

Mboweni found a predictable ally in defence of the new legislation in Gwede Mantashe, the deputy general secretary of the National Union of Mineworkers, who said the new legislation was simpler than the old act and the only losers when it came into effect would be lawyers

But Mboweni was also cornered by unionists who attacked the government's macroeconomic policy and said a policy of reducing the budget deficit would result in cuts to education, healthcare and social services.

HANNES THIART

Labour law: Les Kettledas, left, addresses the Cape Chamber of Commerce and Industry on the new act

Expectations high for new labour law

ARG 6/11/96 (166)

LABOUR REPORTER

About 70 percent of industrial disputes will be settled under the new Labour Relations Act, which becomes law on Monday, says deputy director-general of the Department of Labour Les Kettledas.

This would be accomplished through the Commission for Conciliation, Mediation and Arbitration and bargaining councils, which the new act established, Mr Kettledas told a meeting of the Cape Chamber of Commerce and Industry yesterday.

Only about 30 percent of disputes were being settled under the present system

"The new LRA will revolutionise dispute resolution," he said.

"We expect strikes, lockouts and court cases to become the exception rather than the norm."

Act ushers in new era for SA workers

(166)

Sowetan 7/11/96

By Abdul Milazi

THE once internationally isolated South Africa is set to introduce its new Labour Relations Act on Monday, which coincides with the 50th anniversary of the Philadelphia Declaration

When the Philadelphia Declaration was adopted at the 26th session of the International Labour Organisation in 1944, American president Franklin Roosevelt called it "a summing up of aspirations of an epoch which has known two world wars"

The Declaration gave the ILO a new role of promoting the welfare and rights of employees by improving broader conditions instead of just acting as a workers' protector – a role the organisation fulfilled since 1919

Like the Philadelphia Declaration, the new LRA contains most of the ideals that elevate workers' rights and guarantees constitutional protection

All workers protected

For the first time all workers, including farm and domestic workers, are protected by the Act and all collective agreements between trade unions and employers are enforceable in terms of the legislation

The overall aim of the Act is to advance economic development, social justice, stable industrial relations and the democratisation of the work place It provides a framework for employers and workers to bargain collectively for wages, conditions of employment and other matters of mutual interest

Although the fundamental right of workers to strike is entrenched, the LRA provides for the effective resolution of disputes through its compulsory mediation clause

Dispute resolution will be undertaken by the Commission for Conciliation, Mediation and Arbitration (CCMA)

To create peaceful industrial relations, the CCMA and the compulsory mediation clause are supplemented by work place forums

The workplace forums will act as a vehicle for employers and employees to discuss and resolve problems

Interestingly the Act also provides for Agency Shop Agreements (ASA), ending the long-standing dispute between trade union and non-union members who benefit from union's bargaining process without paying a cent

Under this clause non-union members will pay an amount equivalent to union subscriptions to a fund which will be used for union activities

Although the fund will be administered by the biggest union or jointly with others in a particular plant, the LRA prohibits the use of the money for membership recruitment campaigns

The drafters of the LRA cleverly left the subject of discrimination in the work place to the Transitional Arrangements Schedule, pending the introduction of legislation regulating equal opportunity in employment

It is proposed that the unfair discrimination provision will be contained in the Employment Equity Act – to be enacted soon

Anti-discrimination proposals in the Green Paper on Employment Equity include accelerated recruitment, promotion and training of blacks and women

Compel companies

The Department of Labour will have powers to compel companies to develop employment equity plans, taking into account existing demographics within their own organisations

Industrial councils will now be known as bargaining councils

The Basic Conditions of Employment Act is another milestone for workers as it lays down minimum working conditions in all sectors

Transgression of any of its provisions will be a criminal offence The Act also outlaws the employment of children under 15 and bars employers from forcing women to work eight weeks after childbirth and the four weeks before

The new LRA seeks to minimise scenes like these at the workplace by stimulating shopfloor harmony.

New Labour Act 'contains unworkable aspects'

Reneé Grawitzky (166)

BD 8/11/96

ASPECTS of the German industrial relations system, which was proving to be unsuitable to ensure Germany's continued competitiveness, had been incorporated in the new Labour Relations Act, an employer said yesterday

Speaking at a Webber Wentzel Bowens briefing yesterday, PFG Glass industrial relations manager John Shardlow said although the German model led to a very low level of adversarialism, largely as a result of employee participation and co-determination, the system also contributed "to a loss of competitiveness"

He said an industrial relations system had to balance the need for workplace democracy with flexibility and quick decision-making

The German system, which was highly centralised and bureaucratic, did not facilitate the quick decision-making that was crucial in such a competitive climate, he said

He said German employers were concerned about Germany's decline in competitiveness, and indicated that the model worked well when things were going well

SA needed an industrial relations model that accepted unions' legitimacy, but where unions and employers also committed themselves to the company's success

Webbers partner Rod Harper said a German academic, who provided input in the drafting of the workplace forums section, said recently that the model reflected in the Act was unworkable.

SATURDAY BUSINESS

Labour Act the result of decades of struggle

Basic workers' rights entrenched

(166)

ARG 9/11/96

ESTELLE RANDALL
LABOUR REPORTER

The new Labour Relations Act which comes into operation on Monday entrenches basic rights for which the labour movement has been struggling for decades.

These include the right to belong to a trade union without being victimised, and for labour law to cover all workers The Act also entrenches collective bargaining practices characteristic of major sectors of the economy since the 1980s

By enshrining these practices in law for all workers, the Act establishes an environment to promote economic development, social justice, labour peace and workplace democracy.

So it is no surprise that organised business and labour have pledged support for the Act, voiced again at the swearing-in ceremonies of the Commission for Conciliation, Mediation and Arbitration which the Act establishes

The commission is one of the main vehicles through which the Act can achieve more rational and harmonious industrial relations

Business, labour and Government do not expect industrial disputes to disappear. But they hope effective bargaining rights and dispute-resolving procedures will make industrial action and court cases the exception, not the norm

Ebrahim Patel: human solidarity important

Success of the new Act depends on co-operation from business and labour But it also depends on the extent to which it helps labour and business to resolve disputes speedily

At this week's swearing-in ceremony of the Western Cape's 17 commissioners, labour spokesman Ebrahim Patel noted that the commission's roots could be traced to frustration with the previous official dispute resolutions system

Labour had perceived the old system as inflexible, slow, expensive and overly legalistic

"The growth of the non-statutory system under the old Act was largely due to perceived incompetence of the statutory system," Mr Patel said

The new commission had to built on such a bedrock of competency that parties would not want to go outside the system to buy competence

It should avoid temptations to develop a quasi-judicial culture and instead should roll up its sleeves and go in to help parties solve problems It should not not fixate on process and filling in forms, but should be flexible and quickly resolve disputes

Labour also expected the commission to help the new Act build "human solidarity", rather than the competitiveness which appeared to dominate current economic discussion

"Economic growth is important but development requires more than the rise in output of goods and services Development must embrace solidarity, the preparedness of a society to help those who are poor and those who are powerless, to recognise that social equity and the promotion of social welfare is at the heart of all our economic endeavours," Mr Patel said

Difficult birth predicted for labour dispensation

THE long-awaited Labour Relations Act comes into being tomorrow with thousands of businesses and workers still uncertain of its likely impact

The Act is designed to foster a more conciliatory approach to dispute resolution which, it is hoped, will markedly reduce the level of disruptive labour action

It regulates industrial action, introduces workplace forums and creates vehicles for dispute resolution, including a Commission for Conciliation, Mediation and Arbitration, a Labour Court, Labour Appeals Court and sector-wide bargaining councils, among other institutions designed to usher in labour peace

"However, in both employer and labour circles, much scepticism exists regarding the capacity of the commission, the Labour Court and the Labour Department to administer the Act effectively," says the SA Collective Bargaining Survey

Experts have identified other problem areas, including the involuntary nature of workplace forums, antipathy to industrial councils, and a switch to contract labour in order to move beyond the reaches of the legislation.

● As a service to advertisers we outline the new criteria for recruitment staff in terms of the Act on Page 7

ST(BT) 10/11/96

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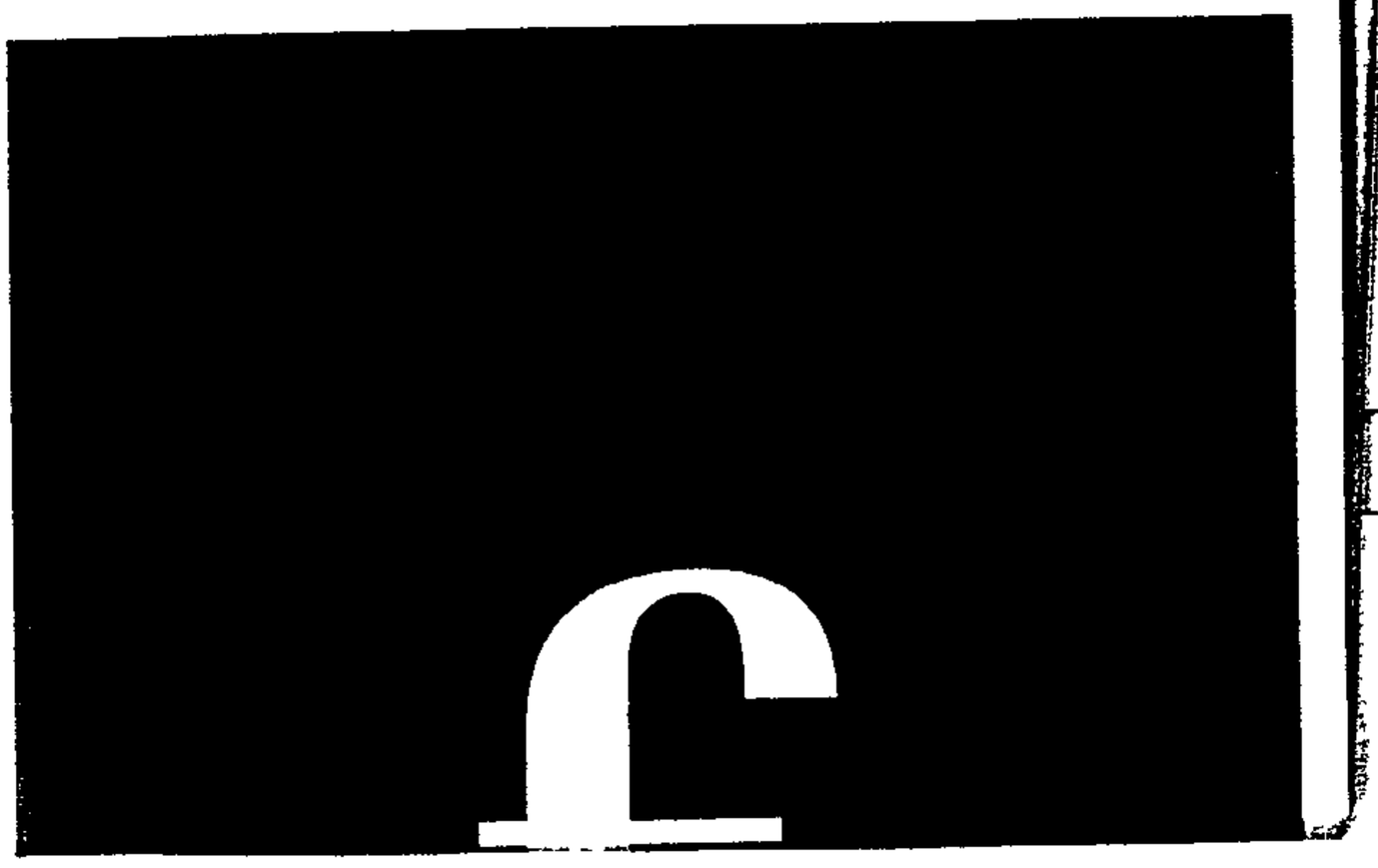

A look back at labour's past on eve of new Act

(166)

Reneé Grawitzky

BD 11/11/96

LABOUR Minister Tito Mboweni's labour reforms would be evaluated by the needs of employers and labour as they sought to co-exist in the workplace, where technological changes and market forces demanded revolutionary changes

Such views are expressed by management consultant and author Pat Stone in his latest book The Adversarial Years. A Chronicle of SA Labour Relations 1980 - 1995, a non-academic commentary on events during that period

Stone said the book's intention was to remind readers facing new challenges with the new Labour Relations Act, which comes into effect today, of the events over the past 15 years and how insurmountable such problems once appeared

"We need to remember where we come from because the diary changes tomorrow," he said

He traces the developments from the Wiehahn reforms on, where government tried to bring "unions into the fold" but failed "Total onslaught" and Cosatu's rise followed legislative reforms in the early 1980s Stone described the period when the "march to political freedom" started as the "dark days" of a "controlled war".

Now, he said, "we face a new economic onslaught". This created problems as "one can have political freedom but economics, by definition, is not democratic, and one can try to structure an economy as democratically as possible, but ultimately no one is born equal in economic terms".

Every country, he said, struggled with balancing political equity and economic stability. "The only chance of achieving labour reform is if parties see it in their self-interest to change."

girlfriend in a Johannesburg night club then blazed away at other patrons, killing three.

Errors in German trade survey

THERE were two errors in Friday's Business Day survey on SA's trade links with Germany.

In a report on different approaches to tax, which said "only natural persons and corporations are taxed on income which is derived from an SA source" should have said "natural persons and corporations are taxed only on income derived from an SA source or deemed SA source".

The same report said: "To date, thin capitalisation and transfer pricing issues have not been covered by SA's exchange control regulations, but as exchange control restrictions slowly go, these issues will have to addressed." It should have read: "To date, thin capitalisation and transfer pricing issues were exclusively covered by the SA exchange control regulations ..."

Business Day regrets the errors.

REPORTS: Business Day Reporters, Reuter.

Region's airlines forge new accord

Stephané Bothma

BD 11/11/96

SOUTHERN African airlines have agreed on closer co-operation in an attempt to counter the threat posed mainly by European airlines increasing their services to the region

Within the next few months SAA, Comair, Air Malawi, Air Namibia, Zimbabwe Airways, Mozambique Airways, Zambian Airways and Angolan Airways would co-operate on maintenance, training, code-sharing and reservation networks, Transnet executive director responsible for SAA, Zukile Nomvete said on Saturday

"The practical implementation of the agreement will be finalised in the next two to three months and by February the benefits of the agreement will be visible," SAA spokesman Leon Els said

The agreement on co-operation was reached at a meeting between the airlines' chief executives on Friday

"A common understanding was established on the benefits to be derived from closer regional co-operation," Nomvete said.

"All parties have given their total commitment to finding workable solutions to the challenges facing airlines of our region"

Far-reaching Act is now in effect

Reneé Grawitzky

THE Labour Relations Act, which comes into effect today, entrenches the right to strike, encourages centralised bargaining, and clarifies the law on unfair dismissals and information disclosure, as well as introducing workplace forums and new mechanisms for dispute resolution.

The main thrust of the new Act is on the one hand to introduce a quicker, cheaper and more efficient dispute resolution procedure and on the other to facilitate the movement away from adversarial collective bargaining towards a more "co-operative and problem-solving orientated relationship on issues like productivity and efficiency" through the establishment of workplace forums.

The Act does away with conciliation boards and the Industrial Court and introduces new institutions such as the Commission for Conciliation, Mediation and Arbitration, the Labour Court and the Labour Appeal Court.

The Labour Court's judge president, Judge John Myburgh, said on Friday that the court would operate from temporary premises in its four regions until the building of the courts was finished

The courts are situated in Johannesburg, Cape Town, Durban and Port Elizabeth.

Myburgh said the staff was ready and the rules of the court had been drafted. As a result of a dispute between the National Economic, Development and Labour Council (Nedlac) and the Judicial Services Committee, the appointment of one judge to the Labour Court was delayed It is understood the commission wanted a politically correct appointment This was rejected by Nedlac. The president, not wanting to take sides, refused to make an appointment and asked for the post to be readvertised

Joe Campanella, author of The Complete Guide to Managing the New LRA, said one of the thrusts of the Act was to move labour relations away from a legalistic approach This implied there would be a greater emphasis on line manager involvement in day-to-day labour relations issues

BD 11/11/96 (166)

TODAY'S WEATHER

Gauteng: Partly cloudy and warm Thundershowers are expected.

Act highlights SA's tight-lipped approach

(166)

ET(BR) 11/11/96

ANN CROTTY & GUY OLIVER

Johannesburg — Details of the disclosure of information required in terms of the new Labour Relations act highlight what one leading international accounting specialist described as South African management's zero-sum game approach to the disclosure of information

One of the architects of the well-known Cadbury report on corporate governance believed that South African management had a proprietorial approach to information on company matters and that they felt sharing such information would leave them worse off

The act's requirements relating to disclosure are regarded by some labour advisers as disappointing and fall short of progress already made by players in the motor industry Section 16 of the act states that "whenever an employer is consulting or bargaining with a representative trade union, the employer must disclose to the representative trade union all relevant information that will allow the representative trade union to engage effectively in consultation or collective bargaining" But it then adds that an employer is not required to disclose information that is legally privileged, that is confidential and, if disclosed, may cause substantial harm to an employee or the employer

If there is a dispute about what information must be disclosed, any party to the dispute may refer it to the commission

The unspecific nature of these requirements suggests that it will be incumbent on the union to take the action necessary to get management to reveal all but the most mundane of information

According to the Labour Research Services, a review of international legislation on the disclosure of information for collective bargaining shows the following elements are important that the information that is disclosed is specific, that it includes plans and budgets, that there be provision for the use of experts, and that worker representatives are trained to enable them to read and interpret the information

Peter Klauer, an observer in South Africa for the Federation of German Trade Unions, said it was imperative that a culture of openness be developed in South Africa between employer and employee

Klauer said the issue of disclosure of executive salaries in Germany was a source of pride

At a conference on disclosure held in Johannesburg two years ago, Monica Singer of the South African Institute of Chartered Accountants said "It is fundamental that a market economy functions properly This can only be achieved in an atmosphere of extensive knowledge concerning financial and other aspects of corporate behaviour"

South African companies regard the demands of international investors as the greatest source of pressure to adopt a more open approach Local investors have never had access to the information that is now available to foreigners

It is difficult to reconcile the daily harassment politicians are subjected to for such things as details of budget-control systems, wage levels and perks with the apparent indifference shareholders have towards budget details as well as wage levels and the perks provided to the executives who run their companies The demands for transparency and disclosure that put South African politicians under pressure do not exist in the corporate world And the new act is unlikely to change this situation much

Consensus eludes business, labour

Reneé Grawitzky

(166)

BD 4/12/96

NEGOTIATIONS on the green paper on employment standards would continue despite the Congress of SA Trade Unions' (Cosatu's) view that labour would not get anything beyond what was currently on the table, Cosatu general secretary Sam Shilowa said last week

Addressing a news conference on a number of resolutions adopted at Cosatu's last executive committee meeting of the year, Shilowa said despite this, bilateral meetings with government and business would continue

In addition, a high-level meeting with Labour Minister Tito Mboweni led by Cosatu's president John Gomomo and assistant general secretary Zwelinzima Vavi would be convened

Whatever emerged during the meetings would be taken back to the alliance.

Sources close to the negotiation process said although bilateral meetings were continuing, the divide between labour and business was very wide

Indications were that government had tried to explore various options to bridge that divide with consensus on all uncertain issues.

It was understood that government wished to ensure that consensus on some issues would be achieved by early next year.

It was unlikely at this point, based on the progress made, that consensus on all issues would be achieved.

Ultimately, government could be forced to table a final Employment Standards Bill without consensus, sources said.

Some of the core issues in dispute related to maternity leave, hours of work, Sunday work, child labour and variation of standards.

Other issues discussed at the Cosatu executive ranged from the support for a national health system to endorsement of recommendations adopted at a trade workshop.

Shilowa called on Cosatu members to pull out of medical aid schemes and support a national health system as such a system would benefit a far greater number of people.

Recommendations adopted at a recent Cosatu workshop on trade policy related to the development of the southern African region, the World Trade Organisation (WTO) and export processing zones (EPZ) Cosatu reaffirmed its opposition to EPZs and said it needed to develop an industry strategy and develop an alternative to the zones

station manager Charlene Smith said yesterday amount of classical music broadcast would not be would become a 24-hour news and information service. Smith denied this was planned SABC radio CE Goyan Reddy said last night that

Arbitration law defective, says commissioner Steyn

BD 5/12/96 (166)

Deborah Fine

SA's unimpressive and internationally backward mechanisms for alternative dispute resolution had significant implications for foreign investment and international trade, SA Law Commission project director on international arbitration Jan Steyn said recently

Steyn, a former Cape judge and currently joint ombudsmen for life assurance and appeal judge for Botswana, Lesotho and Swaziland, said SA's existing arbitration legislation was considered by most circles to be "defective" for use in international arbitrations

The current laws had no provisions dealing with international arbitrations and did little more than seek the enforcement of foreign awards, he said

The law commission's projects committee, which includes Prof David Butler, Prof Dick Christie QC, Adv Jeremy Gauntlett SC and Judge Shenaaz Meer, recently published a discussion paper with three core proposals aimed at enhancing international arbitration in SA and making the SA version "user-friendly" to foreign parties

The proposals included the application of the Model Law adopted by the United Nations Commission on International Trade Law, the enhanced application of the New York convention and the proposed accession by SA to the Washington convention on the settlement of investment disputes between states and nationals of other states

The Model Law's aim was to promote the harmonisation and uniformity of national laws pertaining to international arbitration procedures

The Washington convention of 1965 focused on the resolution of investment disputes between a contracting state or government entity of the state and a national of another contracting state

The aim of the convention was to promote a climate of mutual confidence between states and investors, thereby increasing the flow of resources to developing countries

SA's ratification of the convention would create the necessary legal framework to encourage foreign investment and economic development, Steyn said

He said as the implementation of government's macroeconomic strategy began to yield dividends, major infrastructural development projects could well be financed by international agencies or consortiums Disputes were bound to arise, and international investors would seek acceptable, rapid dispute resolution mechanisms

Firm accuses foreign affairs dept of dirty tricks campaign

PRETORIA — SA's foreign affairs department was utilising its foreign diplomatic missions to leak disinformation to implicate Executive Outcomes in the Zairean conflict, the company claimed yesterday

The company, which supplies military advisers, and allegedly mercenaries, said that confirmation of the department's disinformation campaign had been obtained from at least two embassies in Europe

"This week (the firm) established that staff of SA's French embassy fed the newspaper La Figaro with incorrect and false information to ensure that a story was published blaming (it) for mercenary activities in the area," the firm said

The story appeared in La Figaro last weekend and was quoted in SA newspapers this week

The company also claimed that a similar disinformation operation was carried out by SA's Dutch embassy during September — Sapa

SA mining houses deny rebels' claims

BD 5/12/96

ANGLO American and De Beers have denied claims by Zairean rebels that the SA groups had active operations in the strife-torn central African country

The rebels, who have been gaining territory in recent weeks, reassured foreign companies that they would honour established mining concessions

Jean Kabongo, special security adviser to rebel leader Laurent Kabila, said the rebels would try to open up new areas to mining, especially in the central region of Kasai He said both De Beers and Anglo had mining operations in areas now under rebel control

The rebels said they had already captured the mining centre of Kamituga, where they claimed Anglo had been operating

Sources could only confirm that Canada's Banrow Resources was involved in mining activities in Kamituga Anglo said it had no operations or even exploration teams on the ground in Zaire

Anglo chairman Julian Ogilvie-Thompson said last week that the company, which has spearheaded SA mining houses' move into Africa, would proceed warily in Zaire and had only submitted a bid to develop the Kolwezi Copper tailings project

De Beers, which controls the world's rough diamond market through its London-based Central Selling Organisation, said yesterday that it had no mines in Zaire but maintained about five buying offices in the country

De Beers spokesman Tom Tweedy said mining activities were under the control of the state-owned Societé Miniére de Bakwanga (MIBA), which exploited Zaire's diamond deposits

"De Beers has no diamond mines in Zaire, we don't even have technical guys going up to the MIBA mine It is a totally separate company run by Zaire and Sibeka in Belgium, of which Sibeca only has a 20% interest"

He said De Beers had a small stake in Sibeka but no interest or involvement in the Zairean operations — Reuter

LABOUR RELATIONS ACT

STRIVES FOR NEGOTIATION INSTEAD OF CONFRONTATION

FM 6/12/96 (166)

Seeks quick resolution of disputes

The Labour Relations Act, adopted a year ago, has now come into effect, heralding a new era in employment relations and collective bargaining in SA The Act will have a direct impact on every business and, as Sacob advises, it is imperative for employers (and, indeed, trade unions) to familiarise themselves with its contents in order to effect the required changes to employment policies and practices

New concepts, such as workplace forums and unfair discrimination, are introduced, while a comprehensive system of union organisational rights is now statutorily regulated More legal certainty is provided in the area of dismissals and many procedures have been simplified.

While a voluntary system of collective bargaining is provided for, with minimum interference by the courts, centralised bargaining is promoted The Act does so in two ways — by providing for the establishment of bargaining councils and new bodies, called statutory councils A collective agreement concluded in a bargaining council (which is representative of unions and employers in that sector) may be extended to parties not represented in it Statutory councils, which may be applied for by either unions or employers representing 30% of a sector or area, cannot be extended to nonparties, save in limited instances Bargaining forums can decide which matters may be determined at plant level

Tito Mboweni

Most important, the system of dispute resolution has been overhauled, with the new Commission for Conciliation, Mediation & Arbitration (CCMA), headed by Charles Nupen, replacing the Industrial Court — which retains jurisdiction over disputes that arose under the old Act The emphasis now is on resolving disputes through conciliation and mediation via the CCMA Many unresolved disputes will go to arbitration, which, says the Labour Department, will allow disputes to be resolved more quickly and cheaply than litigation through the courts It also actively promotes private dispute settlement procedures negotiated between the parties, overriding the Act

The Act does not lay down minimum wages or other conditions of service Instead, new mechanisms for collective bargaining are provided

All workers, excluding members of the defence force, secret service and intelligence agency, are now covered by one labour statute, bringing SA into line with international standards

The Act tries to meet the needs of small businesses by, for example, simplifying the law, making provision for them on bargaining councils and exemptions from industry-wide agreements

Arguably, however, greater deregulation is required

The aim of the Act is to "promote economic development, social justice, labour peace and workplace democratisation " It's part of Labour Minister Tito Mboweni's five-year plan of fundamental labour reform, including new minimum employment and equity standards due to be passed by parliament next year

If SA business is to compete in the global economy, major restructuring of the workplace is required, the department says "Management and labour have to find new ways of relating to each other There needs to be a shift towards joint problem-solving and better communication on certain issues "

To this end, the Act introduces **workplace forums** for the first time in SA (though the parties aren't prevented from considering other methods of worker participation)

A workplace forum may be established at any workplace with 100 or more employees Only registered unions (having a majority membership at the workplace) may apply to the CCMA to establish a forum If the CCMA fails to achieve agreement between employer and union on establishing a forum, it must set one up based on guidelines in the Act

Members of forums must be elected by all the employees at a company However, a registered union is entitled to choose all the members of a forum

A workplace forum is entitled to be "consulted" by an employer over 11 issues workplace restructuring, changes in work organisation, plant closures, mergers and transfers (in so far as they affect workers), retrenchments, exemptions from any agreement or law, job grading, criteria for wage increases or bonuses, education and training, production plans; and promotions

Matters that require "joint decision-making" between employer and forum include disciplinary codes and procedures, affirmative action and changes to the rules of benefit funds

Employers are obliged to meet a forum regularly to report on the company's financial and employment situation The forum must be consulted on any matter arising from the report that may affect employees. Forum members are entitled to reasonable time off during working hours — with pay — to perform their duties or undergo training to do so

In line with the Constitution, the Act grants employees the right to **strike** Employers have recourse to a **lockout** under the Act, not the Constitution "Only when a serious attempt to find a negotiated solution has failed should workers and employers consider more drastic measures," says the department

Workers who go on a strike that complies with the Act will be protected from dismissal They could, however, be dismissed for misconduct (violence and intimidation) or for operational reasons The employer may not stop a protected

strike by going to court, though he could do so in order to stop unlawful action, such as damage to machinery Damages as a result of lost production due to the strike may not be claimed

Workers on a protected strike may be retrenched — but only if all the consultative procedures for doing so are followed If after retrenching a firm employs different workers after a strike, those retrenched are entitled to take their dispute to the Labour Court


Charles Nupen

Companies do not have to pay workers engaged in a protected strike or subject to a protected lockout — except where food or accommodation is part of their package Employers may reclaim this money from the workers through the Labour Court

An employer who institutes a lockout in terms of the Act will be protected from court action While such workers may be physically excluded from the workplace, they may not be dismissed If the lockout is in response to a strike, the employer has the right to use replacement labour — but after the strike, those who struck must be allowed to return to work

If in a protected strike there's a collective agreement with a dispute mechanism, it must be followed Where there's no agreed procedure, workers may refer the dispute in writing to the CCMA, or bargaining or statutory council, which have up to 30 days to resolve it If that fails, the body will issue a certificate saying so The union must then give 48 hours' notice in writing (seven days if the State is the employer) of its proposed strike

Procedures for a protected lockout are much the same

A strike or lockout will not be protected if a collective agreement prohibits either in respect of the issue in dispute, an agreement requires that the issue be referred to arbitration, the issue is one that the Act says may be referred to arbitration or the Labour Court, or applied in an essential or maintenance service

Workers may be dismissed for taking part in an unprotected strike — but only if the intention to do so has been discussed with the union, a clear ultimatum given and enough time for the strikers to consider the ultimatum

Secondary strikes are permitted, and will be protected if the primary strike has been procedural The secondary employer is then entitled to seven days' notice, and the nature of the secondary strike must be reasonable in relation to its possible effect on the primary employer

A registered union may authorise a peaceful picket by its members in support of a protected strike or against a lockout Webber Wentzel's Rod Harper strongly advises that picketing rules be established well in advance of any picket

Stayaways linked to workers' socio-economic interests are allowed, provided that the union serves 14 days' notice to Nedlac and attempts to negotiate on the matter Workers cannot be fired for such action

The constitutional right to **freedom of association** means that an employer may not refuse to employ someone because of their trade union membership

Certain **organisational rights** — which in the past would have had to be negotiated with employers — are now granted to unions in terms of the Act Thus a "sufficiently representative" union is entitled to access to a workplace for union business out of working hours The union is also entitled to subscription deductions if it authorises the employer to make them

A **registered union** also has the right to appoint union representatives (shop stewards) and to the disclosure of information (which would allow them to represent workers in hearings) and monitor company compliance with the Act

Registered unions may conclude a recognition agreement with employers for an **agency shop**, which obliges employers to deduct an agreed agency fee from all employees who are not members of the union but would be eligible to join it While such employees cannot be forced to join the union, their fees may not be contributed to a political cause The fees of conscientious objectors have to be paid into a fund administered by the Labour Department Many companies have already received demands for agency shops from unions

Going further, a registered union may conclude a **closed shop** agreement with an employer that would require all the employees of that company or sector to be members of the union

Disclosure of information now goes beyond information to which shop stewards are entitled Employers must also disclose to a representative union (and workplace forum) "all relevant information" that would allow the union to engage effectively in bargaining

There are four grounds on which employers are not required to disclose information legally privileged information, if a law or order of court would be required, confidential information which may cause substantial harm to an employee or the employer, and private information of an employee, unless consented to

Disputes over information disclosure may be referred to the CCMA If the information is both relevant and confidential, the CCMA has to weigh the harm its disclosure is likely to cause against the harm that its nondisclosure is likely to cause the union's ability to perform its function

In terms of the new streamlined **dismissal procedure**, disputes over dismissals must go first to the CCMA, or a bargaining council, for conciliation If that fails, a dismissal over a worker's conduct or capacity may be arbitrated by the CCMA or bargaining council If based on the employer's operational requirements, or if a dismissal is "automatically unfair," these may be referred to the Labour Court

Automatically unfair dismissal is when a fundamental right, such as taking part in union activities, is infringed

Where a dismissal is found to have been unfair, the worker should generally be reinstated or re-employed Compensation instead of reinstatement may be awarded if the circumstances around the dismissal would make a continued employment relationship intolerable, it would not be practical to take the employee back, if the employee did not want to go back, or if there was good reason for the dismissal but the employer went about it unfairly If not reinstated or re-employed, the worker may be awarded up to a year's wages for an unfair dismissal or two years' wages for an automatically unfair dismissal

The Act is the product of tough negotiations in Nedlac between government, business and labour — though not everybody agrees with every part of it Whether the new culture of "regulated flexibility" it tries to promote induces management and labour to resolve differences through negotiation — rather than adversarialism — will be judged by the level of industrial peace and economic growth it fosters ■

CRY: A worker adds a "hearty" voice to union demands for better working conditions, during a Cosatu march in the city yesterday *PICTURE GARTH STEAD*

NC silent on alliance partner's strike

(166) (152)

CHIMKE

usiness and key political parties have expressed unvocal disapproval of the nationwide stayaway ers of the Congress of South African Trade Cosatu), the ruling party has been uncommonly

said yesterday that, from early information, it ore than two million workers d away across the country percentages of absenteeism ted

esses, the National Party, Freedom Party and Democratic mned the action

, national ANC structures did not issue press statements

NC is in a tripartite alliance with the powerful d the South African Communist Party Specula- the strength of this alliance has dogged these months. The chief question has been whether ns remain as cosy as they were before the 1994 when unity meant strength

gh the reasons given by Cosatu for the action focused on disputes over certain clauses in the Basic Conditions of Employment Draft Bill, it was also a direct hit at the government's Growth, Employment and Redistribution strategy (GEAR), which had been presented to South Africans as a non-negotiable

GEAR provides a fiscally conservative framework that aims to make South Africa globally competitive However, it is not so much its content as its being a strategy produced by technocrats — without extensive consultation — that is the issue for Cosatu

HOW STAYAWAY AFFECTED BUSINESS — PAGES 6 & 15

Cosatu spokeswoman Ms Nowetu Mpati denied yesterday that the strike had any impact on the relationship between unions and the ANC She was confident that, no matter what it took, Cosatu's demands — specifically those related to the Basic Conditions of Employment Bill — would be met

These include a 40-hour week, six months' maternity leave, four of which should be with pay, the raising of the lower age limit for child labour and maintaining the status quo in legislation on Sunday work

Mpati said that if agreement could not be reached on these clauses between the unions and business at the National Economic Development and Labour Council (Nedlac), the bill would have to go before Parliament for a vote

In this case, with the ANC's strong voting presence, union demands would be pushed through, she said.

CT 3/6/97

Homosexuals win marriage benefits

(166) ST 22/12/96

By CAROL PATON

DRAMA lecturer Aart de Villiers has worked at the University of the Witwatersrand for more than 20 years but it took until this week for him to win equality with his married colleagues when he was allowed to register with his medical aid the man with whom he has lived for 35 years

The move by Wits follows the implementation of the new Labour Relations Act last month, which says that employers may not discriminate against their employees on grounds of sexual orientation or marital status The Constitution also outlaws these as "unfair discrimination".

Professor John Shochot, chairman of the Wits staff medical aid fund, said the decision to change the rules to recognise same sex and heterosexual domestic partnerships between unmarried people was taken because "it is what is right for our members".

"If people have a legal, binding contract we will accept the partnership. But we want some sort of proof that it is not just a casual relationship," he said.

The first applications at Wits were made only after the new Constitution and labour laws were put in place

"I did not even try under the old constitution," said De Villiers

De Villiers, who recently retired, has lived with his partner for 35 years "Everybody accepted us as a de facto couple but we never had a legal contract between us We have joint bank accounts and own all our property together So we drew up an affidavit which we submitted to the medical aid"

Two other universities have also recently taken this route.

Bruce Smith, director of personnel at Rhodes University, said the medical aid rules were changed when the first applications were made in response to new rights contained in the Constitution. At Rhodes, members need to prove they have been in a relationship for at least two years.

At the University of Cape Town, members have to be in a "marriage-like relationship" and have to submit an affidavit to prove it

But while these developments have been uncontroversial at the universities, the removal of discriminatory benefits is an issue many companies will still have to confront

Derek Robson, who has been employed by Eskom since 1989, has applied four times to have his same sex partner of the last 13 years admitted to the Eskom medical aid society His latest application was refused this month

Now Robson intends using the Labour Relations Act to force Eskom to reverse the decision. In terms of the Act, he will need to file a grievance and go through the dispute-resolution procedures.

If the dispute is not resolved it will be referred to the Commission for Conciliation, Mediation and Arbitration. If that too fails, the Labour Court will have to decide the issue.

The parastatal's medical aid rules specify that a dependant means a spouse, a minor child or a close relative "who is recognised as a dependant".

Peter Adams, a spokesman for Eskom, said the company believed that "based on the legal definition of a spouse and the rules of the scheme" the company's interpretation of the rules was still valid.

"The rules say that a partner must be legally married There are many other classes of partnership and to open the scheme to these would open it to abuse," said Adams.

Labour law expert Joe Campanella said there was no simple answer to the question of whether Eskom's medical aid's rules were legitimate. The only way to find out would be to challenge them using either the Labour Relations Act, the Constitutional Court or impending legislation which aims to remove unfair conditions in contracts

"There's no reason to discriminate against a gay couple. But the question is, is the employer responsible for it? If the employer controls the medical aid there might be a case," he said.

While Eskom is digging its heels in for a legal battle there are a small number of companies which have taken steps to include employees who have gay live-in partners

One of the first was the Information Trust Corporation, a credit bureau

The company chose Northern Medical Aid — one of the five biggest in the country — two years ago because it recognised gay partnerships

Lou-Anne Howie, who was involved in choosing the scheme for ITC, said: "We had quite a few gay couples who work for us so it was important for us to accommodate them. We chose Northern because they offered the facility — but they seemed shocked when real people actually applied.

"We wanted to recognise that not all partnerships are between heterosexual married people."

LRA also expects workers' respect

(160)

Sowetan 17/1/97

By Abdul Milazi

WHILE workers expect fair treatment from employers, they too are now required by the new Labour Relations Act to treat their employers fairly

The LRA for the first time in South Africa introduces a written code of good practice which provides a detailed guide to the procedures to be followed on dismissals and disciplinary action

Labour consultant Joe du Preez says the key principle of the Code of Good Practice, as the code is called, is to engender mutual respect between employers and employees and it accordingly places a premium on both employment justice and the efficient operation of business

"It states that while employees should be protected from arbitrary action, employers are in turn entitled to satisfactory conduct and work performance from their employees," says Du Preez

He points out, however, that the Code of Good Practice is not a substitute for the company's internal disciplinary codes and procedures which have been negotiated by employers and trade unions

"Where companies are applying disciplinary codes which have been unilaterally determined by management, they should compare them with the code to ensure that their procedure is not in conflict with its provisions," Du Preez explains

Du Preez says whether or not a dismissal is based on fair reason is determined by considering how appropriate it is when viewed against the facts of the offence

"Procedural fairness, on the other hand, is determined by whether or not the procedural guidelines in the Code have been followed," says Du Preez

Labour act curbs hiring and firing

Reneé Grawitzky (166) BD 30/1/97

THE new Labour Relations Act, which provided recourse for job applicants to approach the Labour Court with complaints of discrimination, might cause some employers to yearn for the "good old days" when they could hire and fire at will

Joe Campanella, of labour law consultants Weiner & Campanella, said in terms of the new law, unsuccessful applicants could approach the court if they believed the conduct of their would-be employer was unfair in that it involved discrimination on such grounds as race, gender or sexual orientation

Challenges could cause problems for employers if the court found merit in the case It could compel the employer to pay the equivalent of two years' worth of the salary the applicant would have received.

The new legislation clearly required employers not only to be more careful in recruiting new employees but to be ready to justify and defend the appointment made, Campanella said.

"This can best be done by ensuring that the applicant who gets the job is the one who most closely fits the objective specifications for that particular job and that the position was advertised widely in order not to exclude persons from any particular group from applying "

He said job specifications had to be genuine in that they accurately described the actual skills, qualifications and characteristics necessary for a person to perform the job and were not unrealistically high

Industrial relations and training consultants Bruniquel & Associates recently launched a training programme to assist employers to change their recruitment procedures to meet the act's requirement of "unprejudiced decisions in selecting new staff"

Gauteng director Johan Myburgh said "selection without prejudice" assisted employers in shifting the focus of selection interviews from the "traditional approaches to bona fide job requirements, eliminating poor selection decisions and avoiding the risk of unfair labour practices"

The programme could help employers to draft a competency-based job analysis, prepare a candidate specification based on competencies needed for the job, draw up recruitment advertisements which complied with antidiscrimination legislation and assess and select an applicant by reaching a "prejudice-free" decision.

Sowetan 31/1/97

Avoiding LRA pitfalls

(166)

By Isaac Moledi

AN industrial relations and training consultancy group has launched a training programme to help businesses change their manpower recruitment procedures to avoid prejudice when selecting new staff

Selection Without Prejudice is a two-day training programme created by Bruniquel and Associates (B&A) to help employers not to fall foul of the new Labour Relations Act when recruiting their new staff

The LRA requires employers to make "unprejudiced decisions" in selecting new staff

The video-based programme targets human resources managers, recruitment officers, line managers and supervisors involved in the personnel recruitment

The LRA specifies that age, race, gender, religion, residential address and family responsibilities should not play any role when people are recruited for jobs

Selection Without Prejudice teaches participants how to shift the focus of selection interview from the traditional approach to *bona fide* job requirements, eliminating poor selection decisions and avoiding the risk of unfair labour practice

The training package can be purchased and run in-house by the client's own training personnel or may be presented by a B&A consultant

'Strike won't break impasse'

(166) Sowetan 2/6/97

THE South African Chamber of Business said it did not believe the 24-hour strike by the Congress of South African Trade Unions would help resolve the impasse at Nedlac

Sacob was responding to Cosatu's 24-hour strike today in protest against an impasse in talks with employers and the Government on certain sections of the Basic Conditions of Employment Bill.

"We don't like it because we don't think there is need for it," said Sacob economist Gerrie Bezuidenhout.

Meanwhile, Cosatu spokeswoman Nowethu Mpati urged employees engaged in essential or maintenance services to report for duty

She said union and non-union strikers would enjoy the protection of section 77(1a) of the Labour Relations Act

Mpati said Cosatu remained committed to resolving the impasse and was waiting for business and the Government to initiate talks if they had revised their positions and received mandates from their principals.

She said Cosatu would evaluate progress in the negotiations when its executive meets on June 24

IFP condemns planned strike

Sowetan 2/6/97 (166)

TODAY'S planned strike by the Congress of South African Trade Unions was a selfish act serving the interests of "myopic trade unionists", the Inkatha Freedom Party said yesterday

The stayaway would damage South Africa's already unstable economy and would not fill the stomachs of the jobless and hungry millions, the IFP said

The strike would bring an increase in inflation and adverse implications for growth and job creation

If Cosatu was sincerely concerned about workers, it would have consulted political parties and the broader community before embarking on its action

The strike would increase tension in already divided communities, and Cosatu's intimidatory and coercive tactics would inevitably lead to retribution in the townships

The IFP said it doubted the African National Congress was being sincere in wanting to achieve peace as long as it carried the Cosatu albatross around its neck. "We are now witnessing the tyranny of the minority trade unionists prevailing over the unemployed millions," the IFP said

Meanwhile, the South African Democratic Teachers' Union yesterday urged all educators to participate "fully and effectively" in Cosatu strike action

In a statement Sadtu called on its members to observe the general strike in full.

"Hence, all educators are expected to be part of the rallies and marches convened by Cosatu," the union said

Police, soldiers and traffic officials would maintain a strong presence in central Johannesburg during today's protest, police said yesterday – *Sapa*

Cosatu strike has some employers confused

BD 2/6/97 (166)

Reneé Grawitzky

ON THE eve of the Congress of SA Trade Unions' (Cosatu's) 24-hour strike in support of demands linked to the Basic Conditions of Employment Bill, there was confusion among some employers as to whether their workers would be taking part in the planned action.

Despite this confusion, with some employers saying their shop stewards were unclear as to whether today constituted a full-day stayaway or marches, reports from Cosatu offices indicated widespread support. Compared with previous stayaways, there was a high level of mobilisation in the mining industry and among workers not affiliated to Cosatu.

The National Council of Trade Unions informed the National Economic Development and Labour Council (Nedlac) last week that it would be taking part in the action.

Cosatu assistant general secretary Zwelinzima Vavi said today's action was historic as, for the first time, workers would be protected while participating in socioeconomic protest action, with no fear of dismissal. He warned that Cosatu would have to take a tougher stand as business was not listening and would have to consider further action to create a "mini-crisis" to ensure workers' demands were met

Cosatu's Western Cape regional secretary, Tony Ehrenreich, said some employers in the region were opposed to Business SA's position on the bill but indicated they had no influence over the organisation. Ehrenreich said that employers in the metal industry had agreed to six months maternity leave, which indicated clearly that not all employers supported Business SA's position.

Since the formal "deadlock" in negotiations on the bill two weeks ago, no formal discussions have taken place. Cosatu said it awaited moves by business and government to initiate discussions.

Nedlac executive director Jayendra Naidoo believed the issues were not impossible to resolve.

It was unlikely the parties would meet over the next two weeks as the main labour, government and business negotiators would be in Geneva this week for the annual International Labour Organisation conference.

Farouk Chothia reports from Durban that the Inkatha Freedom Party (IFP) warned the Cosatu stayaway would trigger violence. IFP labour spokesman Valephi Ndlovu said Cosatu was likely to resort to intimidation and coercion to enforce the stayaway This would lead to "retributory actions" in townships.

Union urges 'solution'

Cosatu: We'll step up fight

Workers march in city

ARG 2/6/97 (166)

STAFF REPORTERS AND SAPA

Unions today threatened to intensify mass action against the Basic Conditions of Employment Draft Bill if the Government refuses their demands for a 40-hour working week and six months' maternity leave.

The Confederation of SA Trade Unions deputy-president, Connie September, issued the warning to the Cape Argus before an estimated 5 000 marchers set off from the Grand Parade to deliver memoranda to the SA Chamber of Business and the Department of Labour offices

She said Cosatu's executive committee would meet later this month to discuss the planned action.

"If nothing happens between now and June 24, Cosatu will take a decision to intensify rolling mass action," she said

Cosatu called today's countrywide marches and a 24-hour general strike in a bid to compel the business community and the Government to accept its argument for a 40-hour working week and six months' maternity leave, four months of which is to be paid.

Cape Town marchers said the unwillingness of business to listen to Cosatu had forced them to strike.

"We will strike again and again until they listen," said marcher Shanaaz van Blerk

The clothing industry, one of the region's biggest employers, was virtually at a standstill today as 70 percent of its workers heeded the strike call.

"The majority of factories have reported high levels of absence," said Johan Baard, chairman of the Cape Clothing Manufacturers' Association

Elsewhere the response was mixed.

Early today, Charl Adams of the Cape Chamber of Commerce and Industry said that there appeared to be "patchy" support for the strike

One large employer with 11 000 staff members had been unaffected, while a technical company reported an 80 percent

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Union Cosatu warns

ARG 2/6/97 (166)

Nehawu represents about 70 percent of Parliament's unionised workforce

One of the region's biggest unions – the SA Municipal Workers' Union (Samwu) – announced it would join the Cosatu march from 1 30pm today after briefing staff about a successful wage deal struck last week But it would maintain essential services.

Elsewhere the response was mixed. Johannesburg services did not appear badly hit, but in Port Elizabeth and Uitenhage, municipal services ground to a halt

From page 1

stayaway at one branch but full attendance at another

Essential services appeared largely unaffected by the stayaway

The Golden Arrow bus company reported a 14 percent stayaway by staff who were members of the Cosatu-affiliated Transport and General Workers Union

Public relations officer Jeanne Welsh said most staff were members of the Transport and Omnibus Workers Union, affiliated to the National Council of Trade Unions (Nactu), and all had reported for duty.

Metrorail spokeswoman Riana Jacobs said there had been "a 100 percent turnout" of staff and that the numbers of passengers appeared normal.

Parliament operated on a skeleton staff after members of the Cosatu-affiliated National Education, Health and Allied Workers' Union (Nehawu) downed tools in mid-morning and joined the stayaway

strike

CT 26/6/97

(99)

SA labour faces for Cosatu

THREE MILLION EXPECTED TO STAY AWAY

THE SHOWDOWN between business and labour comes to a head today with Cosatu's national stayaway. Political writer **KARIN SCHIMKE** reports.

THE Congress of South African Trade Unions (Cosatu) expects "three million people" to take part in its national stayaway today "The real purpose of the strike is to cause harm to business so that it can shift its uncompromising attitude," Cosatu assistant general secretary Mr Zwelinzima Vavi said yesterday

He warned that if business did not change its stance on labour market flexibility, more militant strikes could be undertaken later in the month

Police in the Western Cape are not expecting trouble, but in Johannesburg the army, police and traffic officials are bracing themselves for a march by at least 50 000 people

In the Western Cape the strike is expected to affect mianly the transport and manufacturing sectors

Vavi said the efficacy of the action would not be measured in the number of people marching on the streets, but would be gauged only this evening when business people reported back on the percentage of the workforce that stayed away

Cosatu has declared a dispute over provisions in the Basic Conditions of Employment Bill, but Vavi made it clear yesterday that the organisation also wished to protest against "the assumption that the labour market is not flexible enough"

This issue is directly related to the government's Growth, Employment and Redistribution (GEAR) strategy, which is seen by Cosatu as an unwelcome shift in economic policy Vavi said, however, that today's action was aimed particularly at business It would not only harm business, but also demonstrate the level of support for Cosatu's demands

"In the past we have pulled no fewer than three million people and we're expecting the same number for this action "

The SA Chamber of Business (Sacob) and the Johannesburg Stock Exchange (JSE) have come out strongly against the action, as has the Inkatha Freedom Party (IFP)

The stayaway has been criticised by Sacob and the IFP as being harmful to the very people unions are meant to protect Mr Russell Loubser of the JSE has said the action will not send a positive signal to foreign investors

The SA Communist Party has voiced its support for the stayaway, saying "all attempts to block workplace democratisation in the name of competitiveness, flexibility or growth must be resisted"

The National Council of Trade Unions (Nactu) has announced it will also take part in the stayaway

Cosatu has taken issue with four main aspects of the Basic Conditions of Employment Bill

The first, said Vavi, was maternity leave which the government had set at four months without pay Cosatu initially called for six months paid maternity leave, but is now demanding at least four months with pay

The second issue is the reduction of the work week from 48 hours to 45 Vavi said Cosatu had wished to reduce this to 40 hours a week, but in a compromise proposed that the reduction be phased in over five years, clipping the work week by an hour a year

Thirdly, Cosatu demands that the status quo be maintained on Sunday work, for which employees are paid double or given a full day's wage if they work less than four hours Occasional Sunday workers should be paid time-and-a-half and be granted a rest day, Vavi said

Cosatu is also demanding that the bottom age threshold for workers should be 16 The disputed bill sets it at 15.

"They (business) have not moved one inch, while we have compromised left, right and centre They issued a statement that this strike would not shift them The action we are embarking on today is mild and they are prepared to write it off," said Vavi

"That means we will have to become more militant in our action sit-ins, sleep-ins, that kind of thing "

SAPS Western Cape spokesman Senior Superintendent John Sterrenberg said "We have taken cognisance of what is going on, but we are sure people will abide by the law We won't interfere with people using their right to demonstrate and we are sure demonstrators won't interfere with others' rights

"We do have plans in case there is trouble, but we are sure we won't have to put them into action "

● See Page 8

MALAWI *Unions welcome law*

Employers bitter about 'biased' new labour bill (166)

PATRICK MWANZA CT(BR) 2/6/97

Blantyre — Private sector employers are calling for immediate changes to Malawi's Labour Relations Act, saying it is biased towards workers

"If this act remains as it is there will be no industrial peace in this country," Wilford Dambuleni, the executive director of the Employers' Consultative Council, warned recently

The law has established a new court, a subsidiary of the high court, whose main function will be to order the reinstatement of unjustifiably dismissed employees. The court will be presided over by a high court judge appointed by the chief justice. Representatives of employees will also sit in this court.

The act states that if either party is not satisfied with the labour court's decision, the case may be taken to the high court and finally to the supreme court

During the nearly 30 years of Hastings Banda's vicious reign, workers' rights were not recognised. Employees, unjustifiably dismissed, were often too scared to seek redress. Trade unions were totally ineffective.

The new labour act forces employers to recognise and enter into collective bargaining with a trade union if 20 percent of the staff belong to that union It also prevents employers from firing striking workers or hiring new labour to replace strikers and allows striking workers or trade unionists to enter employers' premises to persuade other workers to go on strike.

The law also empowers trade unions to demand and get any confidential employers' information they want to help them in collective bargaining.

Trade unions have welcomed the new law, saying this is the first time in the country's history that a law has been passed which recognises the contribution of workers to national development by protecting their rights and laying down regulations governing collective bargaining

But the private sector, spearheaded by the employers' council and the chamber of commerce, disagrees. They complain of the new law "victimising employers" and have called for further consultations with the government

Dambuleni says instead of ordering the reinstatement of an unfairly dismissed worker, the labour court should recommend financial compensation for the sake of worker-employee relationships, which would have soured after the dismissal. He also called for a 50 percent minimum worker membership of trade unions.

John Mataya, the operations manager of the chamber of commerce, objects to employers being compelled to negotiate with unions. "It is undemocratic and may lead to a multiplicity of unions on a single shop floor which would cause tremendous difficulties in any negotiations," he says

He says employers should not be denied the mandate to replace workers who conduct strikes without following collective bargaining procedures stipulated in the act

Dambuleni says it is wrong to allow trade unions access to company secrets. "It is a violation of employers' privacy"

Asian business people last week held a meeting at which they said the act would scare away investors Rafiq Hajat, a prominent businessman who is also an executive member of the chamber of commerce, was quoted in The Nation, a daily newspaper, as saying Asians were bitter about the act as it did not guarantee their operational security — Independent Foreign Service/AIA

Bosses lose millions

Businesses write off millions, workers out of pocket after stayaway

Sowetan 3/6/91 (166)

By Abdul Milazi

BUSINESSES lost millions of rands in lost production as scores of workers heeded the Congress of South African Trade Unions' call for a stayaway to protest against the Basic Conditions of Employment Bill yesterday

Cape Clothing Manufacturers Association spokesman Mr Johan Baard said the Cape Town manufacturing industry dropped about R10 million in lost production, while workers lost R2 million in wages

The South African Chamber of Commerce, however, said they did not have estimates because they had not "bothered to do that exercise"

The Library Gardens in Johannesburg could not contain the estimated 20 000 crowd that spilt over to Harrison, President, Market and Pritchard streets, making traffic flow impossible

The industrial areas resembled ghost towns as a number of factories remained padlocked throughout the day Although many shops opened for business, some shop owners did not bother to open at all

Queues in the townships grew longer and longer yesterday morning as taxi and train commuters waited in vain for transport to work

About 5000 Cosatu members marched on the Union Buildings in Pretoria while police kept a close watch as the group made its way through the city from Brown Street

Cosatu is demanding a 40-hour working week to be phased in over the next five years, six months maternity leave (with four months paid) and double pay on Sundays The Bill proposes a 45-hour working week

The memorandum called on Government and business to review their negotiating mandates in an attempt to resolve the deadlock.

Breakdown in talks

Cosatu said its executive committee would meet on June 24 to discuss the breakdown in talks

Cosatu spokesperson Ms Nowetu Mpati said "If the impasse remains, we shall adopt a tougher programme of action to induce an agreement on matters in deadlock"

Labour Department assistant director Mr Awie Oosthuizen said the memorandum would be presented to Labour Minister Tito Mboweni as soon as possible

Pretoria Chamber of Commerce chief executive officer Mr Alec de Beer said the document would be studied and an official response made

Parliament in Cape Town was operating on a skeleton staff after members of the Cosatu-affiliated National Education, Health and Allied Workers' Union, which represents about 70 percent of Parliament's unionised workforce, downed tools around mid-morning to join the strike

Baard said absenteeism of up to 70 percent was reported at some factories, and the industrywide average was between 50 and 60 percent

"You are looking at a loss of turnover in the clothing industry in the Western Cape of some R10 million and R2 million in wages."

According to Cape Chamber of Commerce estimates, about 25 percent of the workforce in the Western Cape stayed away on Monday

Cosatu president Mr John Gomomo told workers at an East London rally that the federation has "information" that generals who served the apartheid government are planning that "whites will take over" South Africa in 2004

"Some generals are resigning but no one knows where they are going They are strategising," he said

Many schools closed early as some teachers joined the stayaway

Strike hits W Cape clothing

R10-m lost in turnover, R2-m in wages as 70% stay away

ARG 3/6/97

THABO MABASO
BUSINESS REPORTER

Yesterday's Congress of South African Trade Unions' (Cosatu) strike cost the Western Cape's fragile clothing industry R10 million in turnover and R2 million in wages.

Cape Clothing Manufacturers' Association chairman Johann Baard said the losses were suffered when about 70% of clothing industry workers heeded Cosatu's call to strike against provisions in the Basic Conditions of Employment Draft Bill.

Cosatu is demanding a 40-hour working week, to be phased in over five years, and six months' maternity leave, with four months paid, be included in the Bill

"The majority of factories have reported high levels of absenteeism," Mr Baard said

The clothing, textile and leather industries are the biggest employers in the Western Cape

The South African Clothing and Textile Workers' Union (Sactwu) said in a statement that close to 90% or 155 000 of workers in the clothing, textile and leather industries did not report for work countrywide yesterday

Cape Chamber of Commerce and Industry spokesman Charl Adams said about 25% of Western Cape workers did not go to work yesterday. The building and clothing industries were the hardest hit

"The strike was not as comprehensive as people said it would be. The Western Cape compared favourably with the rest of the country," he said.

Cosatu's Western Cape secretary general Tony Ehrenreich, however, has challenged Mr Adams' estimate, saying that between 80% to 85% of employees in the province stayed away from work

South African Chamber of Business (Sacob) labour affairs and social policy manager Janet Dickman said the strike was not supported as well as Cosatu had hoped Support was patchy, with some industries reporting a 100% attendance figures and others 0%

"Mass support depended on how strong organisers were in the various industries," Mrs Dickman said.

She urged Cosatu to negotiate at the National Economic Development and Labour Council before embarking on actions such as calling for strike action

"I do not think taking to the streets is the appropriate way to achieve their aims," Mrs Dickman said

Sapa reported that absenteeism in KwaZulu-Natal factories ranged from 20% to 80%

Durban Chamber of Commerce and Industries spokesman Neil McGregor said most workers had heeded the call

In Johannesburg, council officials only reported hiccups in refuse removal and street sweeping services, Sapa said.

We're shooting ourselves in foot, say tourist bosses

(166) ARG 3/6/97

STAFF REPORTERS AND ARGUS CORRESPONDENTS

The Tourism Business Council has lamented the "negative impact" of yesterday's Congress of South African Trade Unions (Cosatu) stayaway on industry and on tourists.

And while business and the labour movement are at odds over the success of yesterday's nationwide strike, the national council's chief executive, Michael Farr, said there was "no doubt" this kind of industrial action was to the detriment of tourism businesses and tourists countrywide.

Apart from the direct effect that staff stayaways had on service at hotels and other tourist businesses, visitors could also be indirectly affected by the breakdown of other services such as transport

Although Cosatu described the stayaway as a victory for workers and claimed more than two million heeded its call, business leaders said the union's figures were wrong and that the strike, to protest against key provisions of the Basic Conditions of Employment Bill, attracted only sporadic observance

In Cape Town, about 8 000 workers marched through the streets to Parliament

Long march: Cosatu's Sam Shilowa yesterday

In Johannesburg traffic was severely disrupted in the city centre as roads were closed to enable thousands of marchers to gather at the Library Gardens

Cosatu secretary-general Sam Shilowa

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Dispute over Cosatu strike

ARG 3/6/97 (166)

From page 1

said more than 250 000 workers attended its national protest rallies but the South African Chamber of Business (Sacob), Johannesburg Chamber of Commerce and Industry and the Chamber of Mines said their estimates showed a very poor turnout and that the strike did not bring the Johannesburg city centre to a standstill.

Sacob spokesman Janet Dickman said some companies had a 100 percent stayaway while others had full attendance. Chamber of Mines spokesman Llewellyn Kriel said the impact of the strike on productivity differed from place to place

"Our perception is that the strike serves to do more harm to the main players than good," said Mr Kriel

About 5 000 Cosatu supporters marched on the Union Buildings in Pretoria.

The workers took to the streets in protest against certain provisions of the Basic Conditions of Employment Draft Bill.

Cosatu is demanding a 40-hour working week and six months' maternity leave, at least four months of which should be paid

The Government is proposing an ordinary 45-hour working week, which now ranges from 46 to 68 hours depending on the type of work, and four months' maternity leave, but no agreement has been reached on payment

Mr Shilowa said. "There will be no agreement in the National Economic Development and Labour Council on the bill unless there is agreement that women should have a right to at least four months' paid maternity leave"

Clothing industry turnover hit, page 16

Cosatu warns of more strike action

BD 3/6/97 (166)

Reneé Grawitzky

THE Congress of SA Trade Unions' 24-hour strike yesterday in support of better working conditions, which caused the loss of millions of rands to the economy, could be repeated soon if business did not heed worker demands, Cosatu leaders said at countrywide marches

Business was called on to respond within 14 days on core demands.

Cosatu hailed yesterday's turnout as a victory for the working class with about 2-million workers heeding the call, while the SA Chamber of Business (Sacob) claimed the strike did not receive the support Cosatu had expected.

Surveys by regional chambers of commerce and industry showed transport was running in major centres.

KwaZulu-Natal and the Eastern Cape were the hardest hit with between 60% to 75% of workers staying away. An estimated 50% stayaway took place in Gauteng and 40% in the Western Cape and Free State

The stayaway in the Free State was boosted by the large number of mine workers who participated. Although the mining industry tried to downplay the impact, about 135 000 workers did not report for work. Anglo American said the production losses, considering the current economic climate, were especially unwelcome

Automobile Manufacturers' Employers' Organisation chairman Brian Smith said the industry lost 2 000 vehicles, costing millions of rands.

Sacob said the effect of the strike would be minimised by employers having put contingency plans in place

The National Party and Democratic Party hit out at Cosatu for its "irresponsible" behaviour which would project a negative image to the international community.

Workers at Library Gardens in Johannesburg said they would not retreat until government and business had agreed, in the Basic Conditions of Employment Bill, to a 40-hour week

Continued on Page 2

Strike

(166)

Continued from Page 1

BD 3/6/97

and six months' maternity leave. Cosatu said the action was purely in support of bread-and-butter issues.

Trevor Fowler, Gauteng legislature speaker and SA Communist Party member, said at the rally the party believed the bill was progressive but workers had to mobilise in support of their rights.

Cosatu general secretary Sam Shilowa warned Business SA (BSA) that "if our message is not loud and clear we will hold another strike or march". He warned business that in Parliament "we have a majority" and offered business a last chance to reach agreement in the National Economic, Development and Labour Council (Nedlac).

BSA spokesman Adrian du Plessis said all parties in Nedlac realised a resolution was not possible with existing mandates. All undertook to continue negotiations.

Cosatu's demands are a 40-hour week which could be phased in over five years, six months' maternity leave with four paid, no variation of employment standards downwards, Sunday work not being regarded as a normal day and a 16-year-old threshold for child labour.

Picture: Page 3
Comment: Page 9

Mixed response to Cosatu's strike call

CT(BR) 3/6/97 (166)

MATT GETZ

Johannesburg — Yesterday's national 24-hour strike, called by the Congress of South African Trade Unions (Cosatu), drew mixed response across the country, business leaders said yesterday

"The call for a national stayaway did not receive the degree of support that Cosatu may have expected," the South African Chamber of Business said

Manuel da Silva, the director for marketing and communications at the Afrikaanse Handelsinstituut, said there was a regional response to the strike call

"Lots of big companies in the Western Cape had very few problems (but the call) was much more effective up here (in the former Transvaal) "

He said business had seen the strike more as an economic issue than a political one Absenteeism also tended to be higher on Mondays, he said

Mines were patchily hit across the country, but Adrian du Plessis, the industrial relations adviser at the Chamber of Mines, said yesterday his organisation could discern no pattern of stayaways, either by region or by mining company

"In certain instances, support was total, in others there was nothing It almost literally went shaft by shaft "

The JSE seemed to ignore the strike, with some dealers unaware there was one But the market reacted in its own way by trading R371 million worth of shares, the lowest volume this year

Shirley Jones reports from Durban that the majority of textile manufacturers described yesterday's strike as crippling, with some saying the work stoppage would bleed into today as they struggled to get machines up and running again

Brian Brink, the head of the Textile Federation, said yesterday at least 60 percent of textile mills had reported a complete shutdown with the balance, largely in rural areas, running on a skeleton staff He described the strike as "widespread and almost complete"

Maggie Rowley reports from Cape Town that the Cape Chamber of Commerce and Industry estimated the overall stayaway in the Western Cape at between 25 and 30 percent. The clothing industry was the hardest hit, with 60 percent of the workforce observing the strike call

Charl Adams, a spokesman for the Cape chamber, said unlike previous general strikes, this time there appeared to be confusion among the workers as to what was in it for them, and the no-work-no-pay approach taken by the chamber's members had made workers think twice.

He said while the bus companies had reported about a 14 percent stayaway, Metro Rail had a 100 percent turnout In the retail sector, Edgars had reported a 2,5 percent stayaway while a Pick 'n Pay spokesman said their estimates were between 25 and 30 percent

LABOUR *Nedlac talks are business' last chance to settle dispute, warns Shilowa*

Cosatu may use ANC to enforce demands

CT (BR) 3/5/97 (166)

FRANK NXUMALO

Johannesburg — Business should settle its disputes with labour in Nedlac otherwise Cosatu would simply use its relationship with the ANC to push its demands through parliament, Sam Shilowa, the general secretary of Cosatu, warned yesterday

Shilowa said the next round of talks in Nedlac was the last chance for Business South Africa (BSA) and labour to come to an amicable settlement

He was speaking to thousands of workers in central Johannesburg as part of Cosatu's one-day strike, called in support of its demands, which include a legislated 40-hour working week and six months paid maternity leave

Shilowa said Cosatu would set a deadline in the next few weeks for an agreement at Nedlac, failing which the draft Basic Conditions of Employment Bill would go to parliament, where he said it would be developed into an act that entrenched labour's demands

"We are confident that your (BSA's) best chances of settlement are in Nedlac, not in parliament In parliament we have got a majority from the ANC "

But Shilowa indicated that certain of the union's demands were not up for negotiation

"There can be no agreement" in Nedlac on the draft Basic Conditions of Employment Bill "unless there is an agreement that women shall have a right to paid maternity leave for at least six months", he said

Accepting labour's memorandum, Adrian du Plessis, BSA's representative at Nedlac, said "I would hope that Cosatu and business can resolve their differences over this issue in a manner that is peaceful, orderly and not destructive to the economy, the growth, and development of South Africa."

☐ Mixed response, Page 17

NO PUPPETS *Cosatu members in Johannesburg show in no uncertain terms what they expect from the Basic Conditions of Employment Bill*

PHOTO JOHN WOODROOF

Thousands of clothing jobs on line

New strike looms

ARG 4/6/97

ALIDE DASNOIS AND THABO MABASO
BUSINESS STAFF

Tough behind-the-scenes lobbying has begun in a bid to avert another strike over the Basic Conditions of Employment Bill which could deal a fatal blow to the embattled Cape clothing industry.

Clothing workers in the Western Cape were among those who came out in force for Monday's industrial action, called by the Congress of South African Trade Unions (Cosatu) in protest against some clauses in the bill.

Employers calculate the strike cost the clothing industry R10-million in lost turnover, dealing another severe blow to a sector already reeling under competition from cheap imports, many of them smuggled, and from falling consumer spending

The industry lost 15 000 jobs last year, 3 000 of them in the Western Cape, and employers say similar job losses are on the cards this year unless something is done to curb illegal imports.

At a briefing yesterday in Cape Town, Freddie Magugu, chief negotiator of the SA Textile and Clothing Workers' Union (Sactwu), said his union would make every effort within Cosatu to reach a compromise on the disputed provisions of the bill

Cosatu, which is arguing for a 40-hour week, phased in over five years, and six months maternity leave with four months of it paid, has warned of another strike on June 24 if business does not give in on these points

So far, negotiations in the National Economic Development and Labour Council (Nedlac) have not produced a consensus

Mr Magugu said Cosatu might be prepared to make a deal on some of the disputed clauses but would stand firm on others

"We hope that in two weeks' time there will be no need for anyone to be in the streets," he said

Maternity rights might be an issue for discussion, he said

"But I do not see how we can compromise on the 40-hour week It is not that the labour movement likes strikes Industrial action is something we resort to when we find ourselves in a corner."

Johan Baard, vice-president of the Cape Chamber of Commerce and Industry, said there were "lots of initiatives behind the scenes" to try to avert the June 24 strike through a compromise, but he warned that business would not be prepared to compromise "at all costs".

If agreement could not be reached in Nedlac, business would expect the Government to take a firm stand

Sacked Lesotho water scheme workers live in fear

CT (BR) 5/6/97 (168)

JONATHAN ROSENTHAL

Johannesburg — Sacked strikers from the Lesotho Highlands Water Project are living in fear for their lives after the death on Monday of Moralepi Kobo, one of about 600 workers fired during a strike last September

Kobo was beaten to death in Maseru, the capital of Lesotho, by unknown assailants and his body was later found dumped in the yard of a traditional leader who had lent his support to the strikers, Sydney Senoko, the general secretary of the Lesotho Workforce Trade Union, said yesterday

The Lesotho Workforce Trade Union is a splinter union formed by the striking workers and claims to represent about 900 strikers and employees still on site

Kobo's death is the latest in a string of incidents that have led workers to believe a concerted campaign of intimidation was being waged against them, Senoko said

About three weeks ago, another dismissed striker was accosted and beaten by police after they overheard him talking about workers' grievances with the Lesotho Highlands Project Contractors, a consortium of contracting companies building the R14 billion water scheme

But Jean-Louis Lucazeau, the construction manager for the Lesotho Highlands Project Contractors, said he was unaware of any violence and this was the first time he had heard of any attacks on dismissed strikers

A spokesman for Kader Asmal, the South African minister of water affairs, said Asmal could not comment as the matter was internal to Lesotho Lesotho authorities could not be reached for comment

Mpho Mofolo, a Maseru attorney representing the dismissed workers, said she had received several reports of intimidation from dismissed workers

"One of them came to me and said that unknown people had repeatedly called at his house looking for him." It appeared they were plain-clothes policemen, she said

Tito's spanner will shake up the workplace

(166)

Business claims Bill will lead to shrinking job market

ST 6/4/97

CAROL PATON

LABOUR Minister Tito Mboweni is likely to adopt a familiar stance when he presents his Employment Bill to the cabinet this month — that of a champion of social justice

The controversial Bill, formerly known as the Employment Standards green paper, will set minimum standards across the economy, determining working hours, annual and maternity leave and overtime rates

In doing so, it will go to the heart of the dispute between business and labour the reform of the labour market

But this market is not a battle ground for the traditional protagonists alone — it is an area of debate within the government, too

Mboweni's policy framework, which includes the Labour Relations Act (LRA) and proposed legislation on affirmative action and training, has come under attack from business and some government economists

Its critics say that it introduces rigidities into the labour market which, in turn, are responsible for the lack of growth in job numbers

But Mboweni argues that the package is aimed at transforming the workplace in the interests of social justice, which has a positive effect on economic growth

"These policies contribute to creating the overall conditions for job creation They are not policies that are meant to destroy jobs," he said this week

"For example, the LRA democratises workplaces and makes it possible for workers to get involved in discussing productivity and affirmative action

"Those are positive things They don't lead to rigidities — they lead to efficiency gains"

But with job opportunities having shrunk last year— by 3,9 percent in the first quarter, 1,1 percent in the second and 1,4 percent in the third, according to the Reserve Bank — this is a difficult argument to sustain

The Employment Bill is destined to have a far more direct effect on the labour market than did the LRA

It has not yet been published, like the green paper before it, but it is likely to shorten the working week to 45 hours across the economy It will probably provide for three weeks' annual paid leave, rather than two, increase unpaid maternity leave from three months to four and raise the overtime rate from time and a third to time and a half

The cumulative effect of these changes for employers, including the public sector, is that employment costs will rise sharply, some argue by as much as 20 percent

They argue that this will dampen job creation, but Mboweni says rising overtime costs will force companies to hire more people

"Certainly, the Bill will shorten the working day Those companies that require longer hours must make arrangements to hire more workers

"The Bill will also increase the costs of overtime pay The reason? So firms will make arrangements to hire more workers," he said

Due to the costs of employing new workers, it is doubtful the Bill will have the desired effect

But while it makes no sense from a macroeconomic viewpoint, it does do so from a social justice angle

Mboweni insists that it is legislation like this that keeps the ANC true to its election promises

"It is important for us to stick to the position on which we agreed The test for the democratic movement will be whether we can implement the policies on which we agreed"

His cabinet colleagues could find it difficult to oppose the Bill when it is presented in these terms To argue against it would be to argue against the case for justice, for why workers should continue to work extremely long hours

Standing up as a champion of social justice could also benefit the political career Mboweni is trying to build

With all his major pieces of labour policy already on the table, speculation is that he now has his eye on the vacant ANC secretary general post, the incumbent for which will be elected in December

Such a position could place Mboweni closer to the centre of power But if he is to protect his political career, his policy framework must show that it can provide jobs

To this end, he has endorsed the Labour Market Commission's proposal for a presidential jobs summit involving the government, business and labour

"Labour market policies on their own cannot be job creators Job creation goes beyond what the government can do, hence the notion of a job summit to be held towards the end of the year"

The Employment Bill still has the Nedlac hurdle to cross after it goes to the cabinet on April 16 Mboweni is confident a deal will be struck with business and labour If not, Parliament will decide on outstanding matters

Mboweni seems confident he will win the government battle over employment standards this time round

But once the Bill becomes law it will still be tested, not only in terms of whether it remains true to ANC policy, but whether jobs are gained or lost because of it

And if the government's macroeconomic policy fails to meet its targets, the labour market will be a prime candidate for blame

Mboweni could still be the fall guy

IN SEARCH OF SOCIAL JUSTICE Tito Mboweni wants to transform the workplace Picture: RAYMOND PRESTON

Cosatu seeks way forward for employment standards

(166)

Reneé Grawitzky BD 7/4/97

THE Congress of SA Trade Union's (Cosatu's) three-day central executive committee meeting starting today will have to emerge with a position on the way forward for the employment standards campaign and its alliance document released late last year.

The meeting will also discuss the federation's position on the demarcation of industries and the federation's September congress

In November last year Cosatu released a discussion document which was circulated to affiliates and alliance partners outlining the federation's proposals to resurrect a working alliance with the African National Congress (ANC) and the SA Communist Party

The document called for the negotiation of an alliance accord whereby Cosatu and the ANC would commit themselves to an alliance programme It also proposed that the ANC and Cosatu form a united position on policy issues before they were discussed within the National Economic, Development and Labour Council (Nedlac)

The committee will also have to emerge with a position on the demarcation of industries as the federation has, as yet, not tabled its initial proposals for discussion in a Nedlac working group

In terms of the new Labour Relations Act, demarcation disputes would have to be considered by Nedlac The establishment of the chemical industry bargaining council has highlighted the difficulties involved in establishing councils

At a demarcation working group meeting on Friday, Cosatu undertook to submit its position by April 17 so that discussion could commence on the design of a set of criteria to be used by Nedlac in deciding demarcation disputes

Bosses and workers may pay

(166) BD 8/4/97

Reneé Grawitzky

EMPLOYERS and workers could be forced to fork out increased levies to industrial and bargaining councils to finance their additional dispute resolution functions provided for in the new Labour Relations Act

Several councils, fearing they could be short of funds, said they might have to increase their current levies or institute a specific dispute resolution levy Two councils have already gone this route and another is contemplating such a move

A number of council representatives said, however, that such a move depended on the type of disputes referred to councils At this stage a levy increase could be premature Others said increased levies could act as a disincentive for parties to establish councils, as they would become more expensive

One council representative said "This will be viewed as a penalty for belonging to a council" A unionist said. "Why should workers who belong to councils have to bear extra costs when those outside councils have access to free services through the Commission for Conciliation, Mediation and Arbitration."

Those contemplating increases expressed concern over the manner in which subsidies would be granted to councils for dispute resolution

They were opposed to the commission acting as "judge and jury" in apportioning subsidies and argued for this function to be carried out by the labour department.

Traditionally, councils are required by law to carry out a range of dispute resolution functions. However, if bargaining councils wish to become accredited dispute resolution agencies, they will have to comply with criteria specified in the act which will require additional funding Councils have to apply to the mediation commission for accreditation and after that can apply for subsidies,

National Union of Metalworkers of SA general secretary Enoch Godongwana said those councils contemplating levy increases were acting prematurely, as this presupposed that these councils would continue to exist in their present form. Councils, he said, should not be accredited or receive funding until the demarcation of industries had been resolved

Mediation commission executive director Charles Nupen said a large number of councils had applied for accreditation, but as yet none had been accredited Councils could become accredited after a lengthy process in which they had to develop the capacity to discharge their dispute resolution functions as accredited bargaining councils, he said Councils had not as yet reached the stage of applying for subsidies

The building industrial council for Gauteng increased its levy from 30c an employee a week to 75c, and the motor council had increased its levy from R1,15 an employee a week to R1,60 In the case of the motor council, the additional amount will be put into a separate dispute resolution fund

Metal and engineering council general secretary Dave Levy said that although councils had done dispute resolution for decades, extra costs would be incurred because of the increased range of functions councils would have to perform

Master Builders' Association director Colin de Kock said no council could afford to finance requirements of the new act from its current levies

Parsons wants laws tested for labour flexibility needs

(166)

Reneé Grawitzky

GOVERNMENT's job summit later this year would have to test if future labour legislation was compatible with the growth, employment and redistribution strategy's (Gear's) goal of moving towards a flexible labour market, the SA Chamber of Business (Sacob) said yesterday.

Addressing the Sandton Chamber of Commerce and Industry yesterday, Sacob's director-general Raymond Parsons said this "test" was crucial if SA was to meet its employment targets, which had been one area of Gear where detailed implementation plans had not been provided

He said the proposed employment standards bill would be "an acid test of the measure of commitment of government to the objectives of Gear regarding employment creation"

When the green paper on employment standards had originally been tabled business had expressed its reservations on its cost implications. Parsons said it was government's duty to measure each piece of existing and future legislation against the objective of large scale job creation in the formal economic sector

SA's labour absorption rate was till a concern, he said, but high economic growth was no guarantee for high levels of job creation.

BD 10/4/97

Jobs should be test of labour law, says Parsons

166

FRANÇOISE BOTHA

CT(BR) 10/4/97

Johannesburg — All future labour legislation should be tested against the government's growth, employment and redistribution (Gear) strategy if South Africa was to meet its employment targets, Raymond Parsons, the director-general of Sacob, said yesterday

Parsons told the the Sandton Chamber of Commerce and Industry's annual general meeting, that employment was the one pillar of the overall economic policy where failure could have serious socio economic and socio political consequences for the country

"The need to address labour market flexibility is crucial to creating new jobs and a high economic growth rate is no guarantee for high levels of job creation — a reality well illustrated by the jobless growth rate of the past year or two," he said

Parsons said incorrect handling of the labour market could also effect investment in labour intensive sectors, resulting in no or few new jobs being created

He said it was government's duty to measure each piece of existing and future labour legislation against the objective of large-scale job creation in the formal economic sector, he said

Parsons also criticised the skills levy, proposed by government, as a "one size fits all" model, which took little account of sectoral differences, the ability of business to pay or the needs of individual enterprises

Sacob considers legal action against Cosatu

(166) Star 10/4/97

By Cecilia Russell

As Cosatu gears up for the final leg in its mass action programme on proposed employment legislation, the business community has threatened to take legal action to ensure the federation acts within the parameters of the Labour Relations Act

Cosatu has planned a series of mass protests on proposed employment standards legislation which will culminate in a national strike on May 12

Gerrie Bezuidenhout, director of labour affairs for South African Chamber of Business (Sacob) said while the constitution protects the right to protest action, the LRA prescribes clear procedures which unions need to follow

"Sacob is looking at the legal situation as Cosatu has not followed all the procedures," Bezuidenhout said.

Cosatu's mass action aims to have its demands, which include double payment for Sunday work, six months maternity leave, of which at least four months should be paid and a legislated 40-hour working week phased in over five years, included in employment legislation

Bezuidenhout said business was always caught in the middle between labour and the Government and this was having an adverse effect on economic activity. Individual businesses were particularly affected by this mass action

"It would seem over the past few weeks that Cosatu did not always know what its affiliates were up to, and this is just one of the potential problems," said Bezuidenhout.

Cosatu could not be reached for comment

Cosatu strike off until Government plays its hand

AR 12/4/97 (166)

THABO MABASO
BUSINESS REPORTER

The Congress of SA Trade Unions (Cosatu) said yesterday that it had delayed a decision on whether to go ahead with a national strike on May 12 against the proposed Employment Standards Bill.

Cosatu's Western Cape secretary general Tony Ehrenreich told the Cape Argus the federation's central executive had decided during a four-day meeting to wait until the bill had been presented to Cabinet and promulgated before deciding on strike action.

"We have to give Government a chance as a negotiating partner. It's not fair to go on strike when they haven't put their cards on the table," Mr Ehrenreich said

"We do not want to make any pre-emptive statements. We will have to wait for the Bill"

The Bill is to be discussed by President Nelson Mandela's Cabinet on Wednesday

Cosatu's central executive committee will meet on Friday to decide whether or not to strike

'It's not fair to go on strike when they haven't put their cards on the table'

The Employment Standards Bill sets basic conditions of employment for South African workers, including domestic and farm workers

Cosatu has called for the inclusion in the Bill of

- Six-month's maternity leave, four months of which paid,
- A 40-hour week, which can be phased in over a five-year period;
- Double pay for working on Sundays, and;
- A ban on the employment of children under the age of 16 years.

Business has opposed Cosatu's stand, arguing that these proposals would raise labour costs The SA Chamber of Business (Sacob) labour director, Gerrie Bezuidenhout, said Sacob would consider taking legal action if the trade union federation decided to go ahead with national strike action

"We are looking at the Labour Relations Act and whether or not Cosatu complies with its provisions.

"The constitution talks about the right to protest action, but Cosatu must take the correct procedures and our view is that they have not done that."

Mr Ehrenreich criticised Sacob's threat of court action in the event of a strike next month.

"This is a further demonstration of the bad faith business is negotiating in," he said

"Striking is a legitimate form of action to press for our demands. Threats of court action undermine the Labour Relations Action and smack of bad faith," Mr Ehrenreich said

Catholic bishops query new labour legislation

ARG 15/4/99 (166)

Pretoria – The SA Catholic Bishops' Conference said yesterday that some aspects of the proposed labour legislation threatened to put productivity and profit before people.

SACBC spokesman John Capel said delegates had met with Labour Minister Tito Mboweni to present a memorandum highlighting its concern

According to the SACBC, the proposed legislation was formerly aimed at the adoption of an Employment Standards Act, but is now likely to be referred to as the Basic Conditions of Employment Bill, due to come before Parliament shortly

"The misgivings expressed by the church focused on one of the central concepts of the Basic Conditions of Employment Bill – flexibility of labour," he said

"By this is meant legislation that allows a great number of variations in working conditions that could be negotiated or might simply develop – variations which could leave great numbers of workers in a very vulnerable position, especially as the majority of workers in South Africa, about 4,6 million are not organised and have no collective bargaining agreement."

The SACBC argued that workers' minimum shopfloor rights in previous legislation, like the Basic Conditions of Employment Act, would disappear, that flexibility in hours of work and times of rest would lead to prolonged periods of work detrimental to workers' health, that extended working hours would take the place of overtime and do away with overtime pay; that Sunday work might become a common practice and seriously affect home life, religious life and social life

Mr Mboweni maintained that "the concerns of the memorandum were addressed in the most recent development, namely the bill which was to be published shortly for public comment", Mr Capel said.

Regarding variations in the treatment of workers, Mr Mboweni pointed out there was such a multiplicity of working situations, including those of part-time workers, that variations were inevitable and the aim of the new legislation was to deal with all as justly as possible.

Mr Capel said Mr Mboweni insisted that the legislation's important aim was to safeguard workers' rights. – Sapa

European currency

Employment bill unlikely to satisfy business or labour

BD 16/4/97

Reneé Grawitzky
and Alan Fine

CONTENTIOUS clauses in the proposed employment standards bill are unlikely to differ greatly from last year's green paper, with its proposals set to include reduced weekly working hours, four months of unpaid maternity leave and increased overtime rates

The proposed Basic Conditions of Employment Bill, which replaces the current basic conditions of employment act and the wage act, will be debated by cabinet today, but is unlikely to satisfy business or labour

In line with the green paper, which sparked debate between labour, government and business in the National Economic, Development and Labour Council (Nedlac), the bill is likely to retain its proposal to reduce weekly working hours to 45 and to remove the Sunday work prohibition, with workers still being paid double time.

Opposition from various religious organisations might be accommodated by the inclusion of a provision that Sunday work can be worked by agreement between the parties

Despite employer opposition, overtime pay is still likely to be increased from time and a third to time and a half, while some provision might be made for the state to increase its payment for those on maternity leave from a restructured Unemployment Insurance Fund

To provide for increased flexibility, the bill might well include proposals for a limited form of averaging of working hours

Business has lobbied strongly against the proposed legislation, which it believes will create further rigidity in the labour market as well as increasing the costs of employment

Labour has called for a phased-in 40-hour working week, maternity leave with four months paid and two months unpaid, the removal of Sunday as a normal working day and a ban on children younger than 16 working

To support these demands, the Congress of SA Trade Unions (Cosatu) launched a campaign which is set to culminate in a stayaway on May 12.

Cosatu leadership said yesterday that a special executive committee meeting on Friday would evaluate whether sufficient progress had taken place to warrant a relook at the planned strike on May 12

Cosatu said the bill would be analysed and "looked at as a total package". A Cosatu source said it was unlikely its demands would be met. Cosatu general secretary Sam Shilowa said the public seemed to think that differences existed between labour and government, but in fact major differences existed between labour and business

Nedlac executive director Jayendra Naidoo said negotiations had continued for a year and, depending on Cabinet's decision today, the bill would be referred back to Nedlac for more negotiation.

Naidoo said "one does not expect protracted negotiations as the issues are already known to the parties"

Sources said the difference was that this time government would have a proper mandate to negotiate

D-Day for Bill on work conditions

(166)

Sowetan 16/4/97

New law will form part of plan to transform the world of work in SA

By Isaac Moledi

LABOUR MINISTER Tito Mboweni is expected to announce the Cabinet's decision on the proposed Basic Conditions of Employment Bill in Johannesburg tomorrow

The Bill aims to revamp the existing Basic Conditions of Employment Act and the Wage Act so that all employees, including temporary and part-time employees, are protected by a floor of basic working conditions

Submission of the new Basic Conditions of Employment Bill to Cabinet follows publication in February last year of a Green Paper on Policy Proposals for a New Employment Statute The Green Paper proposed new rights to cover all employees, including reducing ordinary working hours to 45 a week for day workers working 46 hours and shift workers working 48 hours

Security guards who work up to 60 hours a week should have their hours reduced to 48 hours over two years

A prohibition on children under 15 years working and specific regulations about working conditions for children between the ages of 15 years and 18 years is also included in the proposals

Last year the National Schools Act set the school leaving age at 15 and stipulated protection for pregnant women

Pregnant workers would be entitled to four months maternity leave during which their jobs would be protected

The Bill, which has been submitted to the Cabinet for a decision today, draws on extensive negotiation of the Green Paper's proposals in the National Economic Development and Labour Council (Nedlac) where business, labour and government are represented

Discussions were held with churches and comments were received from trade unions, employer organisations non-governmental organisations, local authorities and members of the public

If the Cabinet approves the Bill it will be published in the *Government Gazette* on Friday and tabled for further negotiation at Nedlac

Finalising this new law is an important part of the Labour Ministry's five-year programme to transform the world of work in South Africa It is an important part of the Government's action plans for 1997 noted by President Nelson Mandela at the opening of Parliament

Labour Minister Tito Mboweni expected to announce the Cabinet decision on the Bill which is expected to revamp the existing Basic Conditions of Employment Act and the Wage Act

Mboweni's new labour Bill could bust the Budget

ST(BT)6/4/97 (166)

Ministers fear that the rules will increase payroll costs in the public service, writes CAROL PATON

LABOUR Minister Tito Mboweni's proposed minimum standards legislation has sparked panic among his cabinet colleagues as they realise it is too costly to implement in the public service

A source close to the Department of Finance said that imposing the Bill on the public service would break the Budget

"The Budget is already cut to the bone Anything that increases the cost of employment is a non-starter You would have to have a way out for the government," said the source

The Employment Bill — formerly known as the Employment Standards Bill — will be put before cabinet on April 16

The Bill has already been criticised by employers for increasing payroll costs — some estimate by as much as 20%

Employers have promised strong resistance to the proposals although the trade unions are embarking on mass action to see the Bill through

Ministers are, however, hoping to bargain their way out of the proposed law after assessing the cost implications for their departments

Although the Bill has not yet been published, it is likely to have the following proposals

- Reducing the working week to 45 hours for everyone, including security guards and farm and domestic workers
- Increasing paid annual leave from two to three weeks,
- Raising the overtime premium from time and a third to time and a half, and
- Allotting four months' unpaid leave for maternity

Because the public service was not covered by the previous minimum standards law, the Basic Conditions of Employment Act, it will now be obliged to pay double for Sunday work, a provision which previously applied to the private sector only

The public service will also be affected by new obligations to pay employees who have resigned for leave not taken in their last year of employment Under present legislation, leave for public servants is considered a privilege and departing employees are not paid out

The two government departments whose budgets would rocket if the provisions were implemented are the police and health services

Police do not receive extra pay for most overtime work except in the case of special projects while nurses are compensated for overtime by extra days off Neither are paid double for Sunday work

TITO MBOWENI

At a meeting convened by the department of labour this week, government departments expressed their anxiety over the Bill

A departmental official said that in theory it would be possible for the government to negotiate its way out of unaffordable provisions by making collective agreements with employees in the public service bargaining chambers

However, the implications would be huge if government failed, he said.

The phasing in of provisions — for instance overtime pay for police — by attaching special schedules to the Bill is also being considered Similar arrangements for agriculture and mining have been mooted

"We can't insist on standards in the private sector without taking them on board ourselves Departments will have to re-prioritise their spending," said the spokesman

Labour Minister Tito Mboweni dismissed claims that the Bill would break the Budget He said the public service would be accommodated by the Bill through collective bargaining and special schedules He said that Public Service Minister Zola Skweyiya had agreed the Bill should apply to the public service

The affordability of the Bill for the public service is certain to be an issue when it goes before cabinet on April 16

If approved, the Bill will face another hurdle as labour, business and government sit down for the last time to hammer out a mutually acceptable deal in the labour market chamber of the National Economic Development and Labour Council.

The Nedlac negotiating process, which began in May last year, has thus far failed to produce consensus and has given rise to the threat of a general strike on May 12 by Cosatu.

However, Mboweni believes that the time is ripe for an agreement to be struck

The main objection to the Bill in business circles is the effect on the cost of employment

Business South Africa negotiator Adrian du Plessis says "The Bill is far-reaching It raises labour standards and extends them to all classes of employment The effect is to raise unit labour costs throughout the labour market

"Raising unit labour costs without sustained improvements in productivity will be at the expense of jobs

"The price of getting labour market reform wrong will be visited on every workplace, both private and public We can't afford mistakes and we will need to reach the broadest possible consensus on this Bill It can't be imposed "

Labour and business still appear poles apart with labour insisting that ANC election promises made to introduce a 40-hour week are honoured

Cabinet backs 45-hour week

But union clash looms over new deal for workers

THABO MABASO
LABOUR REPORTER

Johannesburg – A far-reaching draft bill which will set minimum working conditions for all workers in South Africa has been given the go-ahead by the Cabinet.

The Basic Conditions of Employment Draft Bill, published today for general comment, establishes basic working conditions, including a maximum working week of 45 hours.

Labour Minister Tito Mboweni said at a news conference in Johannesburg today that the bill was "an embodiment of the desire to achieve justice for all our people"

"It is a challenge to everybody and it demands of everybody to change step from an exploitative atmosphere to one that promotes social justice," he said.

The bill allows for imprisonment for people who flout its provisions.

It covers all workers except the army, intelligence services and unpaid voluntary workers, but includes, for the first time, public service employees.

The bill allows the minister to intervene in instances where the safety of workers is endangered

The green paper on which the bill is based sparked a big row between the Congress of SA Trade Unions, business and the Government, with the trade union movement insisting on various provisions, including six months' maternity leave with four months paid, a 40-hour working week phased in over five years, double pay for working on Sundays and a ban on children under 16 working

(1bb) ARG 17/4/97

The bill has been the subject of negotiation between government, labour unions and business organisations over many months

Last week Cosatu threatened to go on a national strike on May 12 if the Cabinet ignored its proposals

It seems, however, that the Government and labour are on a collision course, especially over the provisions for maternity leave and working hours

The bill proposes the reduction of working hours from 48 to 45 hours a week. Security guards' hours must be reduced from 60 to 45 a week.

Mr Mboweni told today's news conference that he would appoint a five-strong ministerial task team to investigate and advise him about handling the maternity leave issue

Bishops slam new Bill

Sowetan 17/4/97

By Abdul Milazi (166)

AHEAD of its official launch today the Government's Conditions of Employment Bill received strong criticism yesterday from an unexpected quarter – the church

In a statement the Southern Catholic Bishops Conference (SCBC) said the Bill, submitted to Parliament yesterday, promoted the exploitation of workers' rights in favour of profit making

The clergymen argued that their misgivings were based on the flexibility of labour, which is one of the central pillars contained in the Bill

Flexibility of labour is contained in the Bill's variation of standards clause, which allows employers to alter the conditions of employment according to business needs and conditions

This variation of standards came under strong attack from the Congress of SA Trade Unions a month ago because Cosatu felt the legislation would allow employers to lower standards that were already low and open workers to further exploitation

Jobs bill lays down improved conditions

BD 18/4/97 (166)

Reneé Grawitsky

THE Basic Conditions of Employment Bill which was released to the media yesterday proposes improved minimum conditions of employment in a range of areas, but allows greater flexibility to vary these standards through individual and collective bargaining.

While labour and business refused to comment on the bill yesterday, after giving Labour Minister Tito Mboweni an undertaking they would respond only from today, both are likely to express reservations which will be referred to the National Economic, Development and Labour Council (Nedlac) for negotiation

The Afrikaanse Handelsinstituut said the Bill proposed a more regulated labour market. However, positive proposals included the averaging of working hours — — and the variation of standards by collective bargaining

The parties to Nedlac have to conclude negotiations by end-June so that the bill can be discussed in Parliament during the third quarter of the year

The bill reduces maximum weekly working hours for all workers to 45; increases the overtime pay rate from time and a third to time and a half; increases unpaid maternity leave from three to four months, and removes the prohibition on Sunday work while retaining a premium for such work The bill makes no mention of a 40-hour working week, as proposed by labour, or of any commitment to work towards this goal

The cabinet approved the bill on Wednesday amid earlier speculation that Mboweni could face opposition from elements within the cabinet who questioned its effect on job creation and increased costs to the state because public sector, farm and domestic workers would be covered for the first time.

Cosatu faces a tough choice today when it decides whether to go ahead with its May 12 national stayaway as the bill does not come close to meeting its official demands

Cosatu's mobilising campaign has focused on a 40-hour working week, variation of standards without under-

Continued on Page 2

Labour Minister Tito Mboweni and director-general Sipho Pityana at the news conference to announce the Basic Conditions of Employment Bill Picture TYRONE ARTHUR

Bill

(166)

Continued from Page 1

BD 18/4/97

mining rights, 16 years of age as a threshold to enter the labour market and retention of the "special" status of Sunday work

A government source said he was hopeful the stayaway would be called off, and Mboweni downplayed Cosatu's strike call The source said Cosatu could motivate for calling off the action by arguing that problem areas in the bill could be resolved through Nedlac negotiations.

Government has tried to meet Cosatu's demand on paid maternity leave by appointing a ministerial task team, which includes Cosatu representatives, to probe ways of increasing the Unemployment Insurance Fund's maternity pay which is currently a maximum 45% of salary for six months.

Although the Bill removes the prohibition against Sunday work, it discourages it by requiring that a 36-hour rest period per week must include a Sunday, unless by agreement. Employers would also have to pay casuals double pay, and time and a half for those who worked regularly on a Sunday, such as nurses or police. Instead of paying a Sunday premium, however, workers could be granted time off.

The variation of standards constituted a crucial area of discourse during initial negotiations last year. Conditions can be varied by agreement, by the minister or by exemptions. The bill allows bargaining councils and agreements between employer organisations and unions to vary all standards up or down, except on provisions relating to child or forced labour and maternity leave Further, varying working time would have to take workers' health and safety into account

Lower-level collective agreements would be more restricted in the scope of variations, although they could vary conditions to a greater extent than individual contracts Collective agreements would be permitted to average hours and overtime worked over four months, to reduce notice periods; and to reduce "family responsibility" leave set at three days a year which rolls parternity, compassionate and child care leave into one The working week could be compressed into less than five days

The bill also proposes increasing annual leave from two to three weeks, daily rest periods of 12 hours between ending work and starting the next day, an increased notice period and prohibiting employment for those under 15 years.

The bill also proposes establishing an employment conditions commission to replace the Wage Board and advise the minister on sectoral determinations in unorganised areas, the exclusion of certain categories of employees from the bill; and the variation of basic conditions of employment.

Other core proposals are to:

- Define night work as that performed between 18h00 and 06h00. It is currently not defined;
- Increase notice periods; and
- Move away from criminalising non-compliance with the legislation, replacing it with a system of penalties which could include fines.

Comment: Page 13

Tito lays down the basic terms of work

CT (BR) 18/4/97 (166)

FRANK NXUMALO

Johannesburg — Draft details of the Basic Conditions of Employment Bill, which seeks to advance economic development and social justice by establishing and enforcing basic conditions of employment, were released yesterday by Tito Mboweni, the labour minister

The bill applies to all workers and employers except members of the National Defence Force, the National Intelligence Agency, the South African Secret Service and unpaid charity workers

It provides for a maximum of 45 ordinary working hours a week for all workers, a maximum of nine hours a day for employees who work for five days or less a week, and eight hours a day for employees who work for six days a week, while overtime may only be worked by agreement

The provisions of the bill prohibit the employment of children under the age of 15 years and also provide for working conditions for children between the ages of 15 and 16

While the bill provides for the protection of pregnant workers, including women who have stillbirths, and entitles them to four months' maternity leave during which their jobs will be protected, it does not address the issue of maternity pay A ministerial team has instead been set up to handle this issue

The team will be composed of, Dorothy Mohale, from Cosatu, Barry Shipman, representing organised business, Charles Meth, from the University of Natal, Aubrey Qalata, representing Nafcoc, and Shadreck Mkhonto, a director of the Unemployment Insurance Fund (UIF)

The terms of reference of the team will be to investigate and determine mechanisms for the financing of maternity pay, including whether it should remain linked to the provisions of the UIF or a similar mechanism, to determine the duration of such pay, including the amount of the benefit; and also deal with the question of maternity pay for domestic workers

"The bill is extremely challenging to everybody and ... demands of everybody to change step, and to change from an exploitative atmosphere to one which promotes social justice," Mboweni said

He added that this was one legislative proposal which went to the very heart of the relationship between employers and workers.

PUTTING HEADS TOGETHER *Les Kettledas, of the department of labour, and Tito Mboweni, the labour minister, ponder the provisions of the draft Basic Conditions of Employment Bill*

PHOTO JOHN WOCLAR

45-hour week 'will undermine work ethic'

CT 18/4/97 (166)

DAN SIMON

SOUTH AFRICA'S work ethic, particularly in the manufacturing sector, would be undermined if the country were to adopt and enforce a proposed 45-hour working week, according to the Cape Chamber of Commerce and Industry (CCCI).

The Basic Conditions of Employment Draft Bill, which was published yesterday for general comment, sets down minimum standards for working conditions for all workers, and proposes a reduction of the working week from 48 hours to 45 hours

The bill, promoted by Labour Minister Mr Tito Mboweni as a "step from an exploitative atmosphere" to one of social justice, allows for imprisonment if its provisions are flouted

But the CCCI said the bill, if adopted, would undermine South Africa's work ethic

A city lawyer and a city murder and robbery unit detective also said there was no way they would be able to keep up with their work and case loads if they or their staff had to strictly abide to a maximum 45-hour working week

CCCI human resources manager Mr Charl Adams said "We believe this is the thin edge of the wedge The minister (Mboweni) has indicated that he wants to reduce it further to 40 hours This is unacceptable and in contradiction to what is required for South Africa in terms of productivity"

Mr Robert Bricout, a director of staff at the legal firm Herbsteins, said he would "go out of business" if he or his staff were to work a nine-hour day

"The absolute minimum for me is 10 hours a day and I work every weekend As for my staff, I wouldn't survive if they didn't work nine to five Most of them come in at eight and often work into the night."

Detective-Sergeant John Nomdoe of the Peninsula Murder and Robbery Unit in Bellville South said his working day normally started as early as 4.30am.

"My average working day is about 18 hours and this includes my 25 colleagues who are covering the whole Peninsula We can't put in for overtime because they say there is no money and we cannot work a nine-hour day, otherwise we would never solve cases," Nomdoe said.

The Star .... Friday April 18 1997

New era of working conditions unveiled

Star 18/4/97 (166)

Shorter hours and generous sick and maternity leave are cornerstones of draft bill on proposed labour legislation

By Patrick Phosa

A 45-hour working week, six weeks' paid sick leave for every three years of continuous employment, and a ban on employing children under the age of 15 are among labour proposals announced by Labour Minister Tito Mboweni yesterday

The Basic Conditions of Employment Draft Bill promises to revolutionise the workplace by improving the basic working conditions of workers

Speaking at the launch in Johannesburg, Mboweni said the draft was an embodiment of the desire to achieve social justice for all

"It is very challenging to everybody and it demands of everybody to change step from an exploitative atmosphere to one that promotes society," Mboweni said

The proposed law would replace the existing Basic Conditions of Employment Act, the Wage Act and the Agricultural Labour Act, to ensure that all workers are protected by basic conditions At the moment, working hours range from 46 to 68 hours a week, depending on the type of work The draft bill proposes 45.

It has been sent to the National Economic Development and Labour Council for further negotiations before it is sent back to the Cabinet The proposed law will then go to Parliament and eventually become law next year

The draft is likely to set the ANC-led Government and its alliance partner Cosatu on a collision course because the union is demanding at least six months' maternity leave, four of which have to be paid, while the Government is proposing four months' leave but payment has not been decided on.

Cosatu is also demanding a 40-hour working week.

Cosatu's Witwatersrand region held a "stayaway" to press home its demands concerning the bill after deadlocked negotiations in the National Economic Development and Labour Council last year

Cosatu spokesman Nowetu Mpati said the federation would react after a special executive committee meeting planned for today to discuss the bill

She said Cosatu's national strike scheduled for May 12 was still on, and a final decision would be taken today

Jobs Bill row grows

MtG (Bm) 18-24/4/97 (166)

The draft Basic Conditions of Employment Bill, released this week, has raised the ire of business and labour. A compromise is vital if Gear is to stay on track. Madeleine Wackernagel and Ferial Haffajee report

THE next stage in the heavyweight battle to get the draft Basic Conditions of Employment Bill passed into law is set to make the negotiations around the Labour Relations Act look like a friendly joust. So say government insiders, who believe it is going to be more difficult because "this one s about money"

And lots of it Evidence points to a 20% increase in business costs if the working week is indeed cut down to 40 hours as demanded by labour, and part-time employees are given the same benefits as full-time staff The government won t be spared either — higher staff overheads could have severe implications for the Budget deficit target.

The Bill, which calls for an average 45-hour working week to protect employees in industries where 52-hour weeks are common was given the Cabinet's stamp of approval this week, which is about the only stamp it got, with cries of foul coming from almost all corners

The draft Bill will now go back to the National Economic Development and Labour Council for further consideration

Business says the draft plan will make job creation difficult and will cost too much Labour is fighting both the government and business on provisions for a 40-hour week, four months' paid maternity leave and minimum standards of employment.

While nobody questions that labour should be protected from extreme working conditions there are fears that too cast-iron a framework will impede the production process

Says Tony Twine of Econometrix "Issues of fairness have to be addressed but the general appropriateness of the legislation is worrying We aren t a very productive or efficient economy And there are fears that a rigid labour market will make the attainment of Gear [government's growth, employment and redistribution strategy] that much more difficult."

This concern was echoed by Rudolf Gouws chief economist at Rand Merchant Bank "It would be a tragedy if Gear were seen to fail because of the structure of the labour market — because costs imposed on business through employment standards and levies make it impractical to employ more people "

The argument that a shorter working week will help to boost jobs is fallacious, says Democratic Party leader Tony Leon "Every other country is moving towards greater flexibility, not less, because it has been proven that cutting the working week actually results in lower output and fewer jobs In the ideal world of the International Labour Organisation (ILO) in Geneva this logic may apply but real-world experience points to a different outcome

"South Africa is going against the grain of what every other country has demonstrated to be the reality — greater job flexibility creates jobs We are in danger of having too much regulation and not enough flexibility "

The government defends the Bill with arguments that it sets in stone better conditions than anything labour has enjoyed before And it holds out the promise of flexibility by providing for various ways in which standards can be negotiated downwards in struggling industries or by consensus between unions and their employers

But labour, especially the Congress of South African Trade Unions (Cosatu), is spoiling for a fight. Some Cosatu-watchers say this round is really about ongoing unhappiness around the market-oriented Gear strategy

Now Cosatu is shifting the battle to the draft Basic Conditions of Employment Bill, which is easier to mobilise workers around because it concerns nuts-and-bolts issues like money — payment for Sunday work and maternity leave; as well as a shorter working week and better leave conditions

Cosatu s plan for a general strike on May 12 stands, though the federation's most senior decision-making body the National Executive Committee, meets today to run a fine-tooth comb through the Bill

Cosatu s biggest worry is the draft law's suggestion of a 45-hour week The federation is pushing for a 40-hour week, though most countries in the world work 48 hours

ILO figures show that 53 countries have opted for the longer working week, while 42 countries, including China, work a 40-hour week

Trends show that Western Europeans work between 35 and 37,5 hours every week, Australia is equally liberal with a 38-hour work week introduced 14 years ago

But faced with rising unemployment and shrinking economies, unions are starting to show flexibility Overtime, for example, is becoming more acceptable Both Canada and the United States work a 42-hour week though employees in the US manufacturing sector work the longest hours in the world when calculated annually because of short holidays

Comparisons with South Africa are better made with emerging economies Workers in the Republic of Korea and in Singapore are employed on a 47,5 hour week, those in Hong Kong work three hours less In Latin America, the average working week is about 44 hours

The ILO has no figures for African countries other than Egypt, where the working week is unusually long at 52 hours ILO researchers say there s a "virtual absence of debate concerning reducing working hours as a means to combat unemployment"

Running a close second to Cosatu's call for a 40-hour week is its demand for six months' maternity leave, of which four would be paid and two unpaid The government has recommended four months unpaid leave with state assistance, while employers go lower They want three months' unpaid maternity leave

While the 40-hour week has many international examples to point to, Cosatu stands alone on its demands concerning maternity leave

The ILO's benchmark figure is 12 weeks One in two of the ILO s member countries has met this goal, while one-third of the rest provide 14 weeks or more maternity leave and Italy's laws are currently world best practice with provisions for five months' paid maternity leave

A pregnant issue: The government has suggested four-months' unpaid maternity leave with state assistance PHOTOGRAPH SIDDIQUE DAVIDS

Business warns labour Bill may increase costs

And Cosatu remains unsatisfied

(166)

ARG 19/4/97

OWN CORRESPONDENTS

Johannesburg – Business groups have warned that the Basic Conditions of Employment Draft Bill will increase labour costs and damage the country's international competitiveness

Reacting to the draft bill, unveiled on Thursday by Labour Minister Tito Mboweni, Business South Africa and the National Federated Chamber of Commerce said in a joint statement yesterday that the decrease in working hours and the increase in leave entitlements were being proposed without regard to greater productivity

And the president of the Afrikaanse Handelsinstituut, Theo van Wyk, agreed, saying "The cumulative effect of all the legislation that has recently flowed from the Department of Labour is negatively affecting investment, growth, job-creation and survival abilities of many businesses"

The president of the South African Chamber of Business (Sacob), Philip Krawitz, said he would liked to have seen more flexibility, "but the Bill is a realistic attempt to find a middle course between competitiveness and quality of life for workers"

Sacob warned that if the proposals increased labour costs, this could harm job creation Business and labour have conflicting views on the proposed legislation

Trade union federation Cosatu held a "special executive committee meeting" yesterday to decide on the union's response to Mr Mboweni's proposals, some of which fall far short of what Cosatu is demanding

Cosatu wants a maximum working week of 40 hours – Mr Mboweni is proposing 45 hours – and it disagrees over the provisions for maternity leave Cosatu wants six months' maternity leave, four of which must be paid, while Mr Mboweni is proposing four months' maternity leave

Cosatu has threatened a campaign of mass action, culminating in a general strike on May 12

The proposed law would replace the existing Basic Conditions of Employment Act, the Wage Act and the Agricultural Labour Act, to ensure that all workers are protected by basic conditions

At present working hours range from 46 to 68 a week, depending on the type of work The draft Bill proposes a maximum of 45 ordinary working hours a week for all employees

It has been sent to the National Economic Development and Labour Council for further negotiations before it is sent back to the Cabinet

The proposed law would then go to Parliament and become law next year

No general strike but Cosatu seeks mass action

(166)

ARG 19/4/97

Johannesburg – Congress of South African Trade Unions secretary-general Sam Shilowa said Cosatu had decided to call off its planned national strike on May 12, but would instead rally its members countrywide to take part in mass-action protests.

Cosatu adopted this resolution at a special session yesterday during which the trade union federation measured the Basic Conditions of Employment Bill against its members' demands, Mr Shilowa told a media gathering here

He said that in scope the bill was an improvement of the existing Act, but there were aspects with which Cosatu was not satisfied

Cosatu did not believe further negotiations at the National Economic Development and Labour Council (Nedlac) would "produce anything", because labour and business disagreed on some provisions

Mr Shilowa said the bill needed technical refinement in the parliamentary process and Cosatu was committed to "the shortest possible" negotiations on it

He said Cosatu had not lost faith in Nedlac, but that the time for discussions at that forum was over and the bill should be "thrown into the parliamentary process"

Asked whether he thought labour had lost out in the bill, Mr Shilowa said "We are not keeping a scoreboard"

He said there were provisions in the bill with which no businessman he knew would be happy

Workers would be informed of Cosatu's decision to call off the strike and replace it with mass action

He said workers would be instructed to gather at Cosatu's regional offices at noon on May 12 and would march on employers' buildings

Cosatu had changed the focus and target of its industrial action because the situation had changed significantly since February, when the federation decided to strike.

Another form of industrial action had been decided because, while Cosatu's members were generally covered by collective bargaining, the federation also had the needs of vulnerable and unorganised workers at heart

Mr Shilowa said that while Cosatu welcomed the reduction of the maximum working week to 45 hours, as it benefited more than two million farmworkers, mineworkers and security guards, the federation was of the view that the bill should make provision for a gradual reduction to 40 hours

Cosatu was also happy that maternity leave had been increased to four months, but was adamant that this should be extended to six months – four months paid

Cosatu also welcomed the increase in pay for working on Sundays and overnight, and the protection of children

There were problems with the bill's provisions on child labour, Mr Shilowa said

The bill stipulated that children under 15 were not allowed to work, while Cosatu wanted to ensure that children under 16 not be allowed to work – Sapa

Cosatu set to take hard line on employment Bill

(166) ST 20/4/97 (61)

BASIC CONDITIONS

By CAROL PATON

ABANDONED HOPE Sam Shilowa of Cosatu who says negotiations have proved futile

COSATU general-secretary Sam Shilowa said on Friday the union federation had abandoned hope that an agreement could be struck between business, government and labour on the Basic Conditions of Employment Bill

Cosatu resolved to continue with its protest action against the Bill on May 12, although this will now comprise a half-day work stoppage and not a 24-hour general strike

Business organisations also voiced their criticisms of the Bill on Friday — in particular, the effect of its provisions on unit labour costs

The Bill, which will establish a new set of minimum rights for workers across all sectors of the economy including farm and domestic workers, was unveiled by Labour Minister Tito Mboweni this week

It calls for a maximum working week of 45 hours, an increase in the overtime rate from time-and-a-third to time-and-a-half, an increase in annual leave from two to three weeks and an increase in unpaid maternity leave from three to four months

The provisions fell short of Cosatu's demands on a number of the "big issues", notably a 40-hour week within five years and six months maternity leave, four of them paid

Cosatu is also opposed to a provision in the Bill which allows employers and workers to vary conditions by agreement and the Labour Minister to exempt businesses

Shilowa said "We do not believe that negotiations will produce anything more in Nedlac We have been in negotiations since May The big issues are known and we've reached a point where we had to assess our chances of reaching an agreement "

The provisions announced by Mboweni also failed to meet concerns of business, which has argued that the effect of a shorter working week, increased leave arrangements and a higher premium for overtime would affect labour costs and competitiveness

Business SA chairman Hans Smith and Nafcoc president Joe Hlongwane said in a joint statement that the test of employment standards legislation would be whether it was "affordable and practical in a developing country with high growth priorities"

They described the provisions of the Bill as going beyond basic labour standards and attempting to set "highest order standards" which could only be considered if based on labour-market efficiencies and workplace productivity

The SA Chamber of Business expressed concern over higher working costs but also noted positive aspects of the Bill, namely the absence of a legislated 40-hour week and the ability of employers to vary standards by agreement

Sacob president Philip Krawitz said "We see the Bill as a package of measures It seems to be a genuine attempt to find a middle course between competitiveness and enhancing the quality of life of workers."

Treading a fine line between the bosses and the coalface

Tito Mboweni's tough task

(166) ST 20/4/97

The minister of labour will have his work cut out trying to get unions to back his new Bill, which makes many concessions to business but few to workers, writes CAROL PATON

BLOOD, SWEAT AND FEARS: Tito Mboweni, whose Bill has cabinet's approval

IT WAS with a measure of happiness, Labour Minister Tito Mboweni said this week, that he could announce the cabinet's united support of his new Basic Conditions of Employment Bill

The Bill, which aims to set basic standards for all workers across the economy, including domestic, farm and part-time workers, will have a more far-reaching influence on the shape of the labour market than any other labour law before it

Many of the issues it regulates are at the centre of the employment contract They are, therefore, directly at the heart of the conflict between employers and workers

Mboweni's Bill launches into the middle of this conflict, taking up the bold standpoint that workers are people, too

They have babies, their children get sick and they need time to bury their dead The Bill states that working time should be arranged with due consideration of family responsibilities

This sentiment, which forms only a part of the Bill, nevertheless sums up the terms in which Mboweni sees the issue

It was time for employers, he said, "to change step".

Unveiling the Bill, Mboweni said. "It demands of everybody the need to change from an exploitative atmosphere to one which promotes social justice

"It is an embodiment of our desires to achieve social justice for all our people" The main provisions of the Bill are

- A reduction in the working week to 45 hours,
- An increase in the overtime rate from time-and-a-third to time-and-a-half,
- An increase in annual leave from two to three weeks,
- An increase in unpaid maternity leave from three to four months; and
- Three days of paid "family responsibility" leave

Apart from the fact that labour market policy is a hotbed of contention, introducing a piece of social justice legislation could have unintended consequences

Employers have estimated, based on an earlier version of the Bill in green paper form, that the cumulative effects of its provisions will lift employment costs by up to 20 percent — an obvious damper on employment

Unemployment queues have been lengthening for three years amid perceptions that the labour market has forced up labour costs, thereby destroying any incentive to create jobs

In view of this, raising minimum standards and employment costs is a risky step to take

Mboweni's argument that increasing overtime costs will force employers to hire more people is an unlikely outcome, given the costs of introducing new workers.

But while economists may have advised against the Bill, the politicians have backed it

Mboweni said. "The decision of the cabinet is based on the primary objectives of the Bill, which are to ensure that the working conditions of vulnerable workers meet the minimum conditions of employment that are socially acceptable with regard to the level of development of the country"

But the Bill, which has evolved from nearly a year of discussions on the green paper, also made some significant concessions to economic realities when it was presented to cabinet this week

The provision that will have the biggest economic impact — the raising of the overtime rate to time-and-a-half — has been softened to allow employers to exchange overtime with time off

Sunday work, which is now paid for at double the rate, will be reduced to time-and-a-half for regular Sunday workers or swopped for time off

The changes to overtime and Sunday work rates are also intended to accommodate the public sector, in particular nurses and police, who will, for the first time, be covered by basic standards laws. There will also be special transitional arrangements for the public service which will phase in the provisions to soften its financial impact

> 'Cosatu believes that to back down on its demands would amount to a serious compromise of principles'

The Bill also makes other important concessions to business

While the green paper promised a 40-hour week within five years, the Bill reduces the working week from 46 to 45 hours However, workers who work long hours, such as security guards and mineworkers, will now also be covered by the 45-hour week

It also concedes to employer demands by introducing a provision for the averaging of working hours This will allow employers to average the working week over four months, providing some leeway to use labour for longer during busy periods in return for shorter days during slack periods

As in earlier versions, it allows for all labour standards to be varied through individual or collective agreement or through exemption by the minister

However, the Bill makes virtually no concessions to labour

Labour's demands, over which it has threatened a general strike on May 12, include a 40-hour week phased in over five years, six months of maternity leave, of which four should be paid, and no variation of standards below the minimum stated in the Bill Variation, the unions believe, will lead to the whittling away of hard-earned worker rights

Both the 40-hour week and six months of paid maternity leave are demands that the ANC promised unions it would deliver Cosatu believes that to back down on these would amount to a serious compromise of principles

In an attempt at a compromise, Mboweni has undertaken to restructure the Unemployment Insurance Fund to help find a solution to maternity pay

With cabinet support behind him, Mboweni has made it over the first hurdle But the second is already on the horizon — business, labour and government must try to reach consensus on the Bill through negotiations in the National Economic Development and Labour Council

Mboweni believes an agreement is still possible, despite the fact that talks on the green paper ground to a halt last November

But with issues such as working hours, overtime and maternity leave on the table, striking a deal will be as easy as everyone in the country sitting down together at wage negotiations

HOW THE BILL WILL AFFECT YOU

EMPLOYEES

- All employees will be entitled to the basic conditions of employment, which include, a 45-hour week; three weeks paid leave; time-and-a-half for overtime work, and four months of unpaid maternity leave
- These conditions can be altered only if an individual or a trade union agrees or if the minister of labour grants an exemption to a particular enterprise;
- Employees who already enjoy conditions higher than the basic minimums will not be affected,
- All public service workers will be covered by the Bill and provisions to compensate nurses and police for Sunday work and overtime will be phased in

Employees excluded from the hours of work provisions include

- Those earning above a certain level, likely to be set between R40 000 and R70 000 a year,
- Senior management,
- Sales personnel,
- Soldiers and members of the intelligence services are totally excluded

DOMESTIC AND FARM WORKERS:

- Domestic and farm workers will be covered by all the provisions of the Bill,
- For instance, they will be entitled to time-and-a-half after 45 hours a week, three weeks of paid annual leave, and four months of unpaid maternity leave,
- Double rate for Sunday work and work on public holidays,
- A written contract of employment

EMPLOYERS

- Employers will be legally bound to implement the basic conditions for all employees, unless these conditions have been varied through agreement or by ministerial permission,
- They will be obliged to enter into written employment contracts with all employees,
- Failure to comply will result in a fine

Labour Bill fails to satisfy Cosatu

(166)

By SEKOLA SELLO

CP 20/4/97

THE GOVERNMENT'S Basic Conditions of Employment Bill has been cautiously welcomed by organised business and the trade union movement, Cosatu

The Bill, which was approved by Cabinet this week and made public by Labour Minister Tito Mboweni aims to achieve social justice for workers

Due to some favourable aspects of the Bill, Cosatu has called off a nationwide strike on May 12 Instead, Cosatu will now engage in mass action

Organised business has, however, called on Cosatu not to go ahead with the planned mass action .

The Bill applies to workers in all sectors of the economy except for those in the South African National Defence Force, SANDF, the South African Secret Service, SASS, and unpaid charitable workers.

The Bill is expected to be passed by Parliament before the end of the year. For the first time civil servants, domestic workers and farm labourers will be protected by legislation.

The Bill makes illegal the use of child labour (below 15 years), proposes a 45 hourweek and also seeks to guarantee protection for pregnant women

Parliament will be our new battlefield, Cosatu vows

(166) CT(BR) 21/4/97

FRANK NXUMALO

Johannesburg — The national executive of Cosatu scaled down its 24-hour national strike scheduled for May 12 to marches and rallies because of what it called "changed conditions", a Cosatu official said on Friday

But Cosatu was considering taking the battle for basic working conditions to parliament within three months, rather than endure another protracted Nedlac (National Economic Development and Labour Council) process "because we cannot negotiate forever", the official said

Employees will be expected to report for work on the morning of May 12 They will assemble at their unions' offices before the half-day of marches and rallies

Cosatu affiliates would be charged with mobilising their members while the federation's regions "must designate the venues for the rallies and marches to target employers", Cosatu said The work stoppage was seen as "a tactic" and not as "a principle" as the federation was "not married to strikes"

The May 12 programme of action also goes ahead despite Cosatu's welcoming of a number of the provisions of the draft Basic Conditions of Employment Bill

These include the immediate applicability of the 45 hour week for all workers in the first year of enactment, the approach to payment for Sunday work, the increase of overtime pay from one-and a-third the normal wage rate to one-and-a-half that rate, the definition of a child and the regulation of the working conditions for children between 15 and 18

It also reiterated its demands on maternity leave and was "of the view that the bill should set a commitment to a statutory 40-hour week and spell out appropriate and effective mechanisms to achieve that over a period"

The latter flies in the face of the South African Chamber of Business (Sacob) which has "welcomed the absence from the bill of a statutory imposed goal of a 40-hour week which would not have been appropriate at the present stage of South Africa's economic development," Philip Krawitz, the Sacob president, said

But Joe Hlongwane, the chairman of Business South Africa and president of the National African Federated Chamber of Commerce, said "Business has no objection to the regulation of basic labour standards, but can only consider higher labour standards where these are of greater labour market efficiencies and workplace productivities "

Soothing labour's pains

(166) Sowetan 21/4/97

Labour Minister Tito Mboweni is rightly regarded as one of the most successful ministers in the ANC government. **Abdul Milazi** explains why..

LOVE him or hate him, but Labour Minister Tito Mboweni has chosen the right way to restructure South Africa's lopsided industrial relations – staying focused

When he was given this task in 1994 when the African National Congress-led Government came to power, he set himself a five-year plan and is sticking to it, a factor which has become a recipe for his success

Mboweni still has a year and nine months left to his 1998 deadline and already his plan is almost complete – a feat no other minister can boast, except Finance Minister Trevor Manuel, who has had some success in correcting state spending and debt servicing

Mboweni s strong belief in governing finds its clearest expression in the recently released Basic Conditions of Employment Bill which does not side with either business or labour, but focuses on Government's overall goal – attaining social justice and economic empowerment

This was also evident last year when the conflict between business and labour forced the passing of the Labour Relations Act to be postponed three times Mboweni put his foot down and it was finally passed on November 11

The ANC seems to have recognised Mboweni's strong leadership qualities, and has of late been using him as a "Mr Fixit" whenever there is a crisis in the organisation or in government

When the Free State provincial government's leadership crisis threatened to split the then premier Terror Lekota's legislature, Mboweni was called in to save the situation

Northern Province was next when little-known George Mashamba unexpectedly snatched the ANC regional chairmanship from premier Ngoako Ramatlodi – and Mboweni was again called on to restore order He is also the man given the task of solving the leadership crisis within the ANC Women's League, which led to the resignation of Health Minister Nkosazana Zuma and veteran activist Albertina Sisulu

Socialist at heart

A socialist at heart Mboweni is diametrically opposed to the notion which asserts that the immutable laws of capitalist development will inexorably create the conditions for social justice But, in the same vein, Mboweni has also taken cognisance of the need for labour flexibility as a catalyst for overall economic growth, and displays a strong understanding of market forces

The Bill will be the toughest for Mboweni – it goes to the very heart of the relationship between employers and workers It deals with matters such as working hours and maternity and annual leave, factors which impact greatly on productivity

Flashback ... Labour Minister Tito Mboweni at the launch of the Basic Conditions of Employment Bill on Thursday. PIC LEN KUMALO

Employers have already expressed concern that the decrease in working hours and the increase in annual leave, maternity leave and sick leave – without regard to productivity – will inevitably raise labour costs

Business South Africa and the National African Federated Chamber of Commerce say they do not object to the regulation of basic labour standards but can only consider higher labour standards where they are accompanied by efficiency and productivity

At the launch of the Bill last week, Mboweni said "We cannot rebuild our society at the expense of the standard of living of ordinary men and women We cannot develop at the expense of social justice We cannot compete without a floor of basic human standards"

The Bill sets out to address these issues by extending basic workers' rights to temporary, part-time and contract workers, who are excluded from the existing law Mboweni said "A better life for all (an ANC 1994 electioneering slogan) must also mean a better life for working people It must not be a hollow slogan that doesn t have any relevance at all to working people"

He argued that part of Government's move towards improving the lives of all people was ensuring that the primary objectives of job creation an improved investment climate and social wage development are integrated into one cohesive economic and social programme

"The decision of the Cabinet (to approve the draft Bill) is based on the primary objectives of the Bill which are to ensure that working conditions of unorganised and vulnerable workers meet the minimum conditions of employment which are socially acceptable in relation to the level of development of our country," Mboweni said

The Bill also addresses the inadequate protection of vulnerable workers such as farm, domestic and part-time workers by proposing statutory wage-setting in these sectors

There seem to be only two areas of conflict between the Government and trade unions – the period and payment of maternity leave, and the number of working hours a week

The Bill proposes a reduction of working hours from 46 to 45 hours a week and at least 12 hours of rest for workers between knocking off and resuming work the following day

The 45-hour week will also apply to security workers who currently work 60 hours a week

Unions on the other hand, are demanding a 40-hour week for all workers and six months maternity leave, with four months paid Government is offering four months unpaid maternity leave as opposed to the current three months unpaid

Mboweni has set up a special team to investigate the financing of maternity leave pay, and this team is expected to round up its work simultaneously with the finalisation of negotiations on the Bill at the National Economic, Development and Labour Council

In terms of the Bill, workers will also be entitled to a rest period of 36 consecutive hours per week, which must include a Sunday unless otherwise agreed between employer and employee

This Bill will not present much of a problem if Mboweni's success with the Labour Relations Act and several other laws already concluded is anything to go by

Cosatu welcomes establishment of task team

'Union federation will negotiate on proposals for Employment Bill'

(166) ARG 22/4/97

THABO MABASO
BUSINESS REPORTER

The two-million strong Congress of South African Trade Unions (Cosatu) plans to use the ministerial task team set up to advise Labour Minister Tito Mboweni on mechanisms of improving maternity pay, to push for its demands – but it has also not ruled out using more robust tactics

Cosatu's Western Cape secretary general Tony Ehrenreich told the Cape Argus that Cosatu felt that the newly published Basic Conditions of Employment Bill had a number of positive elements. The trade union federation was not happy with some aspects, notably the fact that its demand for six months maternity leave, with four months paid, had not been met

Cosatu would negotiate with the ministerial task team to achieve its objectives, Mr Ehrenreich said.

The task team consists of labour representative Dorothy Mogale, academic Charles Meth, organised business representatives Aubrey Calata and Barry Shipman and unemployment fund commissioner Shadrack Mkhonto.

Mr Ehrenreich welcomed the establishment of the team and said the federation was not unduly concerned that labour had only one representative although Cosatu had called for two

"The issue of numbers does not in any way detract from Dorothy s ability to influence the process," he said

"The numbers on the team do not matter What matters is that we've got the numbers on the street to back our proposals with mass action"

Cosatu is unhappy that its demand for six months' maternity leave, with four months paid, has not been met'

The bill has increased maternity leave from three to four months and guarantees job security while the mother of the child recuperates

In terms of the current legislation, women draw maternity pay from the Unemployed Insurance Fund (UIF) This equals 45 percent of their wages

Mothers are not allowed to draw UIF if after they have already drawn maternity benefits, they later lose their jobs

Cosatu has demanded that the two not be linked The federation says that pregnant women should be able to go on paid maternity leave and also draw UIF A separate maternity fund should be created to enable this

"Our members will back Cosatu's demands by showing their support," Mr Ehrenreich said

The bill is the result of painstaking months of negotiation between business, labour unions and the Government It establishes minimum conditions of employment for vulnerable workers, especially domestic and farm workers

Cosatu had threatened to call a national strike on May 12 if its proposals, particularly those effecting maternity leave and a 40-hour working week, were not met

The federation, however, backed down after the bill was published saying despite its shortcomings it was an improvement on previous legislation.

Cosatu will now hold nationwide marches and pickets on May 12 to highlight its demands, but will not strike

Cosatu changes stance on Bill

166

Sowetan 22/4/97

By Abdul Milazi

THE Congress of South African Trade Unions (Cosatu) has ended changed its planned May 12 strike against the Basic Conditions of Employment Bill. The Federation of Unions of South Africa welcomed the Bill yesterday while the African National Congress supported it.

Cosatu general secretary Sam Shilowa said the Bill should provide a floor of basic rights for all workers. At the bill's launch Labour Minister Tito Mboweni said the proposed legislation did exactly that.

Shilowa said in some respects the Bill was an improvement on the current Basic Conditions of Employment Act.

Shilowa said at the weekend: "Cosatu welcomes the reduction of working hours to 45 hours immediately in the first year of the Bill because of the benefit it will hold for more than two million workers, particularly the most vulnerable and unorganised.

"We are however of the view that the Bill should set a commitment to a 40-hour week and to put out appropriate and effective mechanisms to achieve it over a period of not more than five years."

Fedusa said it was "relatively" satisfied with the Bill and argued that "had it been economically affordable for south Africa, we would have wanted a maximum of a 40-hour week and also the other benefits improved for every single worker in the country".

Social justice

The ANC said the Bill should be seen in the context of the organisation's policies of social justice improving conditions for workers without undermining prospects of job creation and growth.

Cosatu however, said it remained opposed to the proposed model on variation of employment standards, while it welcomed the fact that its proposal for night work from six to six the following day had been incorporated.

Cosatu protest action divides labour court

(166)

WORKPLACE CONFLICT

By CAROL PATON

IN THE first test case to interpret the Labour Relations Act, a full bench of the Labour Appeal Court has failed to reach unanimity on provisions regarding the right of workers to participate in socio-economic protest action

The majority ruling, made by Judge John Myburgh and Judge Johan Froneman on Friday, ruled that tomorrow's proposed protest action by Cosatu does not comply with section 77 1 (c) of the Act. ST(BT) 11/5/97

Judges Myburgh and Froneman said discussion had to take place in the National Economic Development and Labour Council on the matters giving rise to protest action within 14 days of notice being given of an intention to protest. There was no evidence that proper consideration of the issues had taken place This failure was "fatal"

As a result of the ruling, Cosatu has postponed its protest against the Basic Conditions of Employment Bill until June 2 Cosatu general-secretary Sam Shilowa said tomorrow's action would be limited to lunch-hour picketing

The ruling was handed down in response to an urgent application by Business SA.

However, in a minority dissenting view, Judge Chris Nicholson said Cosatu had in fact considered the issues at a meeting called by Nedlac after a final version of the Bill had been published At the meeting, however, business had requested a 10-day adjournment in order to get a mandate

He said he found the request for an adjournment "strange" as the issues in the Bill had already been the subject of a year's negotiations

He said he believed business secured the adjournment with the intention of making it impossible for the issue to be considered by Nedlac before the maximum period of 14 days had passed

NOT US *Adrian du Plessis, a BSA negotiator, left, and Jayandra Naidoo, the executive director of Nedlac, right, deny allegations by Sam Shilowa, Cosatu general secretary, of trying to frustrate discussion on the strike*

PHOTOS JOHN WOODROOF

Cosatu to go higher over the right to strike

CT (BR) 12/5/97 (166)

FRANK NXUMALO

Johannesburg — Cosatu is to launch a Constitutional Court challenge over the labour court's interpretation of the right to strike, the labour federation said yesterday

On Friday the labour court ruled that Cosatu's nationwide industrial action, planned for today, was unlawful because the federation had failed to follow section 77 (1) (c) of the Labour Relations Act.

Judge John Myburgh, the judge-president of the labour court, ruled that Cosatu had not given reasons for the action to the National Economic Development and Labour Council (Nedlac)

Cosatu has postponed its protest until June 2

Sam Shilowa, the Cosatu general secretary, has warned Business South Africa (BSA), the employers' body that took Cosatu to court, that the federation was "concerned that the tactics applied by BSA will lead to the hardening" of members' views

Cosatu rejected the labour court's decision that the protest action over employment standards had not been discussed in Nedlac, saying it had notified Nedlac more than two months ahead of the proposed mass action and that BSA and the government had scuppered attempts to discuss the issue

Cosatu said its battle was made more difficult by government representatives who claimed they had no mandate to negotiate on the matter

Cosatu also accused Jayandra Naidoo, the executive director of Nedlac, of cancelling a meeting, scheduled for March 26, to consider labour's protest action

Naidoo said the government had asked for a postponement because of "progress being made on the draft Basic Conditions of Employment Bill They said they were not ready to discuss matters of substance until they had a mandate from Cabinet."

BSA representatives insisted that by challenging Cosatu's actions in court they were only seeking a legal opinion and not trying to jeopardise Nedlac talks.

Cosatu strike postponed

(166)

Sowetan 12/5/97

Union says Busines South Africa is being rewarded for 'stalling tactics'

TODAY'S planned countrywide industrial action by the Congress of South African Trade Unions (Cosatu) has been postponed to June 2, the federation said on Friday

The postponement follows a verdict on the same day by the Labour Court that Cosatu's industrial action was unlawful

Passing judgment in favour of Business South Africa, which applied for an interdict against the action, Judge John Myburgh said Cosatu failed to comply with the provisions of Section 77(1)(c) of the Labour Relations Act

He directed Cosatu to advise its affiliates that the Monday protest was in breach of Section 77, which stipulates that Cosatu has to give National Economic Development and Labour Council reasons for the protest

Myburgh ruled in favour of the BSA, and ordered Cosatu to pay legal costs

At a media conference Cosatu general secretary Sam Shilowa said he noted the judgment with disappointment

"Our responsibility was to notify Nedlac and hold ourselves open for meetings to consider the matter," he said

He said Cosatu felt it had complied with the stipulations of the Labour Relations Act because it had given more than two months' notice of the protest and had raised the matter with Nedlac on February 28

During that meeting, the Labour Court heard on Friday, it was resolved that a meeting of Nedlac conveners and members of the negotiating committee would meet in mid-March 1997 to consider options for resolving outstanding matters regarding Cosatu's protest That meeting was never held

> **'Our responsibility was to notify Nedlac and wait for meetings to consider the matter'**

Government cancelled

Shilowa said another meeting planned for March 26 never took place because the Government cancelled it

In another letter to Nedlac on April 21, Cosatu reiterated its position on the issues in dispute and indicated that protests planned for May 12 would start at 12pm, Shilowa said

"This surely should be up to the other parties to attempt a settlement The judgment's effect is to reward them for stalling tactics," Shilowa said

Shilowa said Cosatu saw the judgment as meaning the protest could still continue on May 12 but that workers would then not enjoy the protection offered by Section 67 of the Act

He said the planned protest shifted to June 2, would now be discussed by a Cosatu executive committee meeting on May 12 – *Sapa*

Cosatu's attitude to business hardens

BD 13/5/97 (166)

Reneé Grawitzky

THE attitude of Congress of SA Trade Unions (Cosatu) officials hardened against business yesterday, with a decision to embark on a full day of protest action on June 2, in the wake of Friday's Labour Court ruling against the federation.

Cosatu took the decision yesterday ahead of continued negotiations on the Basic Conditions of Employment Bill in the National Economic Development and Labour Council (Nedlac) in the afternoon.

The meeting continued last night and sources said greater clarity was obtained about core issues. Another source said it was questionable how much movement could be made as the bill was already a compromised document.

He said although attitudes had hardened as a result of the recent call for a stayaway and a subsequent application for an interdict, the issues in dispute were in any event "sharply divisive"

The meeting ended inconclusively last night, with a special Nedlac meeting planned for this morning to comply with section 77 1 (c) of the act. According to this section, a matter resulting in protest action has to be considered by Nedlac in an attempt to resolve the issues.

A labour source said it became evident at a special Cosatu executive committee yesterday that attitudes had hardened with some affiliates arguing for Cosatu to take a tough stand in the wake of Business SA's Labour Court victory.

Negotiators, who might have wished to table certain concessions were allegedly ordered to stand firm and not move unless business moved. A Cosatu official said that to date labour had compromised on its position while business had made no movement.

A business source said an escalation of protest action would hinder rather than help settlement

A labour source said Business SA might have won the judgment, but could now face very tough bargaining around employment standards and an intensification of a call for protest action on June 2. Business had to realise that Cosatu was moving towards its national congress in September, with some people wishing to score political points.

Business SA, he said, could well face a far more intransigent leadership after the national congress

Cosatu given 'green light' for strike

(166) BD 14/5/97

Reneé Grawitzky

THE Congress of SA Trade Unions (Cosatu) was given the "green light" yesterday to go ahead with its 24-hour protest strike on June 2 after the National Economic, Development and Labour Council (Nedlac) had considered its notice to embark on such action.

The meeting was held in order to ensure Cosatu complied with section 77 1 (c) of the Labour Relations Act, which required that a matter giving rise to protest action had to be considered by Nedlac

At the same time Cosatu formally announced its intention to approach the Labour Appeal Court for the right to appeal to the Constitutional Court on the court's interpretation of the right to engage in socioeconomic protest

Cosatu general secretary Sam Shilowa said last night it was not the federation's intention to seek to overturn the Labour Appeal Court judgment handed down on Friday, but to appeal to the Constitutional Court on the interpretation of exercising the right to protest

A majority decision of the Court held that Cosatu, in calling for protest action on May 12, had not compiled with section 77 1 (c) of the Labour Relations Act Cosatu has rejected this position and yesterday reiterated its view that the matter had been endlessly considered since the release of the green paper on employment standards last year.

Two of the three judges presiding ruled that the matter had not been properly considered by Nedlac

In compliance with this ruling, the overall labour, government and business convenors met in Nedlac yesterday where they considered Cosatu's notice of intention to protest on June 2. They agreed that the series of meetings held since last Monday had considered the issues giving rise to Cosatu's planned protest action The parties acknowledged the differences remained unresolved

Labour department director-general Sipho Pityana said yesterday's meeting was a properly constituted structure to consider Cosatu's notice of intention to embark on protest action on June 2, as well as to acknowledge that negotiations were taking place through structures created under the auspices of Nedlac. Even though the parties agreed the issues remained unresolved, extra effort would be put into trying to resolve the matters by June 2, with the overall conveners joining the negotiations. However, if differences could not be resolved, Cosatu had the right to proceed with the action.

Meanwhile, **Jacob Dlamini** reports from Cape Town that Cosatu warned yesterday it would withdraw from parliamentary consultations unless the budgetary process was reformed to allow for effective public participation

Cosatu deputy president Connie September said there was little value in making submissions on budgets which could not be changed, or holding hearings and taking part in debates after the budget had already been set by government.

September told the parliamentary labour committee the constitution required a transformation of the "secretive, top-heavy" budget process inherited from the previous administration.

She called for reform to allow effective participation by civil organisations and to ensure Parliament and its committees played an overseeing role in determining expenditure and revenue priorities.

Cosatu's warning came in the wake of Finance Minister Trevor Manuel's announcement of plans to reform budgeting to make it an active exercise matching policy priorities to available resources.

Cosatu expressed concern over the decline in the labour budget from R657m to R620m The reduction in the allocation to the human resource development programme would affect training offered to the unemployed and contradicted government's commitment to skills development economic growth and job creation

Cosatu's concerns were echoed by the Afrikaanse Handelsinstituut, which said it had found it difficult to deal with the budget in detail as it had not been involved in its formulation

Now Cosatu plans 24-hour strike

CT (BR) 14/5/97 (166)

FRANK NXUMALO

Johannesburg — Cosatu will hold a 24-hour strike on June 2 and it will organise a petition to submit to the Constitutional Court, the labour federation said yesterday

Nowethu Mpati, Cosatu's spokesman, said the federation wanted to collect 100 000 signatures to submit to the Constitutional Court showing its rejection of last week's labour court ruling that a protest the federation had planned for Monday was illegal

A special executive committee meeting of Cosatu said the decision to change from an afternoon protest to a 24-hour strike had been made "because of the hardening of attitudes" of business and the government in dealing with Cosatu's demands over labour standards

DEFIANT *Nowethu Mpati, Cosatu's spokesman, hopes to collect 100 000 signatures*

Cosatu said its petition to the Constitutional Court would claim that the labour court was incorrect to grant the application by Business South Africa to declare the planned protest illegal Cosatu was also questioning the "implication of the judgment for peaceful protest and for the exercise of our constitutional right to strike, to assemble and to picket"

Cosatu rejected the labour court ruling for "being inconsistent with the exercise of the democratic rights, overly technical and formalistic, thereby allowing employers to use delaying tactics in Nedlac and seriously undermining the right to apply force by way of socioeconomic protest"

Bosses and workers should be protesting in the streets

ST(BT) 18/5/97 (166)

Labour consultants PIERRE MARAIS and IVAN ISRAELSTAM say the new Bill will lead to a lose-lose scenario

GOVERNMENT, labour and business will be the losers if the new Draft Bill on the Basic Conditions of Employment becomes law in its current form

It makes no attempt to stimulate productivity, and its attempt to stimulate employment by tinkering with working hours and overtime rates will fall far short of this goal

While the Bill shows the beginnings of an understanding of the principle of flexibility, at closer inspection this apparent flexibility is so restricted that it becomes almost an illusion

This is the key cause for concern for those who recognise the crucial need for labour flexibility if our developing economy is to deliver the massive volume of "goods" required of it by employees, business and government

One of the key provisions of the Bill is a major broadening of the scope of the envisaged legislation to include farm workers, domestic workers, public sector employees and temporary workers

While casual workers are not specifically mentioned, it appears that they are tacitly included by the broadness of the Bill's definition of "employee" Certain sections, such as that relating to termination of employment, exclude employees who "work less than four hours per week" The effect of this would be that a "casual" worker employed on one occasion for a period of five hours would have to be given one week's notice!

A potentially positive aspect of the Bill is its provision requiring employers to give employees detailed and written particulars of their conditions of employment.

Should the legislators make it their business to ensure that all employees are made aware of this requirement, this could help to bring more clarity to employment relationships and thus to reduce disputes over what employment conditions were agreed upon when an employee was appointed However, this does saddle the employer with the requirement to re-look at the company's employment conditions, policies and employment contracts It is now essential that the content and wording of these documents are carefully tuned to new legislative requirements while still keeping the business requirements in focus In most cases experts in this area will need to be brought in

The remainder of the proposed provisions are largely unimaginative and will mean an increase in direct costs for employers They include

- A 45-hour week (down from 60 hours for security guards and 46 hours for most employees)
- Overtime pay of time and a half (up from time and a third)
- Annual leave of three weeks (up from two weeks)
- Maternity leave of four months (up from three months) Employers are also required to provide "suitable" alternative work for employees during pregnancy and for six months after the birth in cases where the normal work done could threaten the health of the employee
- Three days paid "family responsibility leave"

'The content and wording of employment contracts will have to be carefully tuned to new legislative requirements'

While some of these requirements may be varied through collective agreements between employers and employees, there are substantial restrictions on the degree to which these variations may go

These proposals amount to unimaginative enhancements of direct employee benefits without any balancing provisions for the promotion of efficiency in the workplace and the creation of employment opportunities

The Bill drafters had the opportunity to introduce concepts such as payment for work completed (as opposed to wages for time spent at the workplace), reward for work well done and the sharing of the fruits of targets achieved and exceeded

Such reward systems promote labour "ownership" of results achievement, flexibility of work systems and the placement of employee prosperity in the hands of the employees themselves

Estimates have been tossed around of a 20% increase in costs to employers if the Bill goes through However, this is the tip of the iceberg in terms of the potential damage

The absence of real flexibility and measures for stimulation of employment opportunities and productivity will mean incalculable costs for individual employers and for South Africa's economic growth plans

Add to these expenses the costly provisions of the new Employment and Occupational Equity Bill and we have a monstrous burden for the South African economy instead of a constructive way forward

It could be time for employers and concerned South Africans in general to join Cosatu in the streets to protest against the enactment of this visionless legislation

● *Marais and Israelstam head The Labour Consultancy The company offers a daily interactive 'labour service, Labour Guides, on Business Times' Web site advising both employers and employees on labour legislation Labour Guides can be found on our home page at* **www.btimes.co.za**

Picture JAMES SOULI

DISAPPOINTED . . . Ivan Israelstam of The Labour Consultancy believes a golden opportunity to boost employment and stimulate productivity has been lost

Cosatu confident strike will go ahead next week

Action 'won't be declared illegal'

ARG 26/5/97 (166)

THABO MABASO
BUSINESS REPORTER

The Congress of South African Trade Unions (Cosatu) says plans for a 24-hour general strike against the Conditions of Employment Standards draft Bill are on schedule and that there is no chance next week's action will be considered illegal

"On May 17 we wrote a letter to the National Employment Development and Labour Council (Nedlac) and told them of our intention to go on strike on June 2," said Cosatu spokeswoman Nowethu Mpati

She said Nedlac had tried to break the impasse between labour, business and government over the draft Bill at a meeting it called last week, but the mediation had proved fruitless

"It was resolved that all three stakeholders would go to their principals to seek new mandates," Ms Mpati said.

Cosatu hopes the strike will force business to reconsider its position on certain aspects of the Bill The federation is arguing for six months' maternity leave with four months paid, and a 40-hour week to be phased in over five years

Business groups have said that acceding to these demands would lead to an increase in labour costs

An earlier plan for a half-day strike on May 12 was overruled by a Johannesburg labour court, which found the federation had not followed the procedures of the Labour Relations Act (LRA) and informed its Nedlac partners in time

Ms Mpati said that this time Cosatu had followed to the letter all LRA procedures governing strike action

"Business must not try to be technical this time, because it could result in conflict But there's is no turning back – no matter how technical the problem is deemed to be we will go ahead with the strike, even if it means breaking the law," she said

"The reason why we also decided on a full-day strike is because workers were angry about the court's decision "

She added that Cosatu had already begun mobilising its 2-million members to strike on June 2

Business South Africa (BSA) spokesman Adrian du Plessis told the Cape Argus it was regrettable that Cosatu was going to strike

"At this time all our efforts should be geared towards building the economy and jobs

"The sooner we get around the table the quicker we will resolve our differences," he said

Mr Du Plessis added that BSA's lawyers would carefully study whether Cosatu had correctly complied with the provisions of the LRA before deciding on the strike

Striking workers may forfeit wages

Cosatu wants 40-hour week

ARG 30/5/97 (166)

THABO MABASO and NOLAN STAIN
BUSINESS REPORTERS

Cape Town workers who take part in Monday's strike over the Basic Conditions of Employment Bill cannot be dismissed, but they may lose a day's pay.

The Cape Chamber of Commerce and Industry said workers taking part in the 24-hour strike called for by the Congress of South African Trade Unions (Cosatu) would be protected from dismissal but the principle of no work no pay would apply

"Although no disciplinary action may be taken for participating in the protest action as such, disciplinary action may be taken for reasons relating to unacceptable conduct during the protest action," Chamber human resources manager Charl Adams said

Cosatu had complied with the procedures of the Labour Relations Act (LRA) relating to protest action, he said

The federation had previously planned the strike for May 12 but its plans were blocked by a Johannesburg Labour Court decision, which found that Cosatu had not followed LRA procedures and informed employers and the National Economic Development and Labour Council (Nedlac) in time

Cosatu wants the final draft of the Basic Conditions of Employment Bill to include provisions for a 40-hour week phased in over five years, and six months maternity leave with four months paid

Employers have said this will increase labour costs Currently the working week varies across industries

Cosatu expects the strike to be widely followed

"The Western Cape will come to a halt on June 2 unless our demands for a 40-hour week or maternity benefits are met," Cosatu's Western Cape region said in a statement

"The only way to stop workers using the one tool which they have to tilt the negotiations to a position that favours employment equity is to concede to the demands"

A snap survey by the Cape Argus showed that some workers supported the strike, some did not know about it, while others said it was unnecessary

Clothing industry workers had the strongest views on the need to strike

"We are doing it to keep our benefits that management wants to take away from us," said one Woodstock clothing worker who did not want to be identified

"If we don't stand up for our rights now how will we ever get things right," another said

A colleague said she supported the strike because a 40-hour week would give her more time to spend with her three children

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Cosatu plans mass action to force labour law changes

ARG 2/5/97 (166)

SABATA NGCAI
STAFF REPORTER

The Congress of South African Trade Unions will embark on countrywide mass action on May 12 to protest against "objectionable clauses" in the Basic Conditions of Employment Bill.

Cosatu vice-president Connie September, addressing about 1 500 people at a May Day rally in Maynardville in Wynberg, said workers would march to demand a 40-hour working week and six months' maternity leave with four months on full pay

The Bill lays down a 45-hour working week and an increase in maternity leave from three to four months "We want a 40-hour working week in our lifetime, not when we retire," Ms Septembe said to loud cheers

Workers are expected to gather at noon on May 12 to march on employers' buildings Ms September said Cosatu was opposed to the Government's Growth Employment and Redistribution Strategy (Gear)

"What is important for us is job creation and addressing basic needs, not plans," she said

There was a tendency to equate Gear with the Reconstruction and Development Programme.

"No way can you say Gear is pregnant with RDP," she said to laughter and applause

"Gear won't deliver RDP in nine months The teachers can tell what is happening to them right now and other departments are experiencing budget cuts "

On a more conciliatory note, Ms September said it was not only the Government's job to fight crime It should also be the priority of Cosatu members

She appealed to workers to help in the fight against crime

"There is nothing wrong in enrolling as police reservists," said Ms September "Don't sit on the sidelines – bring crime to its knees "

Ms September said those who called for a split in Cosatu's alliance with the African National Congress and the SA Communist Party were "Mickey Mouse political parties who have not done anything for the country"

"The alliance is here to stay," Ms September said to a loud applause

Fired up: Minister Kader Asmal at the rally

LEON MULLER

Under cover: two youngsters shelter from the midday sun at Maynardville

Labour harmony: the Luhlaza choir entertains the Worker's Day crowds at Maynardville

ILO move threatens public censure unless nations toe line

BD 2/5/97 (166)

Reneé Grawitzky

COUNTRIES failing to comply with core International Labour Organisation (ILO) conventions could face increasing public censure if the organisation's 174 member states approve adoption of a declaration to this effect next year

This emerged from a report compiled by ILO director-general Michel Hansenne

The director-general's report proposed a range of measures to ensure trade liberalisation was coupled with observance of fundamental worker rights.

The report, intended to give effect to a declaration adopted at the World Trade Organisation (WTO) Singapore conference in December, will be discussed at the ILO's 85th annual conference in June.

The WTO refused to be drawn into a debate which linked trade agreements with worker rights and shifted the responsibility to the ILO to ensure enforcement of core labour standards, including freedom of association and collective bargaining and a ban on discrimination and forced labour

The WTO member states — many are members of the ILO —committed themselves to observing "internationally recognised core labour standards" and stressed that the ILO was the "competent body" to ensure compliance with these standards.

An ILO source said the organisation now faced the formidable task of ensuring the consensus achieved in Singapore was carried through and that the ILO had the ability to ensure the declaration was put into effect

Hansenne said enforcement was a "matter of political will

"The question must now be what particular form this political will, so clearly expressed, should take within the ILO"

In his report, Hansenne proposed that in future, the failure to ratify conventions by member states would come under increased scrutiny. And in terms of the ILO's constitution, the governing body would request reasons for the failure to ratify conventions

He further recommended that the implementation of standards be monitored through a regular report covering social progress. This, he said, would be discussed by member states and lead to national and international public opinion on efforts made by "each state to turn the economic benefits resulting from the liberalisation of trade to good account in terms of social progress".

The ILO believed that "globalisation could not be left to its own devices" and that "freer trade and improved living and working conditions can only hope to develop if there is universal respect for fundamental human rights in the workplace".

t distributable income before exceptional item	22 317	19 811
eptional item (net surplus on disposal of properties)	2 942	672
Distributable income after exceptional item	25 259	20 483
r (to) capital account	(2 942)	(672)
Distributable income	22 317	19 811

May 12 mass action still on says Cosatu

Sowetan 2/5/97 (166)

By Abdul Milazi and Muzi Mkhwanazi

THE Congress of South African Trade Unions will go ahead with the planned strike on May 12 in support of its demand for a 40-hour week and six months' maternity leave

Addressing hundreds of workers at Krugersdorp Stadium on the West Rand yesterday, Cosatu national executive member Mr Charles Bezuidenhout said some of their proposals had not been met by the Basic Conditions of Employment Bill released by the Government last month

Cosatu first announced its intention to embark on "a day of action" on May 12 in February when the federation heard that a draft Bill had already been sent to Parliament.

Cosatu claimed that the Government was planning to sneak the legislation through despite disagreements between business and labour

Areas of major conflict are Cosatu's demand for a 40-hour week and six months' maternity leave (with four months paid) The Government has proposed a 45-hour week and four months' unpaid maternity leave

Business is happy with the current 46 hours and three months unpaid maternity leave, and has not yet put forward new proposals

"In the light of such disagreements, we will continue to mobilise members and the community to rally behind our demands," Bezuidenhout said "To this end, we shall proceed with the nationwide protests planned for May 12

"We will ensure that employers are targeted and forced to accede to workers' demands"

In an interview with *Sowetan* Cosatu general secretary Mr Sam Shilowa said his federation was prepared to accept the 45-hour week as the beginning of a process that will lead to a 40-hour week being phased in over five years

Shilowa said Cosatu was also willing to explore ways of funding maternity leave pay

"We are willing to look at the legitimate concerns of business, provided it does not jeopardise the health and safety of workers"

Meanwhile more than 5 000 people attended a rally addressed by Public Works Minister Jeff Radebe at Wattville Stadium on the East Rand

Radebe used the occasion to to do some electioneering for the African National Congress for the 1999 elections

He said the Government had recorded many achievements during its three years in office but these were not reported by the media

"We have what we call a public works programme which has created 148 000 jobs in rural areas

"For the first time there is clean water in rural areas, and also for the first time squatter camps have access to electricity and clean water," said Radebe

He echoed Shilowa's sentiments that people should acknowledge what had been achieved by the Government.

"In looking back over the past three years, we must acknowledge that although things have been happening at a snail's pace, there have been major changes," said Shilowa

Cosatu orders go-ahead for mass action

(166)

Star 2/5/97

Protest will be against 'objectionable clauses' in proposed employment deal

Own Correspondent and Political Staff

The two million-strong Congress of South African Trade Unions (Cosatu) will embark on a countrywide mass action on May 12 to protest against "objectionable clauses" in the Basic Conditions of Employment Bill, Cosatu vice-president Connie September said yesterday

Addressing a May Day rally in Maynardville in Wynberg in the Cape, she said workers would march to demand a 40-hour working week and six months maternity leave with four months on full pay The bill lays down a 45-hour working week and an increase in maternity leave from three to four months

The workers are expected to gather at noon on the day to march on employers' buildings

September said the federation was opposed to the Government's Growth Employment and Redistribution Strategy (GEAR)

"What is important for us is job creation and addressing basic needs, not plans," she said

■ Just as the Government was demanding equal job opportunities for workers and women, trade unions should also practise what they preach by having more women representatives in their shopsteward and executive committee levels, Labour Minister Tito Mboweni said yesterday

Addressing workers at the Market Precinct in Newtown, Johannesburg, he challenged trade unions to educate and give women a chance to represent workers on the factory floor and on union delegations when negotiating with the Government or the business sector.

He said the Government had gone a long way in employing and appointing women in its ministries and administration. He believed more should be done to carry the process forward, but the unions' role in this respect was not empowering enough women

Mboweni said it was important for unions to explain to workers the details of the proposed labour bill on conditions of employment He said the maximum of 45 working hours a week did not mean an addition of extra working hours for those already working 40 hours. The limit would benefit workers such as those in security firms who sometimes worked 60 hours a week

Organised labour way ahead in negotiations

Sowetan 5/5/97

(166)

By Abdul Milazi

ORGANISED labour seems to be way ahead of business in negotiations for the transformation of the South African labour market

When Labour Minister Tito Mboweni presented the Labour Relations Bill for negotiations in 1995, labour presented its position and business merely reacted to that.

Two weeks ago Mboweni released the Basic Conditions of Employment Bill The Congress of South African Trade Unions has already made its position clear but business's position is still to be made known

In February 1995 the Labour Relations Act was drafted and put before the National Economic Development and Labour Council

It was organised labour which came up with a structured position in the form of the Employment Equity document

For several months business opposed labour's position without presenting theirs, until several months later when they came up with what read like the Growth for All document by the South African Business Foundation

The Basic Conditions of Employment Bill proposes a 45-hour working week, four months unpaid maternity leave and the provision for the variation of employment standards

Labour demands a 40-hour working week and six months maternity leave (four months paid)

Economic growth

It also accepts variation of employment standards provided they are not lowered but improved

Both Business SA and the National African Federated Chamber of Commerce have opposed labour's 40-hour-week demand, saying it would affect productivity, but they are still to present their own proposals

The Suid-Afrikaanse Landbou-unie criticised the Bill saying. "The conditions of employment proposed in the Bill are not applicable in a country where economic growth is a priority"

While business has been criticising labour's position, Cosatu has been scrutinising the provisions of the Bill

In an interview with *Sowetan Business* at the weekend, Cosatu general secretary Sam Shilowa expressed the federation's preparedness to compromise

"The real issue is how do we ensure that while the 45-hour week becomes the basic working time, it eventually becomes 40 hours over a period of five years," said Shilowa

"We are willing to put our faith in the Parliamentary process, we are not saying that Nedlac should override the parliamentary process," he said

Shilowa said labour was also prepared to look at the legitimate concerns of business as long as the health and safety of workers was not affected

"We are not an agricultural country, seasonal work does not apply to many of the industries, but only to a few sectors"

Shilowa said labour was also prepared to explore ways of funding maternity leave pay

day that the meeting, which the province's area police commissioners and national commissioner George Fivaz had also been asked to attend, would take place at Johan-

Gauteng", Cachalia said

The meeting followed a "high density" anticrime operation in Gauteng a month ago in which SA National Defence Force troops as-

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Business SA intends to halt Cosatu mass action

BD 6/5/97 (166)

Reneé Grawitzky

BUSINESS SA yesterday served notice on the Congress of South African Trade Unions (Cosatu) and the National Economic Development and Labour Council (Nedlac) of its intention to apply for a Labour Court interdict preventing the federation from staging mass action next Monday.

The move coincided with the start of negotiations between labour, government and business in Nedlac on the Basic Conditions of Employment Bill, the focus of Cosatu's action.

Cosatu's president, John Gomomo, condemned the move by Business SA and said the federation was more determined to continue with the action on Monday and would redouble its efforts to mobilise workers.

Cosatu initially called for a full-day stayaway but after the bill was released called for a half-day action from noon.

Business SA spokesman Adrian du Plessis said that it would approach the Labour Court on Thursday for clarity on the process to be followed.

Business SA did not believe Cosatu had followed the procedures set out in the Labour Relations Act and therefore wished to obtain a declaratory order to confirm this view, but the issuing of an interdict would be left open.

The order was being sought in terms of section 77 of the act which regulated sociopolitical action.

The section granted workers protection if a union or federation had served notice on Nedlac stating the reasons for the action and that the matter be considered by Nedlac Differences of opinion exist as to whether Nedlac had been given the opportunity to resolve the matter

Gomomo said "Business SA is showing contempt for the processes agreed to in Nedlac's executive and management committees". The committees had agreed that Nedlac would receive a legal opinion on the meaning of the section by May 9 It was disturbing, he said, that Business SA was bringing a court action on Thursday, the day before a decision was to be taken.

Cosatu, Gomomo said, had complied with the provision of the act and would "vigorously" defend the court action.

Sources said that yesterday's meeting provided a good opportunity for all parties to reaffirm areas of concern around the bill. A settlement was possible but would not be easy.

Labour restated its core demands while business highlighted its concerns around reducing weekly hours of work to 45 for those in mining and security, increased overtime payments and the notice period and the wide discretion given the labour ministry on a number of issues.

Court to sketch labour law boundaries

BD 7/5/97 (166)

Renee Grawitzky

THE Labour Court could draw the boundaries for socioeconomic protest action as contemplated under the new Labour Relations Act when it decides tomorrow whether the Congress of SA Trade Unions' (Cosatu's) mass action planned for Monday is lawful

On Monday Business SA (BSA) served notice on Cosatu of its intention to apply for an interdict or declaratory order with regard to Cosatu's compliance with the provisions of section 77 of the act, that is, socioeconomic strikes

Workers embarking on unlawful mass action could lose the protection against dismissal

Observers said the case could set a precedent on socioeconomic strikes

Business has argued that the legislative intention was to regulate and minimise such action and prevent economic harm

Human resource consultant Pat Stone said BSA's tactic was likely to open debate as to whether the right to embark on socioeconomic strikes was fully covered by the act in terms of international standards

Labour lawyer Joe Campanella said the section was well within international norms and in consonance with the spirit of the new act

Cosatu stands firm on May 12 protest

CT(BR) 7/5/97 (166)

FRANK NXUMALO

Johannesburg — Cosatu would not allow itself to be "bullied into shying away from its demand for a fair and just Basic Conditions of Employment Act", the labour federation said yesterday

Cosatu's warning came after Business South Africa served it with legal papers that "seek clarity on the nature of the planned May 12 protest action" and also cast doubt on the legality of the mass action

Kim Jurgensen, the federation's spokesman, said yesterday. "The working class of this country has never shied away from struggle and conflict, and we will not allow bullying tactics to frustrate our efforts now

"Cosatu wishes to assure all our members and the public that the planned protest for Monday, May 12 is indeed legal in that we have complied with the necessary processes outlined by the LRA (Labour Relations Act)."

Cosatu informed Nedlac of its intent to go on strike as early as February 18, well before the 14-day notice stipulated by the act, Cosatu's Jurgensen said

Lomin Saayman, a Nedlac spokesman, confirmed yesterday that the labour federation had properly followed the LRA procedures for mass action. "It is absolutely correct that Cosatu issued its intent to go on strike on May 12 to Nedlac on February 18 We have correspondence to prove it The legal dispute is about other issues."

Business South Africa's Adrian du Plessis said his organisation would only be satisfied with a court ruling on the legality of the action, adding that business in general was not clear about what Cosatu was proposing

"The reason we served papers on Cosatu is to secure legal clarity on the nature of the protest We also want the labour court to make a ruling on whether Cosatu has in fact complied with Section 77 of the new Labour Relations Act, which sets out procedures on socio-economic conduct."

The hearing is scheduled for tomorrow afternoon at the labour court in Braamfontein, Johannesburg.

Bosses trying to halt stayaway – Cosatu

(166) Sowetan 7/5/97

By Abdul Milazi

BUSINESS South Africa's planned application for a court interdict on Thursday to stop next week's mass stayaway is just a last ditch attempt by employers to have the action called off and to move the focus away from real issues, Cosatu said yesterday

Cosatu spokesman Kim Jurgensen said "The issues are our call for a 40-hour-week, paid maternity leave and for no downward variation of employment standards"

Business SA argues that Cosatu has not complied with the 14-day notice period required by Section 77 of the Labour Relations Act, while Cosatu insists that it notified the National Economic Development and Labour Council (Nedlac) of its intentions in time

When Nedlac held its first executive committee and manage-ment committee meetings in February this year, Cosatu's stayaway notice was discussed

Nedlac executive director Jayendra Naidoo then told the media that the two committees had agreed to seek legal opinion on some aspects of Section 77 before May 9

He said the advice would be used to draw up procedures for future mass action

Business SA's planned court action, which will come just a day before the decision on procedures for future mass action, is expected to be made by Nedlac

Cosatu president John Gomomo said "This raises the obvious question as to why Business SA is pre-empting an agreed process It suggests that they are not confident that the legal opinion which will be given to Nedlac will support their argument

"Employers show that they have no intention of settling the critical issues in the four days set aside for negotiations, and therefore are not focusing on averting the mass action

(166)

'Discipline workers who stay away'

By Adam Cooke

Star 7/5/97

No matter what the outcome of tomorrow's crucial court ruling on Cosatu's planned national stayaway, some business organisations have advised their members to discipline workers who heed Cosatu's call for industrial action

Their advice signals the defiant mood of certain business sectors, and the confidence they have of winning the court application tomorrow

Business South Africa (BSA), the lobby group representing the interests of business in the bargaining chambers of the National Economic Development and Labour Council, has applied to the Labour Court to prevent the giant federation from holding a stayaway on Monday

Cosatu has planned a half-day stayaway starting an noon in protest against the Basic Conditions of Employment Bill

BSA is seeking an interdict to prevent the stayaway and a declaratory order confirming Cosatu did not follow the correct procedure in calling for the stayaway.

However, Cosatu late yesterday advised its members that the protest was legal and complied with the Labour Relations Act.

Cosatu warns bosses

Sowetan 8/5/97

THE Congress of SA Trade Unions last night called on all employers to withdraw reported threats to union members

Cosatu spokeswoman Ms Kim Jurgensen said Cosatu had noted media reports that the planned May 12 protest action would not go ahead as planned

An attempt was now made to link this information with a court action by Business South Africa which has served legal papers for a court interdict against Cosatu.

"There seems to be a concerted attempt to sow confusion among workers about whether the protest action would go on or not The BSA's court action falls within this strategy," Jurgensen said

(166)

"Cosatu is inundated with calls from workers who report that their employers are threatening them with disciplinary action if they partake in the May 12 protest action," she said

Jurgensen said the BSA was deliberately trying to deny workers their right to participate in socio-economic protests in line with the new Labour Relations Act "Instead of threatening workers, employers should find a solution to the issues in dispute" – *Sapa*

Jobs threatened by basic conditions, say farmers

BD 5/5/97 (166)

Louise Cook

THE SA Agricultural Union (SAAU) has warned that the basic conditions of employment bill would "inevitably" lead to fewer job opportunities in the agricultural sector, one of SA's most important job creators

SAAU director Kobus Kleynhans said the bill would cause sharp labour cost increases at a time when the farming sectors' margins were under pressure, and the recent scrapping of the diesel rebate to farmers would cause a R250m a year loss to the sector

"It is seemingly the (labour) minister's intention to raise employment conditions in SA to levels considerably higher than in many countries we compete with in international trade The problem is that SA's productivity compares very poorly to the rest of the world," he said

The bill, released two weeks ago, covered all sectors including domestic and farm workers It provided for compulsory overtime payments on farms, three weeks paid annual leave, unpaid maternity leave and double rates on Sundays and public holidays.

For years the agricultural sector has argued against legislation aimed at fixing working hours and overtime payments on farms, claiming that diverse operations and seasonal differences necessitated a flexible approach

However, the Agricultural Workers Organisation, set up to assist farmers on labour issues, welcomed the proposed moves on working hours GM Faan Smith said the bill ensured both employers and employees would enjoy greater certainty about their rights

"Production losses could occur during a proposed six-month phasing-in period, but the exchange of extended working hours during busy periods, with short hours during quiet times, allowed for an important degree of flexibility," he said

The envisaged legislation still had some way to go before it became law The National Economic, Development and Labour Council would consider the bill for the next two months before it was submitted to the cabinet

Cosatu calls off Monday's strike action

(166)

'Stayaway illegal'

ARG 10/5/97

THABO MABASO
BUSINESS REPORTER

The Congress of South African Trade Unions' (Cosatu) yesterday postponed Monday's half-day strike following a ruling by a Johannesburg Labour Court judge that the action was unlawful.

The strike, against certain provisions of the Basic Conditions of Employment Draft Bill, is now planned for June 2.

Cosatu planned to strike against provisions relating to child labour, maternity leave, weekly working hours and overtime.

The trade union federation has called for a 40-hour working week to be phased in over a five-year period and for six months maternity leave with four months paid

Justice John Myburgh ruled that the the two-million strong federation had failed to comply with the provisions of the Labour Relations Act (LRA) before embarking on Monday's action

He ordered Cosatu to pay the costs of the application brought by employer group Business South Africa (BSA).

The LRA stipulates that a union must exhaust all forms of negotiation before taking protest action It must also inform employers 14 days in advance before embarking on a strike.

BSA said in its application that Cosatu had not followed procedure before planning the half-day strike.

BSA spokesman Adrian Du Plessis told Business Argus yesterday that the judgment meant that differences surrounding the Employment Bill must be solved through negotiation.

Labour law expert Gavin Brown said the judgment meant that a worker who stayed away from work on Monday risked dismissal.

"What the judgment basically says is that the bill is still being negotiated, so there was no reason to strike. They could (strike) if they had followed the procedures of the LRA or if negotiations at Nedlac had been concluded or had broken down," Mr Brown said

Cosatu's Western Cape secretary general Tony Ehrenreich said the only way workers would not take action was if business accepted their demands.

Court blocks Cosatu protest

Star 10/5/97 (166)

The Congress of SA Trade Unions has decided to postpone the strike it planned for Monday to June 2 following the ruling by the Labour Court yesterday declaring the planned country-wide protests unlawful

Passing judgment in favour of Business South Africa, Mr Justice John Myburgh said Cosatu had failed to comply with the provisions of section 77(1) of the Labour Relations Act

Late on Thursday afternoon, Cosatu said it had postponed its protests until June 2

Cosatu is a member of the National Economic Development and Labour Council, and the judge said that in order to comply with section 77, the protest should have been discussed by Nedlac before Cosatu decided on it Such a discussion was not held, he said

Judge Myburgh said it was incomprehensible that these discussions did not take place Any person who took part in the protest on Monday, by withdrawing their labour, did not enjoy the protection conferred by section 67 of the act

He directed Cosatu to advise its affiliates that the Monday protest was in breach of section 77 of the act, which stipulated that Cosatu had to give Nedlac reasons for the protest

Nedlac would then have had to attempt to resolve the matter Thereafter Cosatu would have had to have given Nedlac 14 days' notice of its intention to strike.

Judge Myburgh directed Cosatu to pay the costs of the application, including the costs of two counsel

Cosatu planned the protests to voice its displeasure over certain aspects of the Basic Conditions of Employment Bill These concerned child labour, overtime, maternity leave and the right of employers to apply for exemption from labour regulations.

The court heard that on February 18 1997, Cosatu wrote to Nedlac, informing it of its programme of action, in line with the Labour Relations Act

On March 4 Nedlac acknowledged receipt of Cosatu's letter and recorded that the Nedlac executive council should hold a meeting on February 28

During that meeting, the court heard, it was resolved that a meeting of Nedlac conveners and members of the negotiating committee would be convened for mid-March 1997 to consider options for resolving outstanding matters regarding Cosatu's protest action That meeting was never held

BSA sought a declaratory order to prove Cosatu had failed to comply with section 77(1) of the act in relation to the intended protest

Such an order would interdict Cosatu from proceeding with, encouraging, or inciting others to engage in its planned protest action until such time as it had complied with the provisions of section 77(1) of the act – Sapa

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Such an order would interdict Cosatu from proceeding with, encouraging, or inciting others to engage in its planned protest action until such time as it had complied with the provisions of section 77(1) of the act. – Sapa

LABOUR RELATIONS *Unions warned about setting 'unilateral deadlines'*

Big business 'will not cave in'

CT (BR) 5/6/97 (166)

'WE WON'T BE PUSHED' *Chief negotiator Adrian du Plessis accuses Cosatu of sidestepping Nedlac's protocols* PHOTO SEAN HARRIS

FRANK NXUMALO

Johannesburg — Business hit back at labour yesterday, saying it would not make concessions under duress or be pushed to meet labour's "unilateral" deadlines Instead there should be new negotiations over the disputed labour standards at the highest level, said senior officials of Business South Africa (BSA)

The call for new talks was in response to Cosatu's 14-day ultimatum to present new proposals on employment standards or face more strikes

Business proposed that the government, business and labour hold talks "to seek ways forward" Leslie Boyd, BSA's deputy chairman, said the lobby group wanted to make it clear it did "not oppose fundamental labour rights nor the periodic review of labour standards"

But Adrian du Plessis, BSA's chief negotiator, was adamant that business would not cave in "Negotiations cannot be held hostage by arbitrary deadlines, least of all those imposed by one party upon the other The threat of continued mass action is harmful and irresponsible, and puts Cosatu beyond the search for reasonable solutions "

Cosatu's 24-hour strike on Monday, the third such action since the ANC came to power in 1994, was called to push for its demands, which include a legislated 40-hour work week and six months' paid maternity leave

Du Plessis also accused Cosatu of reneging on the protocol of the negotiating chamber

"Cosatu agreed progress in these negotiations would require considerations by all parties of their positions We see no evidence of such consideration in their behaviour On the contrary, we see preference for protest over dialogue, force over reason," Du Plessis said

Concerned that business has been painted as opposing all aspects of the proposed Employment Standards Bill, Du Plessis said the reality was that there were distinct areas of agreement, some of strong disagreement and others where agreement was possible.

SEEKING COMMON GROUND *Deputy chairman Leslie Boyd says BSA is not opposed to basic labour rights* PHOTO SEAN HARRIS

Business SA calls for jobs summit before changes to labour law

BD 5/6/97 (166)

Renée Grawitzky

A JOBS summit which developed a clear strategy for employment creation should precede changes to legislation which would have an effect on the labour market, Business SA's (BSA's) deputy president Leslie Boyd said yesterday

Boyd was addressing a news conference in Johannesburg on BSA's stance on the Basic Conditions of Employment Bill and its reaction to the Congress of SA Trade Unions (Cosatu's) 14-day ultimatum for BSA to revise its position on the Bill

Boyd, speaking in his personal capacity, said "we should first create jobs" and then discuss changes to legislation which affect labour policy He was endorsed by SA Chamber of Business' Raymond Parsons,

Such a view did not prevent an agreement being reached on the Bill, BSA negotiator Adrian du Plessis said An agreement could be reached which balanced job creation and labour market regulation, he said.

"The price of getting the balance wrong will be paid by the economy, the society and ultimately, in increased joblessness" Boyd said

BSA criticised the perception created by Cosatu that the former was intransigent and opposed to the Bill and that it had failed to move on key issues

Boyd said business was not opposed to fundamental labour rights, but was concerned about the Bill's wide scope and provisions which could raise the costs of employment to the point of creating barriers to new jobs and enterprises

BSA warned that increased costs were not limited to the proposed legislation He said additional costs were added "with each wave of legislation" and such legislation was not limited to that which emanated from Labour Minister Tito Mboweni's office

BSA said negotiations could not be held hostage by arbitrary deadlines imposed by Cosatu. Boyd said the negotiations had to be driven by "considerations of getting the Bill right, not Cosatu's threats"

Du Plessis said business had, in fact, agreed to a number of provisions with cost implications, such as four month's maternity leave, increased annual leave and a 45-hour working week, except for mining, security and agriculture He said there was still disagreement on overtime payment, the regulation of night work, three days' family responsibility leave and increased notice provisions

Du Plessis said business had also expressed concern about government's attempt to over-regulate the labour market, a contradiction to the spirit of the new Labour Relations Act, which sought to promote collective bargaining

BSA has called for intervention at the highest possible level, with a meeting between top labour leadership, government and business Although the differences were deep, there was a common objective to create jobs and a sustainable economy, Du Plessis said.

Four more industries may not strike

(166) (15) BD 6/6/97

CAPE TOWN — Air traffic, weather bureau, foodstuffs distribution and supply, and fuel staff would soon be prohibited by law from striking, Commission for Conciliation, Mediation and Arbitration director Charles Nupen said yesterday

They join police and parliamentary services workers — designated essential services by the Labour Relations Act — who may not strike

The designations had been determined by the essential services committee appointed by Labour Minister Tito Mboweni under the auspices of the commission

A notice would soon be published in the Government Gazette, Nupen said.

The committee would also hold hearings to determine which other sectors could be classified as essential or maintenance services.

Essential services are those, which, if interrupted, would endanger the life, personal safety or health of the whole or any part of the population

Asked what action would be taken against police if a strike threat by the Police and Prisons Civil Rights Union (Popcru) became a reality, Mboweni said "The parties will have to follow the rules as currently stipulated If any party violates the basic rules and approach, the other party to the conflict has the support of the law in managing the situation" — Sapa

ILO fights for new labour standards

M+G (POM) 6-12/6/97 (166)

Richard Saunders

FOLLOWING the controversy over the unsuccessful attempt to introduce a social clause to the World Trade Organisation (WTO) structure last year, new options for guaranteeing worldwide minimum labour standards are being set by opponents of the clause. The latest initiatives are led by the International Labour Organisation (ILO), whose members met in Geneva this week.

Michel Hansenne, ILO director general, has proposed that the United Nations affiliate, whose mandate includes responsibility for the development, implementation and monitoring of international labour standards, consider adopting a declaration affirming basic rights of workers in all member states. This declaration would apply in countries irrespective of their ratification or compliance with existing ILO conventions, which are voluntary.

The problem has been the voluntary nature of ILO conventions and other instruments, and the difficulty in winning compliance from member countries. In Africa, for example, the seven "core" ILO conventions relating to forced labour, freedom of association and organisation, collective bargaining, non-discrimination in employment and child labour, have been ratified only by Zambia. South Africa has yet to ratify conventions on non-discrimination and child labour.

Such lack of ratification (particularly among developing countries) has helped revive the debate around trade-based restrictions on cheap labour countries.

Last year, Western governments and trade unions led the way in proposing that legally binding rules be applied in international trade, forcing participating countries to guarantee minimum labour standards at the risk of trade sanctions. Allegations were made that low-wage labour and worker exploitation throughout the developing world, and particularly in the Far East, had led to a situation of unfair competition or "social dumping". The only effective response, it was argued, was to apply pressure where it hurts most: trade sanctions.

Opponents of such moves, including employer organisations and the majority of developing-country WTO members, countered that these arguments were merely dressed-up protectionism.

By ensuring that all 173 ILO member states are signatories to a new declaration on broadly described minimum labour standards, the latest initiative is designed to defuse tension by more clearly defining the agreed-upon rules of "fair play" for producers in the future. It runs parallel to the ILO's relatively successful campaign to elicit wider ratification of and compliance with the ILO's core conventions by non-participating states.

ILO insiders now say these moves will likely be followed by new efforts aimed at making ILO membership itself conditional upon recognition of specified minimum labour standards.

Some employment bill clauses may be shelved

(166)

Minister and business agree that nothing must be done that could hamper the creation of jobs

Star 6/6/97

By Jovial Rantao
Cape Town

The Government may suspend some clauses in the Basic Conditions of Employment Bill that have led to discord between itself, business and Cosatu

Labour Minister Tito Mboweni, who held an emergency meeting with a Business South Africa (BSA) delegation yesterday, said the suspension of certain provisions was one of the options that would be considered in negotiations in the National Economic Development and Labour Council (Nedlac).

Mboweni is expected to discuss this option when he meets Cosatu representatives soon. The Star understands that the suspension was one of the submissions tabled by the business delegation, led by BSA deputy president Lesley Boyd.

Sources told The Star the business delegation had linked the jobs summit planned by the Government and clauses in the bill that were not conducive to job creation. It was suggested that certain clauses should be suspended and should be discussed at the jobs summit

After a one-and-a-half-hour meeting that both parties described as "constructive", Mboweni said the parties had discussed clauses relating to working hours and overtime rates.

Mboweni said the Government would respond at a later date to BSA's submissions

Both parties said they were in support of the jobs summit, scheduled for later this year

"We must not do anything which in any way hampers the creation of jobs, the stabilisation of the workplace or the removal of labour rights Business is concerned that there's an indication that it is against labour rights The view was that there must be some relationship between the bill and the objectives or possible outcomes of the jobs summit," Mboweni said.

Boyd confirmed Mboweni's statement. "The bill should be part of a bigger plan and not be done at random We don't want our hands to be tied at the jobs summit by decisions we might take now."

Cosatu rejected as "absurd" business's call for the jobs summit to precede negotiations on workers' rights.

The organisation reiterated its 14-day ultimatum, which has been rejected by business. "The fact of the matter is that negotiations on the Basic Conditions of Employment Bill have been going on for more than a year now Business has in the past shown that it has no interest in the new law. Broadly, it would prefer the status quo to remain indefinitely. On areas like Sunday work it wants to roll back even the apartheid laws.

"We reiterate our policy conference resolution that an alliance (ANC, SA Communist Party and Cosatu) summit should precede a summit as called by other role-players

"Secondly, any jobs summit called within the framework of GEAR (the Government's Growth, Employment and Redistribution policy) will be a useless exercise," Cosatu said

It accused business of delaying tactics and of blocking the transformation of labour market policies.

Cosatu's executive committee is to meet on June 24 and 25 to look at the progress made in Nedlac on the bill If no progress has been made, the committee will decide on measures appropriate to extend worker rights

Cosatu has demanded a maximum 40-hour working week, six months' maternity leave – four months of which should be paid leave – and that the employment age limit be set at 16.

The bill provides for a 45-hour working week and for four months' maternity leave, but makes no reference to payment It conditionally sets the employable age limit at 15.

Controversial clauses in jobs bill may be dropped

CT 6/6/97 (166)

THE government could suspend some clauses in the Basic Conditions of Employment Bill which have led to discord between itself, business and the Congress of South African Trade Unions (Cosatu)

Labour Minister Mr Tito Mboweni, who held an emergency meeting with a delegation from Business South Africa (BSA) yesterday, said the suspension of certain provisions was one of the options that would be considered in negotiations through the National Economic Development and Labour Council (Nedlac).

Mboweni is expected to discuss this option when he meets Cosatu representatives soon It is understood the suspension is part of the submission tabled by the business delegation, led by Mr Lesley Boyd, the deputy president of BSA

Sources said the business delegation had linked the jobs summit planned by the government and the clauses in the bill which were not conducive to job creation. It was suggested that certain clauses should be suspended and should be discussed at the summit

After the meeting, Mboweni said the parties discussed clauses in the bill which dealt with working hours and overtime rates

He said the government would respond later to BSA's submissions

"We must not do anything which hampers the creation of jobs, the stabilisation of the work place or the removal of labour rights The view was that there must be some relationship between the bill and the objectives or possible outcomes of the jobs summit

"The basic concerns of business are that they're committed to the jobs summit (and) labour rights, but they want these things to be seen as marching in the same direction of job creation, economic development and growth, rather than being seen as just things all over the place without any articulation," Mboweni said

Boyd confirmed Mboweni's statement "The bill should be part of a bigger plan and not be done at random We don't want our hands to be tied at the jobs summit by decisions we might take now."

Cosatu rejected as absurd yesterday BSA's call for the job summit to precede talks on workers' rights

The organisation reiterated its 14-days ultimatum, which has been rejected by business "The fact is that negotiations on the Basic Conditions of Employment Bill have been going on for more than a year now. Business has in the past shown that they have no interest in the new law Broadly, they would prefer the status quo to remain indefinitely On areas such as Sunday work they want to roll back even the apartheid laws

"We reiterate our policy conference resolution that an alliance (ANC, SACP and Cosatu) summit should precede a (jobs) summit Secondly, any jobs summit called within the framework of GEAR will be a useless exercise," Cosatu said

Cosatu has demanded a maximum 40-hour working week and six months' maternity leave, four months of which should be paid leave and the employment age limit set at 16 The Bill provides for a 45-hour working week and for four months' maternity leave, but makes no reference to payment. It conditionally sets the employable age limit at 15

● See Page 11

Business and labour no closer to resolution

(166)

CHRISTO VOLSCHENK AND FRANK NXUMALO

CT(BR) 6/6/97

Cape Town — Business South Africa (BSA) suggested yesterday to Tito Mboweni, the labour minister, that the ill-fated negotiations in Nedlac on the Basic Standards of Employment Bill be postponed until after the presidential jobs summit targeted for October

BSA representatives met Mboweni to table options for breaking the deadlock between business and labour in the negotiations

But Cosatu said yesterday that business was only interested in blocking the transformation of the labour market

Nowetu Mpati, a Cosatu representative, said Monday's 14-day ultimatum to BSA to respond to labour's demands remained in force, and said calls for the jobs summit to precede negotiations were absurd.

"Business has in the past shown that they have no interest in the new law," she said

"Broadly, they would prefer the status quo to remain indefinitely On areas like Sunday work they want to roll back even the apartheid laws"

After the meeting between BSA and Mboweni, labour experts speculated that business had deliberately linked the bill to the jobs summit as a negotiation strategy to highlight the contradiction between the bill and the summit

Business contends that the bill would increase the average cost of labour and destroy jobs as a consequence.

Some of the outstanding issues include labour's demands for a 40-hour work week, six months' paid maternity leave and double pay for work on Sundays

Mboweni said he would "request a meeting with the leadership of organised labour" to hear how labour proposed to break the deadlock

NEWS

LABOUR RELATIONS *Mboweni adds to categories of possible providers of essential services*

Act may stop nurses and prison staff striking

(182) (166) CT(BR) 6/6/97

CHRISTO VOLSCHENK
ECONOMICS EDITOR

Cape Town — Prison staff and nurses are among several categories of workers who might be prohibited from striking under the new Labour Relations Act, Tito Mboweni, the labour minister, said yesterday

Mboweni was speaking at a press briefing after the release of the first annual report of the Commission for Conciliation, Mediation and Arbitration (CCMA)

At the briefing, Charles Nupen, a director of CCMA, said up to 120 000 disputes could be referred to the CCMA for resolution in this financial year — three times more than the 40 000 disputes budgeted for.

The act prohibits providers of essential services from striking and defines essential services as those which, if interrupted, would endanger the life, personal safety or health of the whole or any part of the population

At present, police services and parliamentary services are the only services categorised as essential An essential services committee, appointed by the minister of labour, decides which services are to be designated essential

"Other categories of workers which might be designated essential by the committee include workers in the passenger transport sector, fire fighters, workers involved with payment of social pensions, court workers and medical and paramedical staff," Mboweni said

Nupen said CCMA staff numbers would be increased in the coming months to handle the avalanche of labour disputes.

From November last year (when the CCMA officially started operating) to May 31, about 23 000 disputes were referred to the CCMA, of which 13 794 had been resolved — most within the 30 days allowed by the Labour Relations Act.

"A significant increase in the CCMA's budget from R93 million in the financial year to March 31 this year to R120 million in the year which ends in March next year will allow the CCMA to increase its full-time and part-time staff complement," Nupen said

He said even more money would be needed in future to handle the ever-growing case load He warned this load and the shortage of suitably qualified people to recruit might lower the current high dispute resolution success rate of 71 percent of all cases referred to the CCMA.

"Internationally, a success rate of 70 percent and higher is considered to be very good and, although our rate had dropped from 86 percent at the end of last year to 71 percent at the end of May, we are still doing very well," Nupen said

NO DISPUTE *Charles Nupen, director of the Commission for Conciliation, Mediation and Arbitration, with Tito Mboweni, the labour minister, yesterday*
PHOTO: ANDREW BROWN

Farmers to press for changes to worker Bill

(166)(4)

By CAROL PATON

ST 2/2/97

THE South African Agricultural Union is to appeal to the Minister of Agriculture and Land Affairs, Derek Hanekom, to remove aspects of the proposed Rural Tenure Security Bill — designed to protect farm workers from unfair eviction — before it is presented to the cabinet in the next two weeks

The proposed Bill, which was unveiled this week, will make it unlawful for farmers to evict workers who have been legally dismissed or retrenched, unless they have alternative accommodation

Workers over 55 who have lived on a farm for over 20 years, and their dependants, will be able to remain on the land until they die

It also binds the state to support and fund long-term housing solutions for farm workers, such as the purchase of their own land for housing from farmers

The union, representing about 55 000 farmers, said the Bill would amount to unacceptable interference in the relationship between farmers and workers living on farms

But spokesman Annelize Crosby said that while most farmers "would prefer that there was no such legislation", the union's focus would be on addressing some of the problem areas These included

- The definition of dependants in the case of elderly workers who may not be evicted,
- Ensuring that farmers' long-term housing arrangements with workers would be voluntary, and
- The right of farm dwellers to receive visitors in view of the poor security situation on farms

Crosby said there were also cost implications for farmers because most eviction cases would now be contested

Lobby groups for rural and farm dwellers also criticised the Bill this week, saying it did not go far enough in providing workers with "positive rights" to own land or with secure access to grazing and cultivating land.

The National Land Committee said that although the Bill would be retrospective from the date it was published, this was unlikely to stop farmers from carrying out pre-emptive evictions before it was enacted

Over the last week it had learned of 142 threatened evictions in Gauteng alone.

The SAAU said it could not predict whether its members would take pre-emptive action.

However, at consultative meetings leading to the release of Hanekom's proposals this week, it agreed in principle that unfair evictions should not take place and that long-term solutions should be found to deal with the housing problem in rural areas

ANC FM 7/2/97

TITO'S STAR RISING

(166)

With the axing or neutralisation of potential ANC leaders Bantu Holomisa, Cyril Ramaphosa, Terror Lekota, and Tokyo Sexwale who has been avoiding the limelight, Labour Minister Tito Mboweni is emerging as the rising star

The question is, will Mboweni gradually move into the role that Thabo Mbeki has filled under Nelson Mandela, after Mbeki takes over as president?

The ANC's inner circle, the national working committee, last week appointed Mboweni political head of the organisation's policy department, following their recent meeting, which decided the ANC alliance should play a greater role in shaping government policy

Tito Mboweni

In the perception of the ANC's national leadership, says one insider, "Mboweni has done well in Cabinet and as a party functionary He is hard-working, bright, competent — and ambitious He's got to be seen as a serious emerging leader "

Mboweni's major achievement has been the new Labour Relations Act, a major statute, nominally based on tripartite consensus Its efficacy has yet to be proved, but the fact that it has come this far is lauded by the ANC top brass

Mboweni's DG Sipho Pityana points out that under the Act the rate of dispute resolution by conciliation has risen dramatically, from 20% to 80%, and strikes are down Mboweni has also "asserted the centrality of labour market issues" in economic transformation

In Pityana's view it would be "reasonable" for Mboweni to aspire to the highest office "If you ask me he'd deserve it " According to Pityana, Mboweni gets on well with Mbeki. Both have a "social democratic" approach to the economy

Mboweni is also the chairman of the Economic Transformation Committee of the ANC's national executive committee, a very significant party post He was earlier co-opted to the national working committee to increase its competence in economic policy

It's an open secret that Mboweni would have liked the Finance portfolio which went to Trevor Manuel "It won't be surprising if there's rivalry between Mboweni and Manuel," says a comrade

Mboweni was also given the difficult job of trying to resolve the acrimonious party leadership fight in the Free State, which culminated in the "redeployment" of premier Lekota and his chief adversaries to Cape Town The ANC leadership, at least, were pleased with Mboweni's handling of what was an intractable situation "No-one could have done it better," says Wits University's Tom Lodge, who adds that Mboweni did not show much independence of judgment in the affair

Mboweni has intervened in and resolved tricky situations — the truckers' blockade of the N3 in 1994, when Odi Training Centre students held an administrator hostage in 1995, and in the Rustenburg mine workers crisis last year

According to Lodge, Mboweni is one the ANC's more visionary figures "He is competent, reliable, clever, there's no dirt attached to him and he is liked by everybody He's ambitious and is one of those looking to the year 2004 or 2009 He is the right age (38) and a stronger bet than Sexwale or Jacob Zuma " *Amarnath Singh*

Cosatu announces plans for protests, threatens strike

STAFF REPORTER

The Congress of SA Trade Unions is planning six weeks of nationwide protests to bolster support for its position on parts of the Employment Standards Bill, the organisation's general secretary Sam Shilowa said yesterday.

Speaking at a media briefing after an executive committee meeting, Shilowa said Cosatu would hold marches, rallies and demonstrations around the country from February 24 to April 6 to push for six months of maternity leave, of which at least four months had to be paid; a phased approach to a 40-hour week and appropriate payment for everyone who worked on a Sunday

The clauses are all provided for in the Employment Standards Bill, which is being negotiated in the National Economic Development and Labour Council.

Shilowa added that a general strike would be held on May 12 if "sufficient progress" was not made to meet the demands during the six weeks of protests.

Cosatu would also seek an urgent meeting with the ANC to discuss the matter, he said.

He also "noted with concern" what he called a deliberate attempt by some ministers to sideline Cosatu in negotiations to restructure state assets

Shilowa said Cosatu would not simply stand by and watch the unions being sidelined

(166) Star 14/2/97

Cosatu threatens strike over labour bill dispute

(166)

Union says no to 45-hour week

ARG 14/2/97

Labour giant Cosatu has threatened a general strike over the new Employment Bill, which it says will set a 45-hour working week and offer paid maternity leave of only four months.

The trade union federation wants a maximum 40-hour working week and six months' paid maternity leave

"We are mobilising our members because of the deadlock reached in terms of negotiations on the Employment Bill," a Cosatu spokeswoman said

Cosatu has 1,9 million members and plans the general strike on May 12

But Cosatu added it was still open to talks on the bill, the terms of which have not yet been put to the Cabinet

Cosatu's move came as a shock to Minister of Labour Tito Mboweni

"I am extremely surprised to hear that Cosatu is due to begin a process to mobilise its membership towards a possible general strike," he said

He pointed out that the terms of the planned legislation were still open to discussion.

"The Cabinet has not finalised its position on the Employment Bill and will be doing so in the next couple of weeks, once the bill is formally submitted to it"

The news of a serious labour dispute may dishearten foreign investors who have recently been flooding into the country on the back of a buoyant rand that has started to claw back some of the ground it lost last year

On Monday, Finance Minister Trevor Manuel gave the bullish markets a fresh lease of life by announcing that the Government would meet its budget deficit target in the year ending in March – Reuter

Cosatu threatens national stayaway over legislation

(166)

Reneé Grawitzky

BD 14/2/97

THE hotly contested employment standards legislation looks set to become the focus of a power play between labour and government, with union federation Cosatu announcing plans yesterday for a national stayaway on May 12 if insufficient progress is made in negotiations.

Cosatu general secretary Sam Shilowa said yesterday that the federation's executive committee had resolved to start mass action on February 24 culminating in the stayaway if insufficient progress had been made in negotiations with government and business on employment standards legislation Negotiations would continue but there was a need to mobilise members behind labour's demands

This comes amid speculation within labour circles that the cabinet had given increasing prominence to labour market flexibility and deregulation A labour source said the employment standards legislation was more important than the Labour Relations Act.

A labour source said government was leaning towards the employer position, raising concern that existing rights would be taken away Elements within business were concerned about the legislation and questioned whether this was wrong legislation for the wrong time

Labour Minister Tito Mboweni expressed surprise last night at Cosatu's decision and said no final cabinet decision had been taken on employment standards legislation. He was convinced areas of uncertainty could be ironed out in talks with Cosatu

Business SA spokesman Adrian du Plessis said coercive bargaining tactics would not produce a labour market that generated confidence and economic success Shilowa said Cosatu had revised its positions on disputed issues — the 40-hour week, maternity leave, varied standards and Sunday work

Picture: Page 3

Judge urges unions to study labour act

(166)

Reneé Grawitzky BD 17/2/97

LABOUR Court Judge President John Myburgh urged trade unionists to acquire a good understanding of the new Labour Relations Act so that they could prepare their cases properly before appearing in the Labour Court

At a Development Institute for Training, Support and Education for Labour (Ditsela) workshop on how the courts would operate, Myburgh said judges normally did not train people to appear in their courts. However, Labour Court and Labour Appeal Court judges would be unable to do their jobs unless those appearing before them had prepared their cases

Ditsela director Chris Bonner said that in line with the spirit of the new act, which brought in an era of accessibility, the training session was intended to provide trade unionists with direct access to Labour Court judges

She said Ditsela, a joint Congress of SA Trade Unions and Federation of SA Labour Unions project, was in the process of developing a range of programmes on the act for the trade union movement which would focus on the contents of the act, and also on how to apply it.

High Court Judge Edwin Cameron said the act stressed the importance of conciliation, self-regulation which encouraged parties to develop their own "local regime", and the concept of protection and penalty. The act gave unions and workers far more rights but placed workers under much more discipline "If you are going to ignore the rules, you will be penalised," he said Greater freedom provided for greater responsibility. This was particularly evident in the sections relating to industrial action

Unions react strongly to SABC restructuring plan

BD 24/2/97

Reneé Grawitzky

THE announcement that 1 000 posts could be lost due to the restructuring of the SA Broadcasting Corporation (SABC) could hamper processes under way with labour to consider recommendations made by an external consultant

The Media Workers' Association of SA, the Broadcasting, Electronic Media and Allied Workers' Union and the SA Union of Journalists have reacted strongly to the impression created by the SABC there had been consultations on proposed retrenchments, restructuring or streamlining.

This followed an announcement on SABC television news last week that job losses could occur as a result of restructuring.

In the wake of the announcement, the unions denied they were part of a consultation process

A broadcasting union official said the parties had agreed that the initial recommendations would not be released until they had been fleshed out.

The SABC had "jumped the gun" by announcing possible job losses when no final decision had been taken

The three unions said they regretted the "irresponsible handling by the SABC management of this issue".

In February last year the resource review process, facilitated by the McKenzie Management Consultancy Group at a cost of R6m, started looking at ways of reducing costs and increasing revenue.

The SABC said the process had reached the point where ideas would be turned into concrete recommendations which would then follow the process outlined in the national framework agreement on state asset restructuring.

Among the ideas had been proposals to cut costs in support functions; to freeze vacancies; and to eliminate 530 redundant jobs in the radio division

Cosatu lunch-hour picket protest starts

(166)

Farouk Chothia

BD 24/2/97

DURBAN — The Congress of SA Trade Unions (Cosatu) plans to start lunch-hour pickets in KwaZulu-Natal today to ensure that the federation's demands are met in the Employment Standards Bill

The federation's KwaZulu-Natal executive committee said at the weekend that the lunch-hour pickets would continue until March 5, before becoming two-hour demonstrations on March 10 This would be followed by rallies and marches on April 3 to the offices of the labour department and the chamber of commerce and industry in Durban, Empangeni, Maritzburg, Isithebe and Newcastle

Cosatu was demanding that the Bill guarantee a 40-hour week without a loss of pay, six months maternity leave, and a ban on employing people under the age of 16

Cosatu said that if negotiations failed to ensure that its demands were met, there would be a general strike on May 12.

Workers heed call for rolling mass action

(166) Sowetan 25/2/97

By Abdul Milazi

THE Congress of South African Trade Unions' mass action campaign gained momentum yesterday when members began lunch-hour demonstrations nationwide

The demonstrations are part of the build-up to the federation's planned full-blown strike on May 12

The actions are aimed at forcing the Government to put the Employment Standards Bill back on the negotiation table

Cosatu decided to embark on rolling mass action last week when it learnt that the Employment Standards Bill had already been submitted to Cabinet for approval even though some issues were still outstanding

This week's protests, which will continue until next week, have been left to regional structures after which the central executive committee will meet to evaluate the negotiation process on the Bill

Cosatu has been involved in negotiations with the Government and business on the Employment Standards Green Paper since the Ministry of Labour released the document in February 1996

Cosatu spokesperson Nowetu Mpati said while progress had been made in many areas, the gap between the three parties was still very wide

"Many stumbling blocks have emerged with business adopting a scatter gun approach to the negotiations"

'Business' main strategy is to reverse the rights already enjoyed by workers'

She argued that business' main strategy was to reverse the rights already enjoyed by workers and "water down even the inadequate provisions of the green paper"

The Government had chosen to occupy the middle ground and seemed willing to embrace some proposals by business under pressure "The overall policy shift by the Government at macro-economic level created extra pressure on these negotiations"

Mpati said Cosatu reiterated its demands for a 40 hour work week, six months maternity leave – of which four months would be paid – and double pay for Sunday work

Cosatu is also demanding that the age restriction for child labour should be 16 years instead of 15 years as proposed by the Government "We want to encourage black children to stay at school"

Spokesman for Business South Africa and chief negotiator Bokkie Botha said it was regrettable that Cosatu chose to go on strike instead of continuing with talks

Cosatu to stay away if talks on standards stall

Renée Grawitzky BD 26/2/97 (166)

COSATU has advised the National Economic Development and Labour Council (Nedlac) of its intention to embark on a national stayaway on May 12 due to insufficient progress being made in the negotiations on employment standards

It is believed that Nedlac's executive council meeting on Friday would discuss Cosatu's decision to embark on industrial action

Nedlac sources said there would have to be discussion on the type of initiative to be embarked upon in order to resolve the issues in dispute around the employment standards

The main issues revolved around hours of work, maternity leave, variation of standards, Sunday work pay, child labour and night work

The decision to embark on such action was agreed to at the federation's executive committee meeting last week.

The programme of action agreed to, which has subsequently been endorsed by the various regions, provided for the commencement of shopfloor pickets and demonstrations this week

A snap survey showed that the majority of regions would finalise their plans only this week and would commence shopfloor demonstrations next week.

Cosatu's Wits region, for example, had resolved at the weekend that pickets and demonstrations would be held on March 4 and 5 while a rally would be held at the Library Gardens on March 25 In line with Cosatu's resolution on crime, a march against crime and in particular corporate crime would be held on March 8.

The new Labour Relations Act granted workers the right to engage in action to pursue socioeconomic demands. If workers followed the proper procedures they would be protected.

Cosatu has compiled with the initial requirements by notifying Nedlac of the federation's intention to embark on industrial action. In terms of the Act, the "matter giving rise to the protest action" will have to be considered by Nedlac or any other appropriate forum "in which the parties are able to participate in order to resolve the matter".

Finally, if no resolution is found and Cosatu still intends going ahead with the action on May 12, it will have to give Nedlac fourteen days notice of its intention to proceed with the action

Last-minute bid for tax amnesty

BD 28/2/97

Belinda Beresford

THE SA revenue service was experiencing an "unbelievable" last-minute response to the tax amnesty which expires today, spokesman Christo Henning said yesterday.

Henning said people were complaining that they were unable to get through to the toll-free numbers to register for the amnesty, while tax offices were also being overwhelmed

The revenue service has estimated that about 9% of taxpayers or 435 000 individuals are behind in their payments, of whom 195 500 were eligible for the amnesty

Henning said the service would be satisfied if it collected about R2,15bn in taxes through the amnesty. This is about half the amount of capital tax estimated to be owed by taxpayers.

At the end of last week there had been about 4 000 registrations for category one of the amnesty, which covered those who had never registered for taxes Henning said no one knew just how many tax dodgers there were in SA, but the service was "happy" to have new taxpayers.

He said it would be impossible to provide monetary values for the tax deficits collected in the other categories until early next week. The computer program was still running and figures could not be collated until it was stopped at the end of today

Other taxpayers eligible for amnesty were those who had underdeclared on tax returns, those who had avoided sales tax and those hoping to write off interest and penalties.

Henning said it was very unlikely the amnesty date would be extended, as demanded by the National African Federated Chamber of Commerce. To do so, relevant legislation would need to be altered by the end of tomorrow.

Nedlac labour component divided over stayaway

BD 28/2/97 (166)

Reneé Grawitzky

THE labour component within the National Economic, Development and Labour Council (Nedlac) is divided over Cosatu's call for a national stayaway on May 12 to push for its demands to be included in proposed employment standards legislation.

Cosatu has indicated the action would go ahead if insufficient progress was made during negotiations on the issue. Nedlac's executive council meets today to discuss options for taking negotiations forward.

The Federation of SA Labour Unions (Fedsal) said yesterday that it had not received a mandate from its 297 000 members to participate in Cosatu's action The National Council of Trade Unions (Nactu) said it would participate.

Fedsal general secretary Dannhauser van der Merwe said he did not believe that the labour market was as inflexible as employers made out. Certain industrial council agreements already provided for flexibility by varying standards, he said.

Nactu general secretary Cunningham Ngcukana said the council had decided last week to participate in the mass action. But, a final assessment would be made on March 20. He said workers would continue to push for a 40-hour week with no loss of pay

Nedlac negotiators hail talks as 'constructive'

(166) BD 3/3/97

Reneé Grawitzky

LABOUR, government and business have agreed to prioritise the financing of training and a process for the continuation of negotiations on the employment standards legislation in an attempt to avert a strike called by union federation Cosatu for May 12

These were among a number of issues discussed at the National Economic, Development and Labour Council's (Nedlac's) first executive council meeting of the year, hailed by all as constructive and reflecting maturation of the tripartite structure

Nedlac executive director Jayendra Naidoo said the theme of implementation received a lot of attention with emphasis on job creation and reducing inequalities

This led to a discussion on training and productivity with an undertaking that by the executive council meeting in May, the parties would have agreed on a mechanism to finance training

There was broad discussion on the budget with labour director-general Sipho Pityana indicating that the budgetary process was government's prerogative

A union source said that there had been inadequate consultation on the budget, on which labour awaited a proper presentation by the finance ministry Labour convenor Ebrahim Patel said that labour still felt strongly on introduction of a capital gains tax

Business convenor Raymond Parsons said attainment of a 4% budget deficit should not be done by increasing the tax burden Patel called on business to back a call for the prosecution of the MDs of companies guilty of customs fraud Customs fraud had resulted in 25 000 jobs being lost in the clothing and electronics industries

Naidoo said a meeting would be convened by mid-month to discuss issues in dispute on the employment standards

He said five agreements had been ratified at the meeting on regulations for the operation of the essential services committee, formation of the national development agency; an amendment to the Compensation for Occupational Injuries and Diseases Act, guidelines for creation of local development structures and a policy framework for job creation in community-based public works programmes

Pityana praises Nedlac meeting

(166)

Sowetan 3/3/97

By Abdul Milazi

THE National Economic Development and Labour Council's (Nedlac) first executive meeting at the weekend was described by the director-general of the Department of Labour, Sipho Pityana, as very smooth and successful

Pityana told a Press conference at the weekend that business, labour and government reached consensus on almost all the issues tabled for discussion

Among the policies and regulations finalised by the Nedlac executive council were

- A policy framework for job creation in community-based public works programme,
- Regulations for the essential services committee,
- Amendments to the Compensation for Occupational Injuries and Diseases Act,
- Guidelines for the establishment of local development structures,
- Mechanisms to deal with protests

The proposal for amendments to the Compensation for Occupational Injuries and Diseases Act makes provision for the replacement of obsolete provisions in the Act, in many instances demanding clarity

The amendments now provide for the Minister of Labour to consult the Compensation Board and for the accountability of the Compensation Fund to be transferred to the director-general of the Department of Labour

The amendments also remove the duty of employers to provide first aid and provide for the payment of interest on overdue assessments in cases where the presiding officers or an assessor dies during a hearing or becomes unable to act

The executive council also concluded work in its Labour Market Chamber on regulations for the essential services committee

Nedlac executive director Jayendra Naidoo said "The chamber has considered this issue as part of its ongoing work on the implementation of the new Labour Relations Act (LRA)."

Section 208 of the LRA stipulates that the Minister of Labour must consult Nedlac before publishing regulations for the essential services committee

This committee will investigate the validity of all essential services to determine whether services such as hospitals, police services and other government services are in fact essential

Threat of Cosatu strike still looms

(166) Sowetan 3/3/97

Employment standards legislation will help secure workers' interests

By Abdul Milazi

"THERE are no simple solutions to the issues that Nedlac (the National Economic Development and Labour Council) has to deal with," Department of Labour director-general Sipho Pityana told *Sowetan* after a Press conference in Johannesburg at the weekend

This probably summed up the feelings of all the representatives in Nedlac – except labour's – after threats by the Congress of South African Trade Unions to go on strike on May 12 to highlight their demands on the Employment Standards Green Paper

Cosatu believed the Government was trying to sneak the paper to Parliament, although there were still outstanding issues to be dealt with

Labour Minister Tito Mboweni denied this, saying the Green Paper was to be discussed further at Nedlac, as procedure dictated

He expressed surprise at Cosatu's threat and explained that the Green Paper had not been submitted to the Cabinet

He said once it was submitted and approved, it would be published in the *Government Gazette*, and then tabled for further negotiations at Nedlac

Stumbling blocks

But in a number of statements released to the media, Cosatu insisted that they would continue with their strike for six months maternity leave, with four months being paid leave, a 40-hour working week and double pay for Sunday work and holidays

"While progress has been achieved in many areas (of Nedlac negotiations), the gap between parties is still very wide Many stumbling blocks have emerged, with business adopting a scatter-gun approach to negotiations," lamented one Cosatu statement

Cosatu further accused business of trying to reverse the current rights enjoyed by workers

However, business was not the only negotiating partner at which Cosatu pointed a finger

The Government also came under fire for "occupying middle ground and (being) willing to embrace some positions of business under pressure"

In justifying its decision to go on strike, Cosatu said it had "discussed this state of affairs at its November executive council and felt that there was a need for a sharp campaign to shift the ground"

Words of wisdom, although not heeded, came from Business SA chief negotiator Bokkie Botha "I think the best way to settle things is through negotiations"

Constructive engagement

Botha said there was still hope, however, that the labour movement would gradually move away from the street politics of the 1980s and embrace constructive engagement through negotiations to settle disputes

The Green Paper, with which Cosatu says it is not happy, proposes that maternity leave be increased from three months to four It also provides for job security while a woman is on leave

Cosatu wants six months maternity leave, while business would like the situation to stay as it is – most companies do not pay women while on maternity leave

Initially labour demanded six months paid maternity leave, arguing that without pay women would not be able to take advantage of extended leave

It eventually compromised on six months with only four months paid leave

This brought labour closer to the Government's proposal but business still wants three months unpaid leave

The Green Paper also proposes that male workers with more than a year's service be entitled to three days paid paternity leave

The Government's proposal is more in favour of workers – it proposes that every worker who works more than four hours a day should be entitled to paternity leave irrespective of years of service

This proposal came under strong criticism from business which argued that this should be in addition to the leave to which every worker who works more that four hours a day was entitled

Another highly contested provision was the variation of standards – the Green Paper proposes that workers be allowed to work a maximum of nine hours a day, which translates to 45 hours a week

Labour's argument was that employers could make workers work 12 hours a day with no overtime as long as the 45-hour-a-week limit was not exceeded This would be detrimental to the workers' health

Business also argued for greater flexibility when it comes to casual workers, while Government and labour proposed that the Employment Standards Act should cover both part-time and permanent workers

Cosatu spokeswoman Nowetu Mpati said labour agreed to flexibility or variation of standards, but would not allow employment standards to be lowered

When Mboweni told *Sowetan* last year that the Employment Standards Act was by far the most important part of the new labour dispensation, he knew what he was talking about

The Employment Standards Act will stipulate working hours, overtime, lunch and tea breaks, compensation for night work, public holidays and Sunday work, notice of dismissal and annual leave

This is probably the reason Cosatu is not taking any chances on it the working lives of all citizens rests on this Green Paper

Pityana said negotiations around the Green Paper were still on track, but that "Cosatu is free to use whatever means they deem fit to push for their demands"

Mboweni said the Employment Standards Act would ensure that the basic rights of workers were extended to all workers, in line with the approach adopted in the Labour Relations Act

"The matter of its finalisation is an urgent task, which is a component part of our five-year programme of action I am committed to ensuring this occurs"

Labour Minister Tito Mboweni says the Employment Standards Act will ensure that all workers have basic rights.

Cosatu strike threat over workers' Bill

(166)

ARG 6/3/97

'Mass action this month'

THABO MABASO
BUSINESS REPORTER

The Congress of South African Trade Unions (Cosatu) has threatened to embark on sustained mass action this month that could culminate in a national general strike if employer organisations do not accept the federation's proposals on employment conditions.

Cosatu Western Cape secretary general Tony Ehrenreich told a news conference in Cape town yesterday that the deadlock with employer organisations could only be broken by decisive action

He said mass action, scheduled to start on March 10, would comprise human chains and pickets during lunch hours

"But as time goes on and if there is no progress in the negotiations, it will start encroaching on working hours," Mr Ehrenreich said.

The Employment Standards Bill sets basic conditions of employment for South African workers It pulls together the old Basic Conditions of Employment Act and the Wage Act to protect the most vulnerable employees, notably farm and domestic workers

The federation has called for six-month's maternity leave with four months being paid, a 40-hour working week, which can be phased in over a five-year period, double pay for working on Sundays, and barring children below the age of 16 years from employment to be included in the Bill

Mr Ehrenreich said the national strike would be on May 12.

The last national strike by Cosatu was in April last year, and was aimed at the controversial lockout clause in the new Constitution.

Cosatu placed worker turnout at 75 percent for that strike.

"We want to impress on employers that these demands are serious," Mr Ehrenreich said.

"If we are going to change the mindset of business it will be in the tried and tested ways that are familiar to us "

Some economic and political observers have criticised Cosatu in the past for over-robust tactics that harmed the country's economy and made it difficult for its alliance partner, the African National Congress, to implement its macro-economic strategy

The strategy envisages the creation of one million jobs and a six percent economic growth rate by the year 2000.

Mr Ehrenreich, however, dismissed the accusations and said the federation had to protect its members, anyway it could, from possible exploitation

"We have a responsibility to our members and we are not going to shirk away from that responsibility," he said

The Bill has still to go before the influential National Economic Development and Labour Council (Nedlac) and Parliament – a process that could take the whole of 1997

Meanwhile, the South African Chamber of Business (Sacob) has criticised Cosatu's mass action plans, saying that it did not know what purpose a strike would serve

"In our view, the Employment Standards Bill is a complicated piece of legislation and Cosatu should let the negotiations take their natural course," Sacob labour spokesman Janet Dickman said

Clothing industry, textile union agree on protests to workers' bill

(166)

BUSINESS REPORTER

ARG 13/3/97

Clothing industry bosses have given the go-ahead for the South African Clothing and Textile Workers' Union (Sactwu) to stage protests aimed at forcing negotiators at talks for a new Employment Standards Bill to accept the union's proposals.

It was agreed at a meeting between Sactwu and the Cape Clothing Manufacturers' Association (CCMA) which is an umbrella body of clothing and textile employers, that protests would be by prior arrangement if not held during lunch hours

"If requests are received from shop stewards, we will recommend that since Sactwu is not calling for mass attendance, members (of the CCMA) be accommodating without there being any undue disruption to their production schedules," CCMA executive director Peter Cragg said in a statement.

Mr Cragg also said that the protests would not only focus on the Employment Standards Bill, but on the illegal importation of clothes and policing problems at customs control points

Since tariff barriers were lifted South Africa has seen a rise in the number of cheap illegal clothing and textile imports

As a result thousands of jobs have been lost and factories have closed.

The Employment Standards Bill is currently being discussed by labour, business and Government, and seeks to establish basic conditions of employment

Mr Cragg told manufacturers to adopt a "constructive approach" to Sactwu's plans for protests as there had been consultation before the mass action

"Should it be necessary for employees to participate beyond their lunch period, we suggest that this time be made up in a flexible manner to ensure that establishments do not lose production."

The clothing industry employs close to 45 000 people in the region.

supporting the negotiation process "

Nedlac executive director Jayendra Naidoo was expected later this week to call the parties together to resolve the dispute

If the social partners in Nedlac fail to agree on the contentious clauses Labour Minister Tito Mboweni is likely to ask that parliament be the final decision maker

Business SA's negotiator Adrian du Plessis "had hoped that reason would trump the use of force (since) labour market policy is not something you can bargain like wages "

Du Plessis says the parties are divided in two main areas First, around those proposed standards which raise the unit cost of labour either by reducing working hours or increasing leave provisions and premiums "Simply raising the unit labour costs is not going to create more or better jobs " The second area of disagreement is in the "variation" of standards provisions, which deal with how the parties might amend statutory labour standards to suit their particular needs Business is "vigorously arguing the case to allow collective bargaining to vary the Act where agreements are reached "

While the Labour Relations Act will improve collective bargaining for unionised workers, says the Department of Labour, millions of workers not in unions don't enjoy the benefits The department estimates 5,3m workers are covered by the Basic Conditions of Employment and Wage Acts The proposed new statute is targeted at these workers They are mainly farm and domestic workers, some contract workers, those who work in small shops and rural areas, temporary and part-time workers The department says existing laws are outdated, rigid and complex and do not protect vulnerable workers from exploitation

The proposed law will also deal with problems of poverty in employment, inefficiencies in the labour market, child labour, excessively long working hours and gender discrimination

Key changes are to reduce working hours and increase the overtime rate SA workers work an average 43-hour week but as much as five hours overtime, which is high by international standards While the department is committed to a 40-hour week, the Green Paper proposes working hours be reduced from 48 to 45 for shift and farm workers, from 60 to 48 for security guards and from 46 to 45 for others

Further reductions could be phased in through collective bargaining or setting conditions for specific sectors Also proposed are better protection for night workers, a compulsory rest day, regular meal intervals and removing restrictions on Sunday work

Among leave improvements, pregnant women will have their jobs protected for four months instead of the current three months Maternity pay is not dealt with but the department aims to improve maternity benefit through the Unemployment Insurance Fund

Recognising that "one shoe does not fit all," the Green Paper proposes that the conditions of employment could be varied through collective bargaining, granting exemptions or by individual agreement *Amarnath Singh*

EMPLOYMENT STANDARDS (166)

PROTEST AND PRINCIPLE

FM 14/3/97

Cosatu's "programme of action" over the Employment Standards Green Paper emerged this week when Sacob received several calls from its members Callers from Durban and the East Rand reported protest action under way, or union notice of action to come

Cosatu resolved last month to embark on a series of protests — which could culminate in a general strike on May 12 — after a dispute arose among the social partners haggling in Nedlac since last April over draft new legislation on basic conditions of employment Cosatu's action is "aimed at mobilising our own members and (paradoxically) supporting the negotiation process "

Tito Mboweni

LABOUR *Tensions over employment standards bill come to a head at conference*

Rift widens between Cosatu and Mboweni

CT(BR) 17/3/97 (166)

JONATHAN ROSENTHAL

Johannesburg — A rift between Cosatu, the country's largest labour federation, and Tito Mboweni, the labour minister, is widening over an impending general strike to force labour's demands in employment standards legislation proposed by the ministry of labour.

Last month Cosatu threatened to embark on a general strike in May if its minimum demands on working hours and maternity leave were not met.

The much-speculated rift was made public at a conference of the Chemical Workers' and Industrial Union at which both Sam Shilowa, the general secretary of Cosatu, and Mboweni spoke. Conference delegates said Mboweni, addressing a session closed to the press on Thursday night, argued against the proposed strike and told delegates there was no deadlock over the proposed legislation

Mboweni has previously called for negotiations over the proposed legislation and last month said he was extremely surprised that Cosatu was planning a possible strike over the bill.

But in his most biting public criticism of an ANC government minister and Cosatu ally, Shilowa said on Friday that delegates should decide for themselves whether he or Mboweni was speaking the truth over the question of a deadlock

"I have no reason to go to war with the ANC over something that does not exist I have no reason to say there is a deadlock if one does not exist," Shilowa said "There is no agreement between us and the government on the 40-hour week, on Sunday work, on child labour, on maternity leave, on all these issue and that is a reality."

Cosatu has called for a 40-hour working week, with the possibility of a phase-in period. While the labour department is committed to the 40-hour week, it is expected to table a compromise position of about 45 hours to bring the least protected workers in the agricultural, domestic and security sectors into a legislated net of minimum standards

A spokesman for Mboweni declined to comment, saying the session in which he spoke was closed to the press But sources in the department said the bill was not aimed at organised labour, which is able to bargain its own working conditions.

Labour department sources said the public acrimony failed to recognise the gains the proposed legislation would herald for hitherto unprotected workers.

FRIEND OR FOE *Sam Shilowa, Cosatu's general secretary, and Tito Mboweni, the labour minister, have opposing views about a strike planned for May* PHOTO JOHN WOODROOF

Union denies Shilowa, Mboweni rift

(166) BD 20/3/97

Reneé Grawitzky

THE Congress of SA Trade Unions (Cosatu) denied yesterday that differences existed between its general secretary Sam Shilowa and Labour Minister Tito Mboweni over the call for mass action if insufficient progress was made on employment standards legislation

Cosatu's Wits regional secretary Dan Mohapi said there was no tension either between the two or between Cosatu and the African National Congress (ANC). He said there was only a misunderstanding regarding the process and claims by Mboweni that a deadlock did not exist

Cosatu was committed to the negotiation process within the National Economic Development and Labour Council (Nedlac) and wanted the result to be submitted to cabinet

Instead, Mboweni indicated that a draft bill would be submitted to cabinet and once endorsed would be presented to the parties for negotiation. Labour feared that progress made during negotiations last year would not be taken into account in the bill submitted to cabinet.

Mohapi said labour's mass action call did not imply that negotiations could not continue He urged members of the Federation of SA Labour (Fedsal) and National Council of Trade Unions (Nactu) to participate in the march and rally planned for March 25 in Johannesburg

This action formed part of the Wits region's programme adopted in February. The planned strike on May 12 would depend on progress within Nedlac.

Cosatu to march over provisions in labour bill

Star 20/3/97 (166)

By Patrick Phosa

The Congress of South African Trade Unions' Witwatersrand region will march on the Department of Labour offices in Johannesburg on Tuesday to protest against the proposed Employment Standards Bill

Cosatu regional secretary Dan Mohapi told a press conference yesterday that the federation would hold a rally at the Johannesburg Library Gardens to inform its members of the progress made in negotiations around the bill between labour, the Government and business

The workers would then march to the Labour Department offices to agitate for the exclusion of controversial clauses from the bill

Cosatu has called upon the National Council of Trade Unions and the Federation of South African Labour Unions to join forces with it in its campaign

While denying that Cosatu was calling for a stayaway on Tuesday, Mohapi said the rally and march would take most of the day, and the majority of workers would not be able to go to work

The bill, which has become the latest sticking point in Government/labour relations, is meant to replace the old Basic Conditions of Employment Act and the Wage Act, and has been under negotiation since June

If passed, it would lay down the basic working conditions for millions of workers across the country

Cosatu and other labour unions are demanding the phasing in of a 40-hour week, which at the moment ranges from 46 to 68 depending on the type of work, six months' maternity leave of which at least four months should be paid, banning the employment of children younger than 16, double pay for Sunday work, and that night work should be considered to start at 6pm instead of 11pm

The federation is also opposed to a clause in the bill proposing "downward variations", which mean that employers can apply to the Labour Ministry to be exempted from a particular signed agreement that they have with their employees

Six-month maternity leave not the norm in SA

BD 25/3/97 (166)

Reneé Grawitzky

AS MEMBERS of the Congress of SA Trade Unions begin mobilising around core employment standards demands, including the call for six months of maternity leave, a recent report has revealed that only 17,1% of companies surveyed granted this much maternity leave

This was revealed in a survey released yesterday by industrial relations consultants Andrew Levy & Associates who conducted a survey of 80 companies on the types of benefits granted to workers

Andrew Levy & Associates researcher Jackie Kelley said although 63,2% of companies surveyed granted maternity leave in excess of the statutory minimum of three months, only 17,1% granted maternity leave of six months The most common practice was for companies to give three months, with 57,8% of companies surveyed prepared to pay between 30% and 33% of the weekly wage to complement the Unemployment Insurance Fund benefit

While 17,15% of employers gave six months leave, only 2,6% gave more than six months leave Traditionally, workers in the retail sector have enjoyed maternity leave in excess of six months Kelly said in some cases companies granted time off for antenatal and postnatal check-ups

The survey also found that only 46,4% of firms had a paternity leave policy with the majority granting two to four days leave.

Other benefits and policies surveyed included the provision of study and educational leave, compassionate leave, sports leave and bonus payments Kelly found that 94% of companies had policies covering education and training with 60% granting two days leave The remainder granted between four and 15 days leave

The vast majority of companies granted compassionate leave ranging between five to 10 days More than 90% of companies provided workers with annual bonuses with 55% granting a full 13th cheque

Cabinet committee is given privatisation brief

BD 26/3/97

Linda Ensor

CAPE TOWN — Public Enterprises Minister Stella Sigcau has recommended to the cabinet committee responsible for privatisation that it formulate uniform guidelines to govern privatisation in the provinces

A committee meeting scheduled for yesterday was postponed

Sigcau said in an interview that the committee wanted to ensure there were uniform and acceptable standards for the disposal of state assets by provincial governments

Labour and other interest groups had expressed concern about the restructuring process at provincial level Her spokesman Wandile Zota later denied that the controversial deal by the Mpumalanga Parks Board and the Dolphin group lay behind the bid to streamline procedures

Sigcau said the discussions would include Provincial Affairs and Constitutional Development Minister Valli Moosa, Finance Minister Trevor Manuel and Public Works Minister Jeff Radebe

Meanwhile, parliament's public enterprises portfolio committee has initiated talks with other portfolio committees with responsibility for state enterprises such as transport, energy, telecommunications etc, with a view to boosting parliamentary oversight of the privatisation effort.

Committee chairman Mandla Msomi proposed yesterday that a "super committee", consisting of two representatives each from 11 portfolio committees, be formed. The task of the proposed committee would be to formulate overreaching legislation to govern the disposal of state assets. No decision was taken on the proposal.

Some committee members felt that all parastatals should be consolidated under one ministry, instead of being scattered across a number of line functions.

It was totally unacceptable, they argued, for public enterprises to be wholly dependent on other ministries

Thousands of Congress of SA Trade Union members marched to the labour department offices in Johannesburg yesterday to highlight their demands around proposed employment standards legislation Picture GARTH LUMLEY

Masakhane paperwork 'outweighs success'

BD 26/3/97

EAST LONDON — The Masakhane campaign came in for a drubbing from East Cape premier Arnold Stofile yesterday, when he said the amount of paperwork involved outweighed the campaign's achievements

Addressing a workshop on the campaign, Stofile said it had been ineffectual since its inception in 1995 because organisers had focused too heavily on appeals for citizens to pay for rates and services and not on other aspects of nation building He stressed that the payment of rates was only one facet of the campaign, and that the overall aim was to reconstruct a nation He said the size of the workshops and documents about the campaign were inversely proportional to the end results.

East London city councillor John Badenhorst, representing the SA Local Government Association, said practical considerations — like including accumulative amounts on bills, credit control and flat service rates — were vital to ensuring payment — Ecna

20 000 marchers disrupt Jo'burg CBD

(166) BD 26/3/97

Reneé Grawitzky

ABOUT 20 000 Congress of SA Trade Union members disrupted the city centre yesterday as they marched to the labour department's Johannesburg offices to highlight their demands on proposed employment standards legislation

Yesterday's action, part of Cosatu's programme of mass action which culminates in a national stayaway on May 12, came ahead of a meeting of government, labour and business, planned for today, which was called off at the eleventh hour

The march was preceded by moves by Consol Limited's glass division to bring an urgent interdict against the Chemical Workers' Industrial Union (CWIU), which had called for a stayaway in the Wits region to coincide with the march. Consol intended applying for an interdict in the Labour Court in Johannesburg on the basis that the call constituted an unlawful protest action

The parties reached an out of court settlement whereby the union undertook to take all reasonable and possible steps to inform employees it was no longer calling for a stoppage The company said on that basis it withdrew its application Consol said one factory did not operate yesterday

SA wants Cites

Cosatu accuses business of favouring a 60-hour working week

Shilowa heads protest to increase payroll levy

CT (BR) 26/3/97 (166)

FRANK NXUMALO

Johannesburg — Sam Shilowa, the general secretary of Cosatu, slammed as too low the proposed 1 percent to 1,5 percent payroll levy to fund national training during a protest by 50 000 workers in Johannesburg yesterday

The payroll levy proposal was contained in a government green paper on skills development, released on Monday by Tito Mboweni, the labour minister

Shilowa led a march to the labour department to hand a memorandum on the Employment Standards Bill to Mboweni

Mboweni was not available to receive the delegation, and the document was accepted by a labour department official

Shilowa also lambasted business, accusing it of creating the impression that the employment standards campaign was a fight solely between organised labour and the government

Shilowa said the government was prepared to consider phasing in a 40-hour working week over a five-year period, starting with a 45-hour working week Business, however, was talking of a 55-hour or even a 60-hour working week, which was totally unacceptable to labour, Shilowa said

Cosatu had also demanded six months' maternity leave, of which at least four should be paid The government was proposing three months' paid maternity leave, while Shilowa said business was saying "you shall not get paid maternity leave"

Business was also opposed to double pay for Sunday work, but the state was willing to consider a rate of one and half times the normal rate, Shilowa said

An area where there was agreement between the government and business was on the variation of working conditions, with the two favouring downward variations, which was contrary to Cosatu's demand for upward variations

Other Cosatu demands include a statutory allowance for night work, which should start at 6pm and not at 11pm, compassionate leave of nine days a year, and the threshold at which children could enter the labour market being set at 16 years of age.

Employment Bill goes to Cabinet in mid-April (166)

ALIDE DASNOIS
BUSINESS EDITOR

ARG 27/3/97

The new employment Bill will be presented to Cabinet on April 16, according to the Minister of Labour Tito Mboweni.

Mr Mboweni told the Cape Argus in an interview yesterday that the Bill had been submitted to the Cabinet Committee on Economic Affairs this week and would be tabled in the National Economic Development and Labour Council (Nedlac) after being presented to Cabinet

He did not expect the Bill to be "a second battle of Isandlwana".

"Our goal is not to blow the whistle to start a war, but to get consensus on legislation which sets a floor for all workers"

A green paper preceding the new Bill, which will revamp the old Basic Conditions of Employment Act and the Wage Act and draw them into a single piece of legislation, has provoked an angry reaction from Cosatu.

The trade union federation has threatened to launch industrial action to oppose some clauses in the Bill, calling for six months maternity leave, four of them paid, and for assurances on a 40-hour working week

The Bill suggests a reduction in the working week from 46 to 45 hours for day workers as a first step to a 40-hour week.

Four months maternity leave is proposed, to be paid for from unemployment insurance

Mr Mboweni said the new legislation was aimed mostly at unprotected and vulnerable workers, such as domestic workers, farm workers and security workers

These workers were often "at the mercy of employers".

"One of our goals is to get the working week for security workers reduced from 60 hours to somewhere in the 40s, on a par with other workers"

The Bill would also make child labour and forced labour illegal, he said

A new deal in the pipelin

Draft bill grants new conditions but t

THE NEWLY PUBLISHED BASIC CONDITIONS OF EMPLOYMENT DRAFT BILL MARKS A BOLD ATTEMPT BY PRESIDENT NELSON MANDELA'S GOVERNMENT TO BREAK WITH THE PAST AND PROMULGATE LEGISLATION WHICH SEEKS TO PROTECT THOSE WORKERS MOST AFFECTED BY APARTHEID-INSPIRED LABOUR LAWS, WRITES BUSINESS REPORTER **THABO MABASO**

For the first time in the country's history, the draft bill establishes a floor of minimum rights for all South African workers, especially domestics, children and farm labourers Previously domestic and farm workers were not included in legislation governing employment conditions because they were regarded as temporary or part-time workers

The bill revamps the old Basic Conditions of Employment Act (BCEA) and the Wage Act, and draws them into a single piece of law aimed at protecting the most vulnerable workers

Under the old BCEA, the working hours of domestics and farm labourers were much longer than for employees in other industries Domestics could for instance work as long as 14 hours a day, while farmworkers were prevented from striking and their bosses could refuse arbitration

The new bill does not discriminate against any worker but sets out similar conditions for everyone

These conditions include a 45-hour working week for all workers, an increase in maternity leave from three to four months, and double pay for those whose contracts do not include working on a Sunday but who do work on that day after arrangement with an employer Annual leave has also been increased from two to three weeks

The bill also covers, for the first time, public service employees, but excludes those in the army, intelligence services and unpaid voluntary workers

Children under 15 are also barred from any form of employment

The bill allows Labour Minister Tito Mboweni to intervene in instances where the safety of workers is endangered Those who flout its provisions could face imprisonment. It also requires employers to pay their workers one-and-a-half times the employee's wage for overtime In instances where the employers' costs rise as a result of this, the latter can work out an arrangement with either a union or the employee to try to cut labour costs

Labour law expert Duncan Innes told the Cape Argus that some employers might not be able financially to carry out the provisions of the bill

He suggested rather that the Government devise a three-year phase-in period for employers that have problems coping with costs

"The bill is very good because it strives to bring us close to the developed parts of the world, but it becomes flawed when it expects all employers to implement the bill in one leap," he said

Innes also questioned the wisdom of allowing individuals to negotiate with employers over their conditions in instances where the bill's provisions caused labour costs to rise

"If that happens we could have exceptions all over the place that would not be in line with the bill," he said "Individuals are very weak and can be manipulated to accept conditions that are incompatible with the bill "

Champion of workers? Labour Minister Tito Mboweni whose newly-published Basic Conditions of Emp'... South African workers – including domestics, farm workers and children

'The bill is very good because it strives to bring us close to the developed parts of the world'

As could also be expected, the contents of the bill have also generated both criticism and praise from business organisations and labour unions

The two-million strong Congress of South African Trade Unions (Cosatu) said last week that in certain instances the bill was an improvement on previous laws, but failed to deliver on some matters

Cosatu's primary objectives were a 40-hour week, which would have to be phased in over a five-year period, and six months maternity leave, with four months paid Instead Mr Mboweni has appointed a five-person task team to advise him on the mechanisms of paying for maternity leave

At present most women workers draw maternity pay from the Unemployment Insurance Fund (UIF) which equals 45 percent of their wages They are not allowed to draw UIF if they lose their jobs after they have already drawn maternity pay

The federation first threatened to strike if its demands were not addressed but backed down after the bill was published

Cosatu secretary general Sam Shilowa cited the bill's improvement from previous legislation as the reason for withdrawing the strike threat

Cosatu's latest climbdown marked the

for SA workers

usiness may battle to pay

ARG 23/4/97

(166)

Act establishes a floor of minimum rights for all

COLIN DANIEL

-cond time the union had backed down -fter being in conflict over policy issues with its African National Congress al- ance partners The last time this hap-

'As long as Mandela is in office Cosatu is going to be reluctant to break the alliance'

-ened was after Finance Minister Trevor 'anuel delivered his maiden Budget peech, which included plans to create a ore flexible labour market

The federation then voiced its dissatis- tion with the Budget. But President 'andela reiterated his government's tention to implement the Growth Em- 'oyment and Redistribution (GEAR) ategy.

Gear envisages a six percent economic growth rate and the creation of a million jobs by the year 2000

Last week, during an ANC, Cosatu and South African Communist Party (SACP) meeting, Mr Mandela was reported to have told the alliance partners that his government would not necessarily bow to union demands

"I'm perfectly firm about it that there are cases where the Government will say 'we do not agree with, we're going on'," Mr Mandela was reported as saying.

"We are not looking at the interests just of a section such as labour We are looking at the interests of everybody in the country, workers and otherwise, and for that reason we will take a decision sometimes even though the workers are against it," he added.

The question the tensions between Cosatu and the ANC raise is whether the alliance can withstand the pressures generated by heated discussions over the employment bill

Mr Innes said he thought the alliance would continue until Mr Mandela stepped out of office, which he intends to do after the 1999 elections

"I think the alliance is being severely tested on three areas and these are GEAR, privatisation and this piece of legislation There is a view in some quarters within Cosatu that they should withdraw from the alliance sooner but I think the dominant view is to remain and try to influence policy decisions," Mr Innes said.

"As long as Mandela is in office Cosatu is going to be reluctant to break the alliance His personal popularity makes it difficult for anyone to oppose the ANC publicly and politically."

Business has generally welcomed the bill

The influential South African Chamber of Business and the Afrikaanse Handelsinstituut (AHI) have, however, raised concerns that the increase in overtime pay and the lowering of weekly working hours will lead to higher labour costs

Employees would have to be paid more for working hours that now constituted part of their normal working hours, the organisations have said

"The cumulative effect of all the legislation that has recently flowed from the Department of Labour is negatively affecting investment, growth, job creation and survival abilities of many businesses in South Africa," the AHI said in a statement

The draft bill will now go to the National Economic Development and Labour Council (Nedlac) for discussion and further negotiation

Cosatu, which has expressed unwillingness to participate in the Nedlac process, has apparently been promised by the Government that the negotiations will be more than a rubber stamping of the draft bill

Mr Shilowa was reported as saying that there was no point in focusing on changing the bill's contents through Nedlac

Instead, Cosatu would lobby its allies in Parliament with the aim of making sure the union movement's proposals formed part of the final draft.

Before becoming law the bill will have to be investigated by Cabinet and Parliament.

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BUSINESS

ILO calls for rules

~~132~~ (166) Sowetan 25/4/97

By Abdul Milazi

THE world is moving towards reconciling international trade and the adherence to labour rights – and the International Labour Organisation (ILO) is leading the move.

In the ILO's standard setting and globalisation report released in Geneva, Switzerland, this week, director-general Michel Hansenne calls for the establishment of universal ground rules to ensure that social progress accompanied trade liberalisation.

He calls on the organisation's 174 member states to find new measures to ensure that "social progress and humane conditions proceed apace with trade liberalisation in the globalising world economy"

Globalisation

Hansenne argues that while the globalisation of the world economy can be an unequalled factor of progress and peace, it cannot be left to its own devices

He says his vision of a revitalised system of international standards will be that which encompasses universal respect for human rights in the work place, adhere to the ILO provisions for freedom of association and collective bargaining, minimum age for child labour, forced labour and non-discrimination

Hansenne also wants the adoption of a declaration to be adopted next year to complement the ILO constitution by providing for strengthened supervisory mechanisms to promote and monitor universal compliance with these provisions

He further calls for a regular progress report on the efforts made in each country to translate economic development resulting from the liberation of trade into genuine social progress

Hansenne also proposed the introduction of a voluntary, global system of "social labelling" to guarantee that internationally traded goods are produced under humane conditions

In an attempt to strengthen the relevance and efficiency of future ILO standards, Hansenne proposes a more judicious choice of subjects for international legislation

The introduction of an overall evaluation procedure, and a more systematic use of a whole range of tools available under the ILO.

Early attempts to forge links between international trade and fundamental labour rights through a system of sanctions led to reciprocal accusations of social dumping and disguised protectionism

However, some form of consensus seems to have emerged from the countless discussions conducted on various international fora.

There seems to be agreement between organised international business and labour that the comparative advantages that developing countries derive from their lower wages and levels of social protection are legitimate as long as they serve to encourage development and are not maintained artificially as a commercial strategy.

Development

There is also agreement that if globalisation is to fulfil its promise, it needs an agreed social dimension for workers in countries at all stages of development.

Hansenne says the bottom line is that free trade and improved working and living conditions can only hope to develop if there is universal respect for fundamental human rights in the work place

He stressed that each country should act in accordance with the principle that all workers in a country should have a fair share of the fruits of globalisation

"This is neither unrealistic nor impossible to achieve," argues Hansenne

EMPLOYMENT STANDARDS

Mboweni moves too far, too fast

Minimum job standards and social justice need to be balanced against the need for competitive growth

(166) FM 25/4/97

SA urgently needs to create more jobs By raising minimum employment standards with his proposed Basic Conditions of Employment Bill, Labour Minister Tito Mboweni unfortunately also risks raising the barriers to entry into the jobs market

Few would oppose the need to lay down decent minimum conditions for the most vulnerable sections of the work force, such as farm and domestic workers Certainly, no ANC Labour Minister could be expected to do less But the danger with Mboweni's Bill is that, in the developing country context of SA, it tilts the balance too far in the direction of labour — without doing anything to encourage increased output

The consequences of shorter working hours, increased leave entitlements, higher overtime pay, time off for family responsibilities and the like will, as organised business points out, be an immediate rise in unit labour costs

These will doubtless be passed on to the consumer They will also hurt industry's ability to compete internationally The development of a thriving small business sector, which elsewhere provides the backbone of economies, could be stunted

Higher labour costs promise more mechanisation and job shedding Increasing the premium on overtime, for example, is highly unlikely to generate more jobs, as Mboweni and the ILO seem to believe It's also hard to maintain that the Bill chimes with the call in government's macro-economic blueprint, Gear, for greater deregulation and labour market flexibility

But Mboweni is undeterred, refuses to bow to interest group pressure in policy-making, and apparently feels that if both the unions and business oppose the Bill, he is on the right track

However, Cosatu's opposition (which will now take the form of a half-day work stoppage and not a full-blown strike on May 12) smacks of opportunism It is a smokescreen which has more to do with Cosatu's internal problems, including an apathetic membership, which the protest is meant to mobilise After all, aside from wanting to see a commitment to a 40-hour week phased in over five years, six months' maternity leave with four paid, and less Ministerial power to vary standards downwards, Cosatu boss Sam Shilowa basically welcomed the Bill Precisely why Cosatu's protest is targeted at business, rather than at Mboweni, a fraternal architect of the Bill, is confusing — unless it is really meant to strengthen the Minister's arm when the Bill is negotiated in Nedlac

Backed by Cabinet and the ANC, Mboweni aims through the Bill "to develop a uniform floor of realistic minimum conditions of employment for all workers " He says it "gives employees reasonable normal working hours, with higher pay for overtime to encourage job creation, and it will improve maternal and annual leave The Bill enables employers and employees to define working time more freely within overall limits It establishes a body to monitor basic employment conditions, including wage determinations, so that the floor of minimum conditions is appropriate to our changing society "

The concept of social justice — specifically aimed at vulnerable, non-unionised workers — is at the heart of the Bill Mboweni insists it's part of an integrated framework whose objectives include job creation, investment and social justice It will, he maintains, promote greater labour market efficiency, and is realistic and flexible 'We cannot rebuild and develop at the expense of social justice, we cannot compete without a basic floor of justice "

In his speech on the Budget in parliament last month entitled "Seizing the moment for Job Creation," Mboweni said 'In the debate about labour market policy there are indeed many defunct economists who call for deregulation as the way to improve flexibility and, through that, job creation They equate inflexibility with the regulations that enhance workers' security and which enable them to negotiate meaningfully with employers about wages and working conditions

"We reject that argument because it ignores the fact that unemployment does not arise from the labour market alone, but from the overall structure of the economy and its performance The key causes of labour inefficiencies in SA do not lie in progressive regulations· They are a consequence of many factors (including weak education and training systems and discrimination) "

According to Mboweni, deregulationists too often resist the extension of minimum protection to low-wage sectors, which historically have been excluded from the main labour laws

"We will support policies which encourage greater and more productive use of labour — without undermining worker security and basic conditions "

Mboweni further contends that no matter how flexible, the labour market will on its own not overcome unemployment, that job creation flows from the investment structure and macro-economic policies which define demand for labour ■

EMPLOYMENT BILL

(166)
FM 25/4/97

Growth vs social justice

Controversy rages on around Tito's draft Bill on basic job conditions

Unveiling his controversial draft Bill on basic conditions of employment on April 17, Labour Minister Tito Mboweni said it went "to the heart of the relationship between employers and workers

"It demands of everybody the need to change step in work organisation, from an exploitive atmosphere to the promotion of social justice"

But employers say statutory increases in basic wages and benefits without regard to productivity will raise production costs and price many workers out of the market

In a rare joint statement, Business SA and Nafcoc say "the test of employment standards legislation is whether it will be affordable and practical in a developing economy with high growth priorities"

Business has no objection to job standards regulation, they say, but will consider only higher standards "born of greater labour market efficiencies and workplace productivity"

The Bill is intended to replace the present Basic Conditions of Employment Act and the Wage Act, which cover about 5m workers Main beneficiaries will be the non-unionised — farm, domestic, contract, shop, part-time workers — who are not in a position to negotiate better conditions, unlike the unionised, who are covered effectively by the Labour Relations Act

"The Bill embodies our desire to achieve social justice for all, and social justice is the centrepiece in the ANC's march forward," says Mboweni "We cannot develop at the expense of social justice, we cannot compete without a basic floor of justice"

Mboweni says Cabinet approved the Bill for its primary objectives of ensuring minimum standards for unorganised and vulnerable workers and for promoting "greater efficiency in the labour market"

Key provisions of the Bill are

- The maximum ordinary weekly hours for all workers are reduced to 45 from 46,
- Overtime may be worked only by agreement, and may not be more than three hours a day or 10 hours a week, to be paid at 1,5 times the normal rate (now time and a third), or time off at the higher rate,
- A collective agreement may permit hours of work to be averaged over a maximum of four months, but not more than 45 ordinary hours and five hours' overtime a week,
- Sunday work is no longer prohibited and will be at double pay, except for those who normally work on Sundays (1,5 times),
- Annual leave is increased from two to three weeks, paid,
- Maternity leave is increased from three to four months, unpaid,
- Six weeks of paid sick leave for every 36 months of continuous employment,
- Three days of paid "family responsibility leave" for those who work four or more days a week, and
- Working time must be arranged so as not to endanger employees' health and safety and with regard to their family responsibilities

A collective agreement by a bargaining council, or between an employers' organisation and a union, may replace or exclude any basic condition except those concerning working time, with due regard to health, child labour, maternity and sick leave

Mboweni "social justice is the centrepiece in the ANC's march forward"

Business says when Nedlac negotiates the Bill, it will ask how rising labour standards can be balanced with the imperatives of growth and job creation Business also called on Cosatu to renounce its May 12 mass action and search for negotiated settlements

Cosatu grudgingly welcomed most of the Bill, saying it "should provide a floor of basic rights for all workers" But the labour federation wants a 40-hour week to be phased in over five years and six months' maternity leave (at least four of them paid)

Its main gripe is over the Bill's proposed variation of standards which, it maintains, would erode workers' basic rights

Cosatu's decision to go ahead with its May 12 protest, though, appears aimed more at mobilising its apathetic membership than at expressing any deep unhappiness over the Bill What was to have been a 24-hour strike has been watered down to a series of marches and rallies

Amarnath Singh

Unfazed by conflict

Labour Minister Tito Mboweni feels the conflict about the Basic Conditions of Employment Bill can be solved. **Abdul Milazi** takes stock of the situation...

(166) Sowetan 12/5/97

WHENEVER business and labour clash, people tend to expect the worst – but not Labour Minister Tito Mboweni who seems unfazed by the current conflict over the Basic Conditions of Employment Bill

He is certain that the Bill will be passed this year despite the current conflict between business and labour over some of its provisions

Mboweni says a lot has already been achieved in behind-the-scenes meetings, which makes him positive that there are no serious disagreements that could scuttle negotiations at the National Economic Development and Labour Council (Nedlac) or delay passing the Bill before the end of the year

'What people don't normally see are the many discussions that take place in what I call non-existent meetings, which I sometimes also refer to as the deal-making meetings," he says

Strategic direction

"Before you publish a Bill like that, you enter lots of behind-the-scenes meetings and it is there that elements of a deal begin to emerge It is in those meetings that you can tell that this kind of proposal is likely to be acceptable or not"

Mboweni says the key to his success so far is not allowing himself to become distracted "One shouldn't allow too much distraction, there is a lot of distraction out there what I call the noise"

He says the Government is taking a strategic direction, while at the same time taking cognisance of views from other quarters such as business and labour

Mboweni says "We know where we want to go, but we are aware that where we want to go is not just determined by ourselves, but also by the views and positions of other people

"We will try and reconcile this in such a way that we don't lose direction We don't have to be arrogant, we have to take into account the views of other people"

Mboweni is well aware of the major challenge facing the Government and his ministry – that of addressing the imbalances created by the apartheid system

Historic opportunity

"There is a historic opportunity before us It is the first time black people are at the helm of government in this country in 300 years

"It's an exciting historical challenge and at the same time it's difficult to move our society from an apartheid society to a normal and humane society

"What we've done is develop a plan of action, as a summary of things we want to do

Labour Minister Tito Mboweni is addressing the challenges facing the Government and his ministry with enthusiasm.

But also as a business management plan, to be able to say this is what we would like to do in five years'

Mboweni says he has already begun to roll over the plan to 2001 "so that whoever comes in in 1999 will have a base to roll over into the next century"

'Of course they will do their own modifications, but we have laid the bases for them, in terms of streamlining the departments and putting into place an effective management system Whoever takes over will find that in place"

Mboweni is described as a perfectionist, a hard worker and "a pleasure to work with" by colleagues, his comrades in the African National Congress and some subordinates

He says when he wants something done, he wants it done exactly on deadline – as he likes to put it, "not a day later or a day before"

I like working with competent people Some people like surrounding themselves with incompetents, but the failure of these people is a reflection on your ability as leader," he says

> **'Some people like surrounding themselves with incompetents, but the failure of these people is a reflection on your ability as leader'**

He is a firm believer in structured plans and timetables 'The key thing is to be clear about what you want to do how you want to do it and the timetable

'In other words there is a strategic direction where we want to go, but we don't go there with blinkers"

Mboweni has a passion for economics and hopes to play a role in that field in the future

The ANC invests a lot of time and effort in training me as an economist, so I do want to play some role at some point around the economic question, be it in the private sector or in academia or in a parastatal institution

'But the jury is out on what I am going to do I am a cadre of the ANC and have always abided by what the organisation says I should do I come from the old school of politics that says you never seek to impose yourself on the organisation but do the tasks before you"

Although Mboweni does not like talking about his private life, he says there is one thing he would like to do most – spend more time with his mother in Tzaneen to try and re-establish family ties broken by his more than 10 years in exile

"I think when you go into exile or when you are away from your family for a long time, there is something that doesn't quite connect when you come back the gap is too wide

"I visit the old lady from time to time, but our conversations are not that long I think she is still trying to understand me, and I am also still trying to reconnect with her It's not very easy"

Business 'deliberately' links unrelated issues

Cosatu rejects job summit plan

CT(BR) 9/6/97 (166)

FRANK NXUMALO

Johannesburg — Cosatu, the trade union federation said last week it would reject any attempts to link National Economic Development and Labour Council (Nedlac) negotiations on the draft Basic Conditions of Employment Bill to a presidential job summit proposed for October.

Nowetu Mpati, a Cosatu spokesman, also accused Business South Africa (BSA) of "running away from issues" She said labour's 14-day ultimatum to business remained in force, adding that relations between business and labour had hit rock bottom "We are not on good terms with BSA We have nothing to smile at each other about"

On Thursday, BSA representatives in talks with Tito Mboweni, the labour minister, proposed that the deadlocked Nedlac talks be deferred until after the summit, a strategy seen by labour analysts as deliberately linking two unrelated issues

There is disagreement on certain aspects of the bill, especially a legislated 40-hour week, an increase in overtime pay and a four-week notice period.

"The bill has nothing to do with [the proposed] job summit. These are two different issues BSA must table fresh proposals on the bill. It is their problem if they do not want to meet our 14-day ultimatum," Mpati said

Estelle Randall, Mboweni's spokesman, said yesterday "We will wait for more detailed suggestions regarding business's proposals, but whether some parts of the bill do go to the proposed job summit, these won't in any way jeopardise the time frames set down [before the government imposes solutions if parties at Nedlac fail to agree]"

Mpati said the labour federation would not be party to an employment summit proposed by role-players other than those of the alliance, nor should any job summit by such role-players precede an alliance job summit

Cosatu welcomed Mboweni's invitation on Thursday to a labour leadership meeting to hear their proposals for breaking the Nedlac impasse Mpati said Cosatu had no problem with meeting Mboweni on efforts aimed at breaking the deadlock

BSA was not available for comment

Cosatu throws down gauntlet

One-day strike a challenge to ANC, not business

(166)

ARG 12/6/97

IS THERE A HIDDEN AGENDA BEHIND COSATU'S RELENTLESS ATTACKS ON THE GOVERNMENT'S LABOUR LEGISLATION, AND WAS THERE MORE TO THIS MONTH'S ONE-DAY NATIONAL STRIKE THAN MET THE EYE? WILLIAM-MERVIN GUMEDE AND THABO MABASO EXAMINE THE MOTIVES BEHIND COSATU'S LATEST ACTIONS

The Congress of SA Trade Unions' (Cosatu) one-day general strike has come and gone, but questions about the federation's true motives for the action linger

Observers have asked whether Cosatu is fighting against provisions in the Basic Conditions of Employment Draft Bill or pressing its ruling alliance partner, the African National Congress (ANC), to renegotiate its Growth, Employment and Redistribution (Gear) strategy

The federation's parliamentary officer, Neil Coleman, says the strike can be seen as a protest against the ANC Government's shift in economic policy

"To the extent that the elements of the Basic Conditions of Employment Act is based on the prescriptions of Gear – to undermine protection for the vulnerable, rather than extending them basic rights – then I suppose our strike on Monday is also against Gear," Mr Coleman told a meeting two weekends ago

"We don't need to apologise for that"

He said it was legitimate for Cosatu to protest against Gear, because the strategy represented a fundamental shift in economic policy from that outlined in the Reconstruction and Development Programme (RDP).

Cosatu was the main architect of the RDP policy

The Gear strategy, unveiled last year, among other things emphasises labour market flexibility and stringent control over the budget deficit by reducing it to three percent by 2000

The strategy also envisages the creation of a million jobs and a six percent economic growth rate by the year 2000.

But Cosatu says the Gear policy will lead to job losses and has asked the Government to renegotiate the strategy

President Mandela consistently has maintained that Gear is not negotiable

He has said that his government would not be held to ransom in its efforts to improve people's lives by a small group within South African society

Cosatu said it went on strike to protest at the non-inclusion of six months' maternity leave, with four months paid, and a 40-hour week, which would be phased in over five years, on the draft bill

Labour law expert Gavin Brown, however, has told the Cape Argus that Cosatu was deceiving the public by making out as if it had a dispute with the business sector.

"This disagreement is simply a mask for a much bigger dispute between Cosatu and the Government," said Mr Brown

He said the strike was used by Cosatu to tell the Government they were not happy with Gear and that the federation needed more say in formulating economic policies

"It is a mistake to see this as a dispute between Cosatu and business," he said

Yet, in spite of Mr Brown's assertion, the Department of Labour has chosen to send out different signals about its response to the dispute

Labour Minister Tito Mboweni told Business Argus that legislating a 40-hour working week, to which he had committed himself in the past, was still a priority of the Government

However, he said Cosatu's 40-hour week demand could not be implemented in one stroke

"The 40-hour week is a historical demand of the working class," said Mr Mboweni

"Whatever I think on a personal level, I don't work alone I don't determine what market conditions are," he added.

Monday's strike was the third national stoppage since the 1994 elections which brought President Mandela's government to power

That there have been problems between Cosatu and the SA Communist Party, on the one hand, and the ANC on the other, is an open secret that appears to have strained relations in the alliance

At issue has been the Government's economic policies and the pace of delivering essential relief to disadvantaged communities

The secretaries of the Western Cape region of Cosatu and SACP, Tony Ehrenreich and Phillip Dexter respectively, openly admitted this during a National Education, Health and Allied Workers Union meeting last month

The extent of the odds at which the alliance partners are, was demonstrated by the fact that the SACP fully supported the strike and hardly a whisper was heard from the ANC

During Cosatu's march to Parliament last week, ANC leaders were notable by their absence

The SACP went further and publicly chastised the ANC in a statement and said it had abandoned its constituency which consisted mainly of the poor and the working class

"The SACP expresses its solidarity and support for the Cosatu 24-hour strike tomorrow," the party's central committee said in the statement

"All attempts to block workplace democratisation in the name of competitiveness, flexibility or growth must be resisted," it added

In spite of the reported problems in the alliance, Cosatu secretary-general Sam Shilowa has denied an impending break-up of relations among the partners

"The alliance is united on the need to eradicate apartheid at the workplace and to extend worker rights and conditions that have systematically been denied over many years of oppression and exploitation," said Mr Shilowa

Despite the apparent damage the disagreements have done to the alliance, Cosatu has stood its ground and threatened another strike if business does not accept its point of view on the draft bill

"If they want to take a hard line, this is not a one-way street We'll also take a hard line to challenge them," Mr Shilowa has said.

"If they have nerves to continue the argument around workers' basic rights we will use our steel nerves to fight them"

The debate over the draft bill has, however, taken an unexpected turn with the employer organisation, Business South Africa (BSA), saying last week that negotiations on the bill should be suspended until after the presidential job summit set for October.

BSA deputy president Leslie Boyd has said business was concerned that some aspects of the draft bill could have a bearing of the summit and therefore slow job creation

Sources close to Cosatu have told the Cape Argus that the federation had expected business to take a hard line against the federation demands and did not expect a proposal to stall the negotiations until the job summit

The sources said Cosatu would hold an executive committee meeting later this month to formulate a response to business's proposal

Whatever the outcome of the Cosatu executive committee meeting on June 24, or business' response to the federation demands, one question that begs answering is how much hammering the South African economy can take, while parties settle old scores

COLIN DANIEL

Cosatu conundrum: secretary-general Sam Shilowa denies there is a split among union partners

'Disagreement is simply a mask for a much bigger dispute between Cosatu and the Government'

'Just how much hammering can the South African economy take, while parties settle old scores?'

Shilowa slates labour market flexibility calls

(166)

Fears workers will lose their rights

ARG 16/6/97

THABO MABASO
BUSINESS REPORTER

Calls for labour market flexibility are merely an attempt to strip workers of basic rights and protection, Congress of South African Trade Unions (Cosatu) secretary general Sam Shilowa claims.

Mr Shilowa spoke out at an International Labour Organisation plenary session in Geneva against those who wanted to remove the state's role in protecting workers and to "demonise" the labour movement.

Turning the clock back and removing workers' rights in the name of "flexibility", he said, would lead to exploitation and the flouting of ILO conventions It would also entrench the idea that global competitiveness could be achieved only through the use of child labour and the suppression of worker rights

"This type of flexibility will lead not to dynamism, innovation and the unleashing of the productive potential, but to stagnation and the destruction of human and natural resources," Mr Shilowa said

'We see it as a euphemism for very little or no regulation, which makes it easy for employers to hire and fire'

He said the concept needed to be closely scrutinised to ensure that it did not achieve the opposite of what was intended

"For South African workers, the reality is that effective targeted intervention is needed to overcome many of the inherited rigidities that retard economic development and introduce dynamism where there is now stagnation," Mr Shilowa said

Whatever its intentions, the concept of labour market flexibility had been discredited among workers.

"We see it as a euphemism for very little or no regulation, which makes it easy for employers to hire and fire, pay whatever level of wages, make no investment in people, deny workers a say in decision-making and have no protection for workers."

Mr Shilowa said that although Cosatu had its differences with the government, "there is also overwhelming support for the overall strategic approach being pursued to foster social justice, economic development and job creation "

Numsa's economic policy conference in Johannesburg yesterday. PICTURE: LORI WASELCHUK

telephone calls.

Numsa conference to focus on manufacturing industry's dip

BD 18/6/97

Nomavenda Mathiane

THE effect of the decline of SA's manufacturing industry would be the focus of the National Union of Metalworkers of SA (Numsa) this week, the union's acting general secretary Mbuyi Mngwenda said yesterday

The closed conference, attended by senior personnel from Numsa's nine regions, would review the union's economic policy with regard to the Growth, Employment and Redistribution (Gear) strategy and labour market issues, Mngwenda said.

The decisions of the conference will be considered by the central committee, which will meet tomorrow and on Friday to prepare Numsa's submissions to Cosatu's September congress.

Mngwenda said the conference would debate employment and job creation strategies, as well as focusing on "cluster studies"

He said the conference was taking place at a time when technological innovations were having a negative effect on Numsa members.

The union would look also at a code of conduct for foreign investors, and would examine how investors could boost labour-intensive programmes

Mngwenda criticised the "lack of commitment of local business in developing the local economy". It was an anomaly that the government was calling for foreign investors to come to SA, while local business was leaving the country.

Cosatu could answer 'rebuke' with strike

BD 18/6/97 (166)

CAPE TOWN — The Congress of SA Trade Unions (Cosatu) said on yesterday a new strike was possible over planned labour legislation following a "rebuke" to workers from employers.

"We will go with the action," Cosatu general secretary Sam Shilowa said at a news conference Asked if a strike was on the cards, he replied: "Oh yes. There is no doubt."

He said Cosatu's executive committee would meet on June 24 and 25 to decide what form the action would take, and its duration.

The labour federation held a one-day national strike on June 2 in an effort to pile pressure on business and government over new laws which would govern the basic conditions of employment

"We are going to emerge victorious. We are going to engage in action which will ensure they (employers) change their positions," Shilowa said. "It will be a response which will be commensurate with their rebuke of workers," he said.

Shilowa said Business South Africa (BSA) had effectively told workers "to go to hell" at a news conference the employer group gave in Johannesburg on June 4.

He said Cosatu thought talks in the National Economic, Development and Labour Council (Nedlac) on the Basic Conditions of Employment Bill were a waste of time. "We propose that the negotiations in Nedlac be brought to an end" — Reuter.

Zimbabweans lose 'bargain used cars' they bought in SA

Michael Hartnack

HARARE — Hundreds of Zimbabweans had found themselves stripped of "bargain" used cars bought in SA when they were impounded at the border as stolen, a police spokesman in Harare has confirmed.

He said up to 700 vehicles were held in the Messina police "pound", many of them the subject of alleged insurance frauds, in which unscrupulous former owners sell to foreigners and then claim — sometimes within a few hours — they have been stolen

Due to computerised police systems, however, details are relayed swiftly to border posts and the vehicles are intercepted and impounded

SA insurance companies had lost millions of rands through this type of fraud, said the spokesman, urging Zimbabweans to seek clearances from SA police in the area where they bought the vehicle before attempting to take it home

Impounded vehicles were eventually sold at SA police auctions in Pietersburg, but vehicles incorrectly reported stolen were returned to their Zimbabwean owners, the spokesman said

Cosatu to quit labour bill talks

ARG 18/6/97 (166)

POLITICAL CORRESPONDENT

The Congress of SA Trade Unions is poised to break off the protracted Nedlac negotiations on the Basic Conditions of Employment Bill and put its faith in its African National Congress allies in Parliament to approve its favoured version of the legislation.

Cosatu will propose in the Nedlac management committee meeting scheduled for June 27 that areas of agreement and disagreement be spelt out, technical aspects of the bill "cleaned up" and the bill introduced in Parliament without delay

Cosatu called on members to engage in lunch-hour demonstrations at workplaces, pending a decision on further industrial action An urgent meeting of the ANC-Cosatu-Communist Party alliance is to be held to reach agreement on the core issues, Cosatu general secretary Sam Shilowa said here.

"It is clear that business have no desire to see a new statute. They are happy with the present one which was drafted by them, together with the apartheid regime, at a time when the majority of workers were disenfranchised," he said.

LABOUR *Business is still committed to seeking consensus at Nedlac*

Cosatu threatens more strikes

CT(BR) 18/6/97 (166)

Christo Volschenk
ECONOMICS EDITOR

Cape Town — Negotiations on the controversial employment standards bill were pointless, and the proposed law should go straight to parliament where organised labour was confident of getting its way, Sam Shilowa, the general secretary of Cosatu, said yesterday

Shilowa also raised the possibility of further strikes to enforce labour's demands on the legislation Cosatu organised a 24-hour work stoppage on June 2

Analysts believe if the Basic Conditions of Employment Bill was presented to parliament in its present form, organised business would need to lobby parliamentarians to fight its corner.

Shilowa said the National Economic Development and Labour Council's (Nedlac) management committee would be asked on June 27 to stop negotiations since "no amount of negotiations in this body would bring agreement on the bill"

"We have had enough of negotiations and want government to table the bill in parliament without delay," he said

Other senior spokesmen for Cosatu said yesterday they were sure the ANC majority in parliament would pass the bill in the form organised labour wanted

Neil Coleman, a Cosatu spokesman, said the bill was "the workers' constitution" and, as such, the "public sector would have no other option but to accept it".

But Cosatu was leaving nothing to chance and announced a provisional plan of action yesterday, including lunch-hour demonstrations at work places, to put pressure on parliament

The Cosatu executive committee would decide on a comprehensive plan of action, which might include strikes, when it meets on June 24 and 25, said Zwelinzima Vavi, the assistant general secretary

After 14 months of negotiations in Nedlac, business and labour deadlocked on five issues — paid maternity leave, hours of work, pay for Sunday work, prohibition of child labour, and whether these rights should be flexible downwards

Last week Business South Africa (BSA) suggested ways to break the deadlock in a meeting with Tito Mboweni, the labour minister These included postponing negotiations until after the presidential job summit in October Yesterday Cosatu rejected all the BSA proposals, and criticised efforts by business "to win over comrade Mboweni to its side"

Cosatu kept the door to the job summit open, saying it would like to meet the ANC "to work out a strategy to create jobs and agree on an approach to the job summit".

Frank Nxumalo reports from Johannesburg that business is still committed to seeking consensus at Nedlac.

☐ **Business Watch, Page 18**

CONFIDENT *(from left) Cosatu's Zwelinzima Vavi, Sam Shilowa and Connie September believe the ANC majority in parliament will pass the Basic Conditions of Employment Bill to suit labour's requirements if it is tabled immediately* PHOTO ANDREW BROWN

BUSINESS DAY, Thursday, June 19 1997

Business SA criticises Cosatu's threat of strikes

BD 19/6/97 (166)

Kevin O'Grady

BUSINESS SA (BSA) criticised the Congress of SA Trade Unions (Cosatu) yesterday for threatening strike action over the Basic Conditions of Employment Bill, and said Cosatu's ultimatums were hindering wider agreement on the legislation.

BSA was responding to Cosatu's announcement on Tuesday that it would ask for an end to negotiations on the bill in the National Economic, Development and Labour Council (Nedlac) and would prefer it to go directly to Parliament

Cosatu assistant general secretary Zwelinzima Vavi said action would be planned, possibly including strikes, to put pressure on Parliament

A BSA spokesman said business accepted that the bill, ultimately, would be referred to the parliamentary process

However, it did not believe outstanding issues could be "effectively finalised only as a matter of political judgment"

After 14 months of negotiations in Nedlac, business and labour are still deadlocked on the issues of paid maternity leave, hours of work, pay for Sunday work and the prohibition of child labour

The BSA spokesman said the issues raised "deep concerns of economic, commercial and social interest which needed to be debated by the parties directly affected and balances found which the parties can live with"

"Outcomes which favour one party at the expense of the other will inevitably be to the detriment of economic growth, employment levels and industrial peace."

Labour standards which were advanced to the detriment of the viability of enterprise would have a devastating effect on the SA labour market and the economy.

The spokesman denied Cosatu's allegations that business had been unyielding in its negotiations, saying it had made several important concessions which carried substantial increases in the cost of labour

Business was not aware of any corresponding compromises from Cosatu, which had "persistently retreated to opening positions".

All affected stakeholders would need to be included in further deliberations Nedlac should continue to play a facilitative role, business believed

Labour Minister Tito Mboweni declined to comment yesterday on Cosatu's announcement

Our Port Elizabeth correspondent reports that Democratic Party leader Tony Leon warned last night that if Cosatu was allowed to proceed "unchecked and unhindered on its present course" the Growth, Employment and Redistribution (Gear) strategy would become irrelevant

Leon was addressing a public meeting in Port Elizabeth He said Cosatu's latest demand that the Employment Standards Bill should go directly to Parliament and bypass Nedlac, if implemented, will destroy Nedlac as an institution — and the social partnership promised "

Leon said it would also confirm that Cosatu played by the book for as long as it got its own way "When the going gets rough, Cosatu tears up the rule book "

Govt, unions under fire over labour bill

BD 20/6/97 (166)

Greta Steyn

THE Reserve Bank has taken a swipe at labour and government in its latest Quarterly Bulletin, saying planned changes to basic conditions of employment could be bad for jobs

The warning on the Basic Conditions of Employment Bill was one of the minuses in the Bank's quarterly "report card" on the economy

The bulletin paints a picture of an economy which has just entered a downswing, with many short-term indicators still moving in the wrong direction and not enough progress on important structural issues

However, it was not all bad news, with some of the items on the Bank's economic checklist performing well.

The Bank was openly critical of proposals on basic conditions of employment, which it said could lead to an increase in the costs of labour The plan "could have adverse implications for the overall level of formal sector employment in the economy"

The decline in job numbers last year took the overall fall in formal employment to 7% from 1989 to last year

The bulletin made the point that job creation depended on wage growth It noted a small rise in employment in the last quarter of last year, which had coincided with a slowdown in the rate of growth in the cost of labour — as had been the case during previous periods of employment growth

For the year as a whole, however, employment was still down last year from 1995 By contrast, real remuneration a worker was up 0,5% last year, compared with a projected fall of 0,5% in the growth, employment and redistribution strategy

The bulletin noted that the current account deficit was R1,9bn in the first quarter — an increase from the tiny deficit recorded in the last quarter of last year Export volumes had fallen 5,5% from the previous quarter, which had outstripped the fall of 0,5% in import volumes on a seasonally adjusted and annualised basis

The capital account of the balance of payments made up for the disappointment on the current account The bulletin said the net capital inflow for the first quarter was R3,6bn compared with an inflow of only R3,9bn for last year as a whole As a result, SA's net gold and other foreign reserves increased by R1,7bn in the quarter

On the spending front, there was good news in the fact that fixed investment spending was holding up well despite a prolonged period of high real interest rates Overall fixed investment was up 2% quarter on quarter, seasonally adjusted and annualised

The manufacturing sector did particularly well, notching up a real rise of 4,5% The sector had performed well in the first quarter and indications were that it would continue to do so "It is conceivable that the resilience of manufacturing output growth might be a stabilising factor in 1997"

However, overall spending was slightly lower, largely reflecting a running down of inventories Private consumption expenditure also performed weakly, rising only 0,5% as a result of a fall in spending on durables such as cars, furniture and household appliances The changes are real, seasonally adjusted and annualised quarterly changes, unless otherwise stated

But the slowdown in the economy was not enough to dampen the demand for credit and keep a lid on money supply The bulletin said "Such monetary expansion, if left unchecked, would inevitably have serious repercussions on

Continued on Page 2

Reserve Bank

Continued from Page 1

inflation expectations and ultimately on inflation itself."

The Bank also took a dim view of the country's savings performance, which it described as "extremely low"

The ratio of gross domestic saving to gross domestic product (GDP) had fallen to 15,5% in the first quarter from 16,5% in the fourth quarter of last year. It blamed government's practice of using long-term capital to finance consumption spending for contributing to the problem The country's savings "warrants urgent attention in view of the need to bolster employment enhancing fixed investment in the economy".

With little incentive being provided to the private sector to strengthen savings, the low national savings ratio was likely to prevail for some time

The lack of domestic savings meant the economy was becoming more and more dependent on foreign capital

The Bank refrained from giving full marks to government for its fiscal policy performance, noting that tax and spending were still too high as a percentage of GDP

LABOUR RELATIONS ACT

(166)

FM 20/6/97

Department set to bite back

Consultants making a killing out of new union registrations

The Labour Department is set to recommend key amendments to the Labour Relations Act (LRA) following a spate of new union registrations

Since the Act was legislated in November more than 100 new unions have sprung up — nearly one-third of the total register Some of these have as few as eight members, says the department's deputy registrar, Johan Crouse

But what has set the alarm bells ringing for the authorities is the questionable validity of many of the new bodies, as labour consultants allegedly cash in on the trend

Some consultants are said to be actively encouraging small groups of workers to register Some charge R500 just to look at a labour dispute, whether it is a single or multiple action If they undertake to handle a case they can charge up to R24 000, depending on the duration of the action

Tito Mboweni *to be asked to amend the Labour Relations Act*

Before the introduction of the LRA, consultants had no access to the Commission for Conciliation, Mediation & Arbitration (CCMA), as the body recognises only registered unions and employer organisations Registration gives consultants access to more work opportunities arising from the commission

Labour Department chief director Jeremy Baskin says the new Act makes it simple for unions to register The mushrooming of unions to a total of 385 is not purely because workers are disillusioned, he says

"Many labour consultants register trade unions purely out of self-interest"

He would not spell out the department's proposed amendments to the LRA, but indicated these would require more stringent union qualifications

National Union of Metalworkers information officer Dumisa Ntuli agrees that the interests of consultants are behind the formation of many of the new unions

But labour consultant Brian Allen says the Act is to blame as its provisions encourage new unions Registration gives several benefits such as access to collective agreements, bargaining and statutory councils, organisational rights and closed shop agreements

However, Metal & General Workers Union spokesman Jeff Rampou says worker disillusionment with large unions and federations is a major factor in the growth of small unions Some federations, he maintains, are too closely aligned with political parties and act in accordance with ideology instead of serving workers' interests

Ellias Maredi, chairman of the newly formed, 137-member Petrol & Garage Workers Union, says his union grew out of disaffection with the federations' neglect of workers in small businesses Each of his members pays a monthly membership fee of R10

Time will tell if Labour Minister Tito Mboweni will take effective action against labour consultants who are milking the present system

David Sedumedi

Stals lifts silence on costly labour policies

ST(BT) 22/6/97 (166)

ANC alliance lashes out at Reserve Bank for 'biased' protest, writes SVEN LUNSCHE

A major political row is brewing over the Reserve Bank's attack on the government's bevy of labour legislation

The Bank, in its Quarterly Bulletin released this week, joined the business sector in citing the inflexible labour market as one of the main barriers to job creation

The Bank warned that the array of labour laws, including the controversial Basic Conditions of Employment Bill, "could have adverse implications for the overall level of formal employment"

On Friday, the African National Congress and Cosatu fired a broadside at the Bank for an "inappropriate intervention" on labour policy

"The Reserve Bank, which is supposed to be independent, has no business whatsoever intervening in a biased way in this matter," the ANC said in a statement

Cosatu attacked the Bank for siding with big business and called for an urgent restructuring of its board

The Bank's criticism follows its assessment of employment trends which show that job levels fell by a further 1 1% last year when the economy registered 3% growth The decline last year means that over the past seven years almost 422 000 workers — 7% of the workforce — have lost their jobs over a period when investment in the economy topped R500-billion

In an address to foreign exchange traders in Canada last month, Reserve Bank governor Chris Stals linked the unemployment problem to the rising rate of crime and violence "The need to address this problem urgently is now recognised by the government as the major challenge for securing almost all social, economic and political objectives," he said

The acute unemployment problem remains the most visible and damaging failure of the government's macroeconomic strategy According to the strategy's scenario, 126 000 jobs should have been created last year, 250 000 jobs this year and next, 320 000 in 1999 and 400 000 in 2000

The government has so far rejected any suggestions that steep labour costs have contributed to rising unemployment It has backed Labour Minister Tito Mboweni's labour laws, generally viewed as union-friendly

However, senior government officials are beginning to voice their concerns at the poor job-creation figures at a time when growth and investment are performing well.

In April a number of his Cabinet colleagues warned Mboweni that the Basic Conditions of Employment Bill was too costly to implement in the public service

The Bill is currently the subject of a heated debate between labour, business and government, who are trying to thrash out a compromise at Nedlac Cosatu held a one-day strike to press its claims for a better deal this month and is threatening new action

In its criticism of the labour market, the Bank makes specific reference to the Basic Conditions of Employment Bill and Mboweni's proposed business levy to fund training and education

"To the extent that the implementation of these proposals could lead to an increase in the costs of labour, it could have adverse implications for the overall level of formal sector employment in the economy," the Bank warned

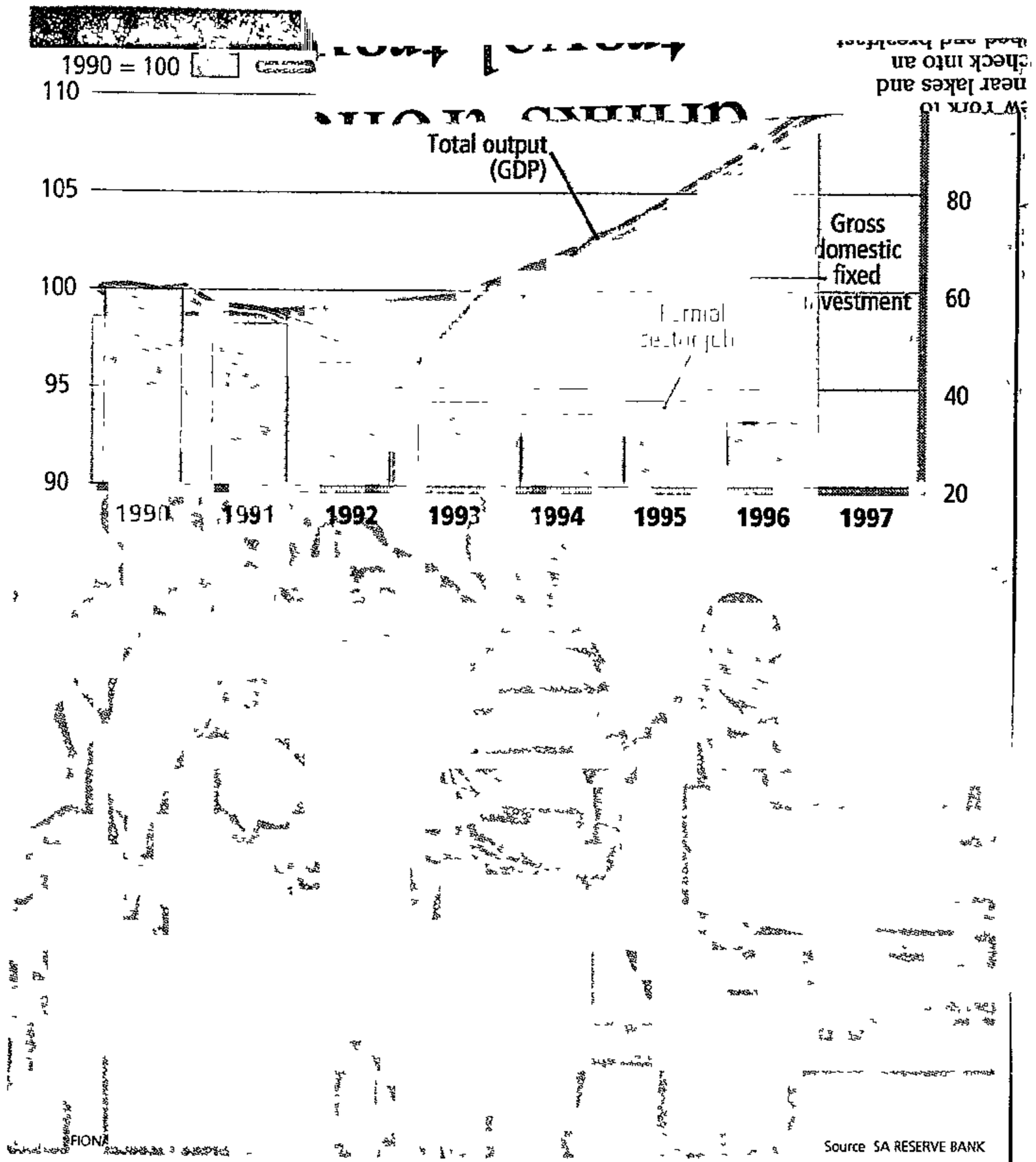
The Bank has been a persistent critic of high labour costs without concurrent improvements in productivity, pointing to the adverse impact of these trends on inflation, growth and joblessness

This week's attack on the labour laws is the first time the Bank has transcended its focus on broad economic trends and honed in on specific government policy It appears Bank officials, headed by Stals, are frustrated at the failure to get the message across to the government

The official unemployment rate is conservatively estimated at 30% of the economically active population

The 7% fall in employment levels over the past seven years was accompanied by 10% economic growth and total fixed investments of almost R520-billion According to the Bulletin, fixed investment hit a record R92 6-billion last year

The discrepancy between investment and unemployment can be partially explained by the need for SA companies to invest in technology in order to compete with offshore companies. But it is foremost an indication that labour is proving too expensive and inflexible



Cosatu sticks to its guns on jobs summit

(166) CT(BR) 23/6/97

FRANK NXUMALO

Johannesburg — Cosatu said last week it was prepared to meet the ANC to discuss the proposed presidential jobs summit in October, although the union federation remained opposed to any linking of the summit with the draft Basic Conditions of Employment Bill

Cosatu's Nowetu Mpati said any linking of the two, as proposed by business, "amounted to [illegible] the need to transform the workplace"

"We remain open to a meeting with the ANC on a strategy to create employment and together we will agree on an approach to the summit," Mpati said

She said labour had yet to receive an official response to its June 2 ultimatum to business

"In a (June 2) march in Johannesburg, we indicated to Business South Africa (BSA) that we would want a response to our demands within 14 days .. but we have yet to receive a formal response from BSA," Mpati said.

"However, we would be wrong to say that they have not responded at all as on June 4, at a press conference, they indicated that they had no intention of responding to us within the specified period."

BSA said it wanted a meeting at a senior level with labour and the government and that the proposed legislation be delayed until after the summit, or that it be passed without the disputed sections.

Small businesses may be granted exemptions

Mboweni plans changes to Labour Relations Act

CT (BR) 24/6/97 (166)

Christo Volschenk

ECONOMICS EDITOR

Cape Town — Tito Mboweni, the labour minister, was considering amendments to the new Labour Relations Act to make it easier for small businesses to get exemption from wage agreements brokered in sectoral bargaining councils

In some industries bargaining councils have been loath to grant small businesses exemptions from the basic standards of employments set in council agreements — including minimum wages payable — sometimes endangering the businesses and the jobs they provide

Mboweni was looking at changes that would make councils more forthcoming with exemptions by amending the act to allow partial exemptions for the first time.

Among the industries that engage in industry-level wage bargaining through bargaining councils are the clothing, textiles, motor, engineering and furniture sectors, and the public service In most of the service, transport and telecommunications, finance and large parts of the manufacturing sectors — such as food, printing, paper and chemicals — wages are determined through company-level bargaining

"The act requires of small businesses to apply to bargaining councils for exemption from agreements Many councils provide applicants with easy exemptions We want to encourage exemptions, and to that end are considering amendments to the act," Mboweni said in his formal reply to a question in the national council of provinces last week

The new act virtually obliges Mboweni to extend an agreement — reached in a bargaining council by over 50 percent of the industry — to non-parties in the industry regardless of the firm's size. Small businesses may then apply for exemptions

Mboweni was not available for comment yesterday, but labour experts said he might be giving serious thought to the Labour Commission's proposal that he should have greater discretion in deciding whether or not to extend agreements.

The commission also recommended amendments to the act to allow councils to give partial exemptions from agreements

"A council should be able to give an applicant exemption from parts of the agreement reached in the bargaining council for a specific period For example, a new small business might only be required to pay a percentage of the minimum wage, and as the business gets established the percentage could rise," the council proposed in its report to Mboweni last year

Cosatu retreat would betray workers

(166)

Cosatu general secretary **Sam Shilowa** takes issue with recent Business Day editorials on flexibility in the labour market

BD 25/6/97

IT IS almost 16 months since the green paper on employment standards, now known as the Basic Conditions of Employment Bill, was published by Labour Minister Tito Mboweni

Negotiations started in April last year with the exchange of party positions From the onset, it has been clear that business and labour have different expectations from the new statute

Business sees it as an instrument to reintroduce the dual labour market, which was a central feature of apartheid labour legislation, at a time when the majority of South Africans were disenfranchised

Business also wants to reverse or stop any gains achieved by workers since the early '70s Despite its "support" for the minister's five-year plan, business remains opposed to any progressive legislation that improves the rights of workers

It is often argued that the positions of big business are aimed at smooth implementation of government's growth, employment and redistribution strategy (Gear) This is being economical with the truth As Business Day has begrudgingly acknowledged, business's hand was revealed in the SA Foundation strategy document, wrongly titled Growth for All In it, the captains of industry argued for a dual labour market system in which some workers will have no rights, save maybe for health and safety regulations

While business has appeared to retreat slightly from this position, the proposals on downward variation of basic standards will amount in essence to a dual labour market, where those who are better organised have one set of rights, and those who are unorganised or in vulnerable industries have little or no protection

Their hours of work would be at the mercy of the "baas" Women would have virtually no parental or family rights

In other words, conditions of employment would be changed willy nilly to suit employers' desire for cheap labour under the guise of global competitiveness. All of this under a democracy which many workers lost their lives to bring about

This is the agenda of business which Business Day editorials ask us to accept We have been told to reach an agreement with business since we are "likely to lose" in the parliamentary process

This proposal underestimates the political will in the alliance and among parliamentarians to bring about changes that are beneficial to workers

Ironically, there is nothing new in this advice The commercial press, including Business Day, has always been against our positions, be they the VAT struggles, the Labour Relations Act or the lockout If we followed their advice we would have abandoned our struggle for better rights in legislation and the constitution

Just a few weeks ago, Business Day irresponsibly advised employers to sit out the June 2 strike, as a worthwhile price to pay in favour of "flexibility" If there are any positions that need to be revised it may be those of business and the commercial press

What is business's understanding of flexibility? It was recently outlined by their "shop steward", DP leader Tony Leon, in Parliament as the ability to hire and fire with ease, more working hours, ability to change conditions of employment to suit employers' needs, and lower wages

Recently those opposed to the improvement of worker rights were joined by Reserve Bank governor Chris Stals, who, in line with his board which is composed of employer representatives, warned against the adoption of the Basic Conditions of Employment Bill and the skills development green paper as they would increase labour costs.

If it was not such a serious matter for workers, we would just laugh at Stals A glance at all his bulletins, dating as far back as 1994, reveals that he is against improvement of worker rights, better pay for workers or the closing of the wage gap.

Cosatu rejects with contempt any attempt to quarantine the labour market from meaningful changes that are beneficial to workers When we struggled to end apartheid, we fought to end it in all its forms.

For our part, we see the role of the statute as addressing the legacy of exploitation which faces millions of workers — the cheap labour system which was the centrepiece of apartheid and remains the harsh reality for the majority of working people

The primary purpose of the statute must be to provide a floor of basic conditions of employment for all workers, particularly the unorganised and the vulnerable

These include the regulation of reasonable working hours, overtime payment, maternity leave and ensuring that basic standards are not diminished either by collective bargaining or ministerial powers, but rather can only be improved upon

These are in line with the broad strategies of the entire democratic movement over decades of struggle for better working conditions.

As a movement, we have always supported a 40-hour working week, paid maternity leave for women, as well as better working conditions The labour minister, at numerous union congresses, confirmed this view which has been the position of the ANC since adoption of the Freedom Charter

Suggestions have been made that our actions are directed at government or that we are fighting Gear Nothing could be further from the truth Our demands are as old as the history of the labour movement

Even if there was no Gear, we would have adopted the same positions Indeed, both the green paper and our responses were tabled before Gear At the same time, we have never hidden our opposition to Gear

As we prepare for our congress we are also developing responses to the failure to adopt macroeconomic policies which places the needs of society at the centre. Gear is only a factor in the negotiations to the extent that it may be informing both the government and business mandates

It is not enough to say that no one proposes a return to sweatshop-type worker rights, yet oppose a move away from apartheid legislation

The challenge is to explain to us whether there is agreement that women have a right to paid maternity leave, that the state must regulate for better working hours, that a floor of rights once given should not be diminished but rather be improved upon

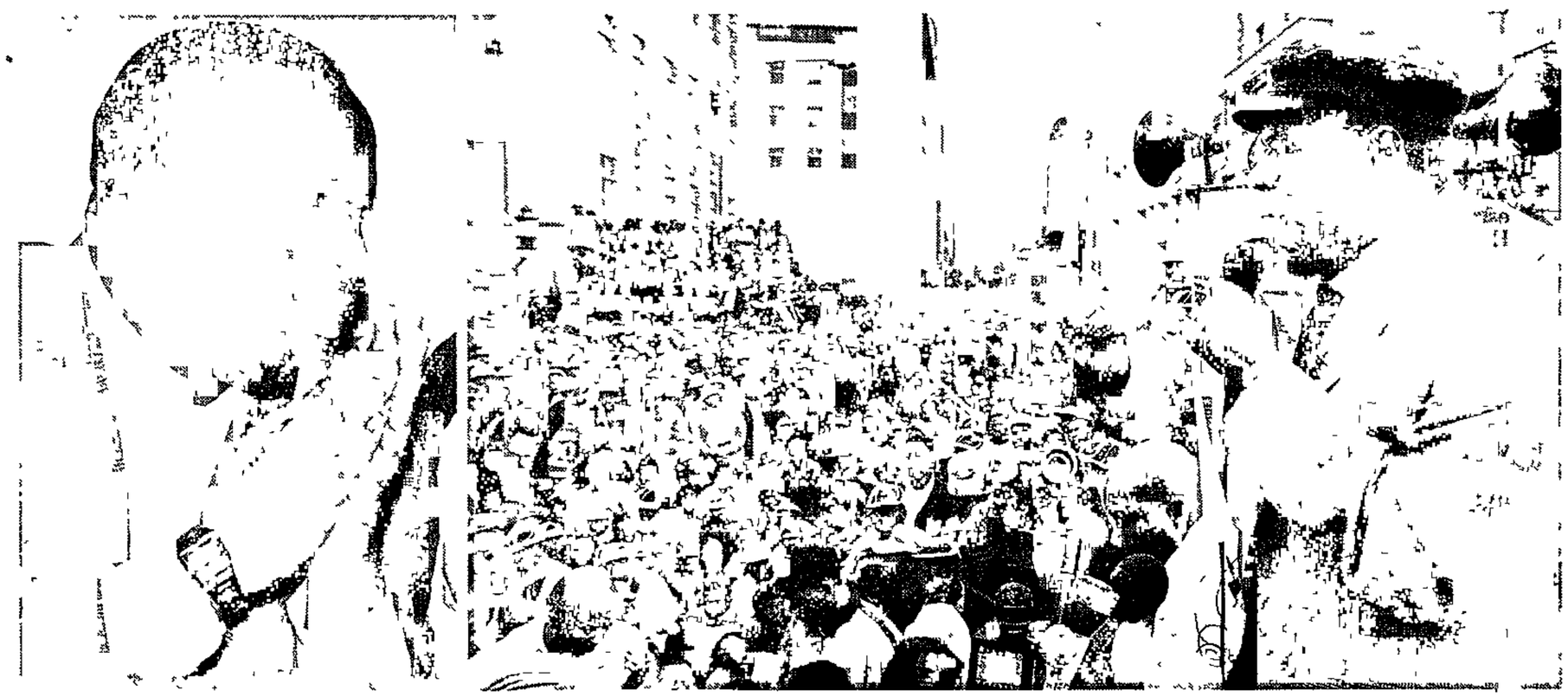
We are confident that our positions will find backing within the alliance and in Parliament The majority of the ANC's constituency comes from the working people Our proposals are legitimate and reasonable Just as we resolved our differences and adopted a common approach to the constitution, the same will happen here Those who are hoping for an alliance between the ANC and business on the bill are mistaken It is not them who will have the last laugh

As for the suggestion that Cosatu should develop new or retreating positions, this we reject as silly

Even though I do not believe that we will lose on this one, I also believe that it is far better to lose with dignity than settle for an unacceptable compromise

In that unlikely event, I would be prepared to go to workers and explain that, as in Gear, employers have scored a significant victory, rather than lie to workers

It will then be left to historians to judge the correctness of our positions Anything else would be a betrayal of the workers who have elected us to represent their interests



Labour minister Tito Mboweni, left, and Cosatu's Sam Shilowa ... still fighting a legacy of exploitation of workers

COSATU & THE ANC ALLIANCE

Big stakes as Cosatu goes for broke

(166) FM 27/6/97

The labour federation embarks on a power struggle for the hearts and minds of the rump ANC

Shilowa (left) and Mboweni allies for much longer?

Cosatu has put its embattled alliance with the ANC and Communist Party at risk as it tries to force its will on the Basic Conditions of Employment Bill

By abandoning the Nedlac consultative process with government and business and taking its demands directly to parliament, Cosatu is forcing ANC backbenchers to choose between their leadership and the union federation, say ANC MPs

If Cosatu wins the vote, it would humiliate the ANC leadership over its economic blueprint, the Growth, Employment & Redistribution (Gear) strategy — with calamitous consequences for party unity But if Cosatu loses, it risks crippling its partnership with the party just two years before a national election, for which the ANC would hope to have union support

The ruling party this week received blows from proponents of Gear in business and the Reserve Bank The Bank accused government of trying to over-regulate the labour market Cosatu hammered the party for not wanting to regulate enough

In a memorandum handed to ANC MPs over the weekend, Cosatu expresses confidence that the parliamentarians will give it their backing "as comrades in parliament are well aware of the conditions and expectations of SA's workers "

Cosatu spokesman Nowethu Mpati said she expected most women parliamentarians to support labour's demand for six months' paid maternity leave She did admit, however, that the federation's tactic carried "severe risks "

Labour analyst Gavin Brown says it would be "so politically unpleasant" for the ANC and Cosatu to scrap in parliament that it is unlikely to happen

"What will probably happen is that there will be a deal between the ANC and Cosatu to ensure that there is no public split, that would be too damaging for both "

If no such consensus is reached, the fight will be waged in parliament's Portfolio Committee on Labour

One MP says ANC whips might instruct parliamentarians to vote for a business-friendly Bill and so further alienate Cosatu

But a compromise may yet be hammered out before it gets to a National Assembly vote The Bill must go to the Labour Committee before reaching the Assembly

Committee chairman Godfrey Oliphant says the Bill could be changed in the committee stage to suit all sides It would probably come up for committee discussion in August or earlier if the parties wished

Business SA has proposed that Deputy President Thabo Mbeki convene a labour-government-business leadership meeting to reach a compromise, but this has yet to be confirmed

Oliphant said he would have preferred agreement to have been reached in Nedlac, but his committee would exercise its prerogative if necessary ANC MPs say they fear business and Cosatu are unable to reach agreement because of animosities built up over recent years

"After all the mud-slinging around Cosatu's June 2 march, there is such animosity that one does not know if they can work together again," says one MP

Cosatu secretary-general Sam Shilowa said this week the federation would mount action "commensurate to business's arrogant rejection of our demands " This would include pickets, strikes and other forms of mass action

The Bill provides for a 45-hour working week and for four months' maternity leave but makes no reference to payment

Cosatu wants six months' maternity leave, of which at least four must be paid, a phased-in 40-hour week within the next five years and a double rate for anyone who works more than four hours on a Sunday

Shilowa reiterated his insistence that the federation's actions were not aimed at government, but at business

The ANC's frosty silence on the Bill is a further sign that the alliance is under strain The party used to speak in solidarity with Cosatu street protests But it said nothing about Cosatu's June 2 marches

One irony about the fight over the Basic Conditions of Employment Bill is that some of Cosatu's demands are already in practice

For example, a labour committee MP said that most industry sectors had already agreed with their unions on a 40-hour week to be phased in over five years Most unionised workers were already working to a reduced 43-hour week

Sacob labour director Gerrie Bezuidenhout said business was not against six months' paid maternity leave — the problem was putting it into law and forcing it on businesses, particularly small enterprises, which cannot afford it

Justice Malala

CT 27/6/97 (166)

Cosatu to strike again at business

SAM PLAYS IT AGAIN: Cosatu secretary general, Sam Shilowa

JOHANNESBURG· A series of provincial and national strikes was announced yesterday by the Congress of SA Trade Unions (Cosatu) after a two-day meeting of its executive committee

Cosatu secretary-general Mr Sam Shilowa said the action was aimed at business for its opposition to some provisions of the Basic Conditions of Employment Bill, soon to be voted on by Parliament He described the dispute as a war Business had thrown down the gauntlet to labour, and Cosatu had taken up the challenge

He said business had drawn a line beyond which it would make no concessions, and Cosatu had reached its bottom line as well

Negotiations on the issue have deadlocked in the National Economic Development and Labour Council

Shilowa said Cosatu would strike on August 4 from 10am to 11am countrywide Regional strikes would follow on a daily basis, starting on August 18 in the Eastern Cape, August 19 in KwaZulu-Natal and Mpumalanga, August 20 in the Northern Cape, Free State and Western Cape and August 21 on the Witwatersrand and in Cosatu's northern and western Transvaal regions

A strike is also to be held on the two days to be set aside by the National Assembly's committee on labour, when business and Cosatu are to make their submissions on the bill

"We hope that these actions will send a clear message to business that we are serious about our demands," Shilowa said.

He added that Cosatu would ask the TRC to hold a special hearing into alleged collaboration between business and the police in the apartheid era, which had led to the deaths of workers —Sapa

● See Page 17

Cosatu calls strikes to protest against bill

(166) Star 27/6/97

STAFF REPORTER AND SAPA

The Congress of South African Trade Unions (Cosatu) has planned a series of one-day provincial and national strikes against the position of business on the Basic Conditions of Employment Bill, which is soon to be voted on by Parliament.

Cosatu general secretary Sam Shilowa told a press conference in Johannesburg yesterday, after a two-day meeting of its executive committee, that the dispute with business was a war

He said business had drawn a line beyond which it would make no concessions and Cosatu had also reached the bottom line in its concessions to business

Cosatu is demanding a 40-hour working week and six months' maternity leave, at least four months of which should be paid

At the moment, employers are giving workers three months' maternity leave.

Government is proposing an ordinary 45-hour working week, which currently ranges from 46 to 68, depending on the type of work, and four months' maternity leave,

Shilowa calls dispute with business 'war'

but no agreement has been reached on payment.

Negotiations on the issue have deadlocked in the National Economic Development and Labour Council (Nedlac)

If the bill is finally passed into law by Parliament, it will replace the Basic Conditions of Employment Act and the Wage Act, and lay down the basic working conditions for workers countrywide

Shilowa said Cosatu would hold a countrywide strike on August 4 from 10am to 11am

Other strikes would be held on August 18 in the Eastern Cape, August 19 in KwaZulu Natal and Mpumalanga, August 20 in the Northern Cape, Free State and Western Cape

And Cosatu's Witwatersrand, northern and western regions would go on strike on August 21

Cosatu would also strike on two days yet to be set by the national assembly's committee on labour, when business and Cosatu will make their submissions on the bill

"We hope that these actions will send a clear message to business that we are serious about our demands," Shilowa said.

Behind Cosatu's strategies lies a consistent vision

(166)

CT(BR) 27/6/97

Today, at a meeting of the National Economic Development and Labour Council (Nedlac), the Cosatu trade union federation will table a motion to put an end to talks on the controversial Basic Conditions of Employment Bill.

Although business and the government are keen to reopen talks in Nedlac, the Cosatu unions have resolved to call it a day — and to try to force the matter to parliament

Cosatu should also, by today, have announced plans for further industrial action to underline its contention that the bill be amended At the same time, Mbhazima Shilowa, Cosatu's general secretary, has prepared the ground for a possible defeat in parliament.

Although Cosatu lobbyists have gained the verbal support of a majority of ANC members of the national assembly, neither the ANC nor its allies will push the matter to an explosive conclusion the cabinet will probably have its way in the end

Hopes within the labour movement that the cabinet might be split, especially with former trade union militant and Communist Party (SACP) member Alec Erwin being trade and industry minister, have evaporated.

TERRY BELL

Erwin was apparently one of the parliamentarians who argued hardest that the country could not afford the 40-hour week which is central to Cosatu's demands.

To continue talking at Nedlac implies that labour is prepared to make further concessions Cosatu is not prepared to face this

Yet despite the public utterances by Shilowa and his deputy, Zwelinzima Vavi, about confidence in a parliamentary victory, it is privately acknowledged that defeat is on the cards

But a defeat in parliament would be "a defeat with dignity" Cosatu would not have given way in face-to-face confrontation with the bosses and the government

ANC MPs would also have to answer for their betrayal of ANC policy to the ANC membership, probably at the December congress of the ANC

The triennial Cosatu congress in September will almost certainly not have to confront the issue, since the labour conditions bill is unlikely to be tabled for its first reading until September 15, when the congress starts

The submission of the bill will also signal the start of a 48-hour strike aimed at highlighting the strength of feeling against the government's proposals

But there is concern at the highest levels in Cosatu about how successful a strike may be, since there is apathy within the labour movement.

Even the Cosatu executive meeting this week initially had difficulty obtaining a quorum, and the country's major union, the miners' NUM, reportedly never showed up

The call for a complex four-day series of strikes in August could be difficult to sustain The Cosatu proposal pairs off the eight Cosatu regions in the country, with each provincial pair given responsibility to stage a 24-hour strike, covering a Monday to a Thursday.

This is a lower level of action than that threatened earlier by the Cosatu leadership But it is more than some members at the executive meeting initially wanted.

It seems that only the traditionally militant chemical workers' union, CWIU, and the municipal workers' Samwu, favoured the "French option". a series of three- and four-day general strikes which were put forward earlier this month by the Cosatu leadership

The 48-hour general strike resolution was a compromise from the militants, and backed by Numsa, the metalworkers' union, the country's second-largest union, after much debate

The other area of debate concerned the linkage between the basic conditions bill and the government's growth, employment and redistribution (Gear) policy

Shilowa has publicly refuted such linkage, using the argument that the Basic Conditions of Employment Bill would have been opposed whether or not Gear existed This ignores the fact that the bill exists in its present form because of the demands of Gear.

At the Cosatu executive this was apparently pointed out in no uncertain terms — and finally agreed

However, tactically, a dichotomy will still be stressed in public statements What this underlines is that Cosatu's political bottom line remains consistent: the ANC-led alliance must remain intact

Cosatu planning a series of strikes

BD 27/6/97 (166)

Reneé Grawitzky

THE Congress of SA Trade Unions (Cosatu) would stage 24-hour strikes in each province from August 18-21 and two national strikes, possibly in September, it said yesterday.

Cosatu general secretary Sam Shilowa said the action in support of core demands on the Basic Conditions of Employment Bill was directed at business, not government. The federation said it regretted the hardening of attitudes on the part of business which wished to preserve "apartheid legislation in the labour market" It was an "ideological war" with business drawing the line to fight transformation to ensure flexibility at all costs

Business SA expressed shock at the plans and called on Labour Minister Tito Mboweni to initiate a meeting.

Shilowa said national strikes would be called to coincide with the presentation of labour's and business's submissions on the bill to the parliamentary standing labour committee. Cosatu had no reason to doubt the African National Congress and was confident of its backing. The federation believed an agreement could be hammered out in the alliance but this was not the case with business, hence the call for action.

SA Reserve Bank governor Chris Stals also came under fire in the wake of the release of the March quarterly report which questioned the effect of the bill on employment. Cosatu assistant general secretary Zwelinzima Vavi said Stals could no longer claim his independence and ride on the backs of other political parties to realise his conservative policies.

Shilowa said Stals was trying to deflect attention from his monetary policies, which were coming under increased scrutiny by economists, and was trying to blame the labour market.

BSA said Cosatu's plan was irresponsible and would put the economy and job creation at risk and harm SA's international image.

Business rejected a war of attrition to resolve conflict and saw the action as being opposed to the philosophy underlying the National Economic, Development and Labour Council.

Cosatu had not changed its mandate on the bill and the only way forward was through negotiation.

Overhaul of labour practices a necessity

(166) BD 27/6/97

Labour Minister **Tito Mboweni** responds to an editorial in Business Day earlier this week, and puts the case for proposed new labour legislation

BUSINESS Day's editorial, Touching a raw nerve (June 23), raises issues pertaining to the debate on the relationship between wage costs and employment creation which require clarification.

The issues have been given some prominence recently as a result of the comments in the Reserve Bank's Quarterly Review which prompted your editorial

The Reserve Bank has every right and responsibility to present to the country the state of the economy and, if it so wishes, comment on labour market policies and their possible effect on overall economic growth and employment and on how these policies relate to other policies that the Bank itself is pursuing — and that government in general is promoting

Yet such comments should be made judiciously, especially in cases where there is much in dispute with respect to the actual facts and with respect to the possible impact of proposed policies on the economy

That the Bank comment was ill-advised is easily demonstrated by the emotive reactions to it (a mere paragraph that is speculative in its expectations), and this in an area in which it does not have a mandate or competency. Incidentally, the reports of the Bank are not the "holy book" on the economy

Yes, it is true that labour costs have an effect on employment, and it is true that labour market polices may also have an effect on labour (wages, salaries and benefits) The issue, however, is more [illegible]d than that And this is [illegible] issues ends [illegible] to ask ourselves [illegible] labour costs signifi- [illegible] employment, and, more pointedly, whether labour costs are the fundamental cause of, and solution to, high SA rates of open unemployment and underemployment (low return forms of employment such as those in the informal and subsistence sectors)

Second, we need to ask ourselves whether we need to promote any form of employment, even if the working conditions might be an affront to our moral sense of justice and fairness, and even if such employment — while beneficial to the parties involved — might entail a high social cost to society at large.

It may be recalled that the market has historically operated in the context of, and taken advantage of, slavery, feudalism and semifeudalism, fascism, totalitarianism, and apartheid

And when struggles to eliminate these abhorrent appendages to the market emerged, private beneficiaries of these decadent institutions argued that their abolition would hurt the workers involved and that they would result in increased costs of production

Third, we need to ask ourselves whether the present Basic Conditions of Employment Act — which we seek to replace — and current practices in the labour market do not reinforce certain rigidities and inefficiencies in the use of labour power at the workplace and its allocation in the economy.

I am of the view that certain measures such as the restrictions on Sunday work, the excessive reliance on overtime, the lengthy working hours in sectors such as transport, security, agriculture and domestic service, the absence of maternity leave benefits for certain categories of workers, and so on, do result in labour market inefficiencies and additional costs to the workers, their households and to society as a whole.

And fourth, it is necessary to recall that the market is best suited to freely allocate resources when conditions for free competition prevail among workers, among employers, and between workers and employers.

If and when these conditions are not met, and especially if a competitive labour market is matched against employers who have monopoly and conglomerate control over their industries, especially within a spatial context, workers are likely to be unduly exploited or subjected to onerous working conditions — hence the need for regulation

It is necessary here to clarify the fact that while a significant portion of the unemployment and underemployment is cyclical and frictional, the greater part of it is structural and related to the fact that the growth and development process in SA has historically excluded and marginalised the majority of its black population through consciously designed policies of intervention in the market.

This legacy is still with us and embedded in the very structures of our economy, and has very little to do with labour costs as such

Tito **Mboweni**

Business Day

Touching a raw nerve

THE Reserve Bank's Quarterly Bulletin does not generally stir up strong emotions It usually makes its points about economic policy so subtly that they are easily missed. But the latest bulletin has made some points more obviously than others — and touched raw nerves in doing so

The ANC alliance has taken except[illegible] [illegible] issue on the economic p[illegible] agenda.

It is common cause that the employment targets in the growth, employment and redistribution (Gear) strategy are not going to be reached. The reasons for this are going to be the subject of debate for months to come.

The bulletin illustrates the link be[illegible]

The issue of the relationship between labour costs and employment is therefore not a simple one at all, and any suggestion that it is should be seen as ideology masquerading in the guise of "factual" or "scientific" economic analysis

These considerations must be factored into the assessment, and their net costs and benefits to private parties and society as a whole in the short and long term need calculation.

No one, including economists who write the Bank's economic reviews and journalists at Business Day, has undertaken any rigorous exercise along these lines to be able to make categorical statements on the relationship between labour costs and employment growth

There is strong evidence that the low responsiveness of employment with respect to increases to output is a result of a number of factors outside of the labour market, and in particular other policy biases in favour of capital intensity and large-scale enterprises

It is also the case that conditions of employment in some sectors in which many poor workers work are deplorable and need improvement, that certain forms of work like child labour and forced labour need to be abolished without question; that in some sectors employers have historically had monopolistic powers over employment and working conditions in a way that has underpinned exploitative forms of work, and that the old Basic Conditions of Employment Act and current work practices in some sectors have reinforced inefficient operations

The bottom line for us is that there are compelling reasons for the proposed bill, and that in any case it is foolhardy to have to rely on the present Basic Conditions of Employment Act as the primary instrument for employment creation because, actually, it is not a good law

We need to uphold reasonable minimum conditions of work while actively resorting to more appropriate and direct policy instruments to generate employment It is in this context that we are finalising an employment strategy which we will submit to the country for a debate before the Presidential Jobs Summit in October The cabinet has already appointed a team of ministers to manage this process

I am convinced that the need for a new Basic Conditions of Employment Act is unquestionable — even if the exact levels to which these conditions should be set is currently an issue of debate and negotiation

It is clear that SA should not be looking to the lower ends of competitive advantage based on cheap labour, but should be looking for a competitive advantage which exploits other value chains and channels more in line with dynamic forms of efficiency

The current work practices and working conditions which result in a net social cost to our society may be far in excess of the presumed benefits as argued for in your editorial

BUSINESS

Cosatu call for series of countrywide strikes

W Cape strike set for August 20

(166) ARG 27/6/97

THABO MABASO
BU REPORTER

The Congress of South African Trade Unions' (Cosatu) has taken off its gloves in its fight with business over the Basic Conditions of Employment Draft Bill, and has called six regional and countrywide strikes between now and September.

Western Cape members would be called out on strike on August 20, Cosatu said in a statement yesterday.

The strike action would begin on August 4 with a national one-hour work stoppage This would be followed by a 24-hour strike in the Eastern Cape on August 18, and between August 19 and 21 workers in other provinces would embark on 24-hour regional strikes

The announcement follows a meeting of the federation's executive committee on Tuesday and Wednesday.

Cosatu secretary general Sam Shilowa said in the statement that union members would also hold a 24-hour countrywide strike on the day the federation made its submission on the Employment Bill to Parliament

A similar strike would be held on the day that business made its submission Parliament has not yet set a date for either the Cosatu or business submissions

"We hope that these actions will send a clear message to business that we are serious about our demands," Mr Shilowa said

Cosatu's strike call follows a refusal by business organisations to respond to a 14-day ultimatum set by unions for business to respond to its demands. Trade unions and business, in negotiations in Nedlac, have failed to reach agreement on items in the proposed Employment Bill.

Cosatu has called for the inclusion in the bill of a 40-hour working week, phased in over five years and six months maternity leave with four months paid

Business organisations have opposed these demands on the grounds that they would increase labour costs

Two weeks ago, business called for a halt to negotiations until after the Presidential Job Summit, set for October, to discuss unemployment

Cosatu claims this is merely an attempt to wear down workers in their fight against the bill

"This is business's attempt to preserve apartheid legislation in the labour market What is needed from business is a change in its current position and mandate. A meeting of senior leadership will be a futile exercise if it is based on current positions," Mr Shilowa said

A strike called by Cosatu earlier this month met with mixed response countrywide

The clothing and textile industries were the hardest hit in the Western Cape

Take a second look at the new labour Bill

ST 29/6/97 (166)

The proposed Basic Conditions of Employment Bill is not all the critics claim it is, writes TITO MBOWENI

SOME commentators have seized the opportunity presented by the introduction of the Basic Conditions of Employment Bill to malign labour market policies in general, while others have decided to highlight the policy of growth and development

Some commentators and social partners are clearly using this opportunity to push for other agendas

First there appears to be a selective amnesia regarding the historical causes of unemployment and under-employment This is particularly perplexing considering that the South African economy was consciously manipulated so as to marginalise and exclude the majority from access to productive activities and viable income-generating opportunities

Second, presumably competent analysts appear to be ignoring the evidence that the fundamental causes of the problem lie primarily outside the labour market Analysts from both the Left and the Right have demonstrated that the inward-looking policies of the past have given the economy an unusually high capital-intensity bias This is underpinned by a number of policies outside of the labour market which mean the economy has a low employment absorptive capacity

And, third, repetitions of the relationship between labour-market flexibility and job growth in output and employment have led to labour market flexibility being seen as the *sine qua non* of economic efficiency regardless of the facts

Many fail to consider whether, if labour-market flexibility prevailed, the resulting growth in output and employment would be enough to resolve the problems we are confronted with, or to properly examine the proposals from the Department of Labour to discover whether they indeed foster inflexibility

The department is concerned about the high rates of unemployment (at about 33 percent of 1995) and under-employment (employment in low-return activities such as the informal sector) and the low rate of job creation Nevertheless, contrary to the perceptions of many observers, the department does not have the instruments to address these problems It has policy instruments that can create an enabling environment for employment growth, but it cannot create jobs directly The problems in the labour market need to be addressed by a package of policies encompassing various government departments Job creation is ultimately the responsibility of the state (in terms of policy and public employment), parastatals, the private sector and individuals

These problems are primarily structural, and only secondarily cyclical or frictional The structural aspect is a consequence of two interrelated factors First the marginalising of the black population The apartheid infrastructure made sure that open unemployment was suppressed in the form of under-employment or disguised unemployment — particularly in the homelands

Second, the high capital-intensity bias imparted by the inward-looking policies of the past has militated against adequate employment policies The major policies related to government expenditure policies that subsidised large-scale capital-intensive projects, regulatory policies that suppressed the development of small and medium enterprises, trade and tariff policies that made it easier to get credit for large capital outlays, and job and occupational discrimination that restricted the supply of labour in the skilled categories

As a result of the apartheid legacy, the formal sector has evolved as an exclusive sector This has created a vicious circle the economy can't absorb labour and, since the majority of its citizens are marginalised, internal demand is restricted, which in turn limits the internal expansion of the economy Thus, both the responsiveness of employment to changes in output and investment, and the potential of the economy to expand are low, underpinning structural unemployment

The upshot of all this is that labour market policies cannot be blamed for the lack of new jobs Neither are these policies the sole solution

Yes, the Bill can play an enabling role in job creation, but it is not the appropriate instrument for this Its primary purpose is to safeguard workers, especially those in the unorganised sectors of our economy We should not allow this Bill to become an ideological football by burdening it with expectations that it cannot fulfil

The Bill is motivated by the need to reassert the fundamental rights of workers in line with conventions and recommendation by the International Labour Organisation, especially with regard to child labour, forced labour, and slavery The proposals also seek to minimise the net costs to individual workers, households and society of various work practices This is particularly the case with respect to working hours Finally, the Bill attempts to give more flexibility in the use of labour, particularly with respect to work on Sundays

It cannot be denied that there are gross inequities with respect to working conditions Further, we should not be duped into accepting superficial forms of flexibility under the pretext of wanting to enhance efficiency when the result is that labour absorbs the negative consequences of restructuring in the faint hope that they will benefit in the long run While there may be benefits to long working hours for the firms and workers involved, what are the costs in terms of the deterioration of human capital, household stability and the upbringing of children?

If commentators took the time to adequately assess the Bill they will be convinced of the need for it on the grounds of efficiency and welfare South Africa's economy is mature enough to seek competitive advantage by means other than exploiting cheap labour at great expense to society

● *Mboweni is the Minister of Labour*

Reserve Bank slammed over labour bill

(166) CT(BR) 30/6/97

FRANK NXUMALO

Johannesburg — Tito Mboweni, the labour minister, has slammed the Reserve Bank for venturing an opinion on the draft Basic Conditions of Employment Bill, an area in which "it does not have competency"

In its latest quarterly bulletin released last week, the Bank's economists said the proposed labour legislation could "aggravate matters by enforcing improved terms for workers"

Mboweni said the bank had not conducted exhaustive research that would have allowed it to make a learned analysis of the interdependency between jobs growth and unit labour costs

"It is clear that South Africa should not be looking to the lower ends of competitive advantage based on cheap labour but should be looking at competitive advantage which exploit other value chains, the current work practices and working conditions which result in a net social cost to our society may be far in excess of the presumed benefits "

He said the fact that the Bank's comment was ill advised was borne out by "the emotive reaction to it and this, in an area that it does not have mandate or competency"

The Bank's comments also came under fire from union federation Cosatu, which said instead of singling out South Africa's apparently inflexible labour market policy as the basic deterrent to employment growth, the bank should own up to the negative effects that its own "sadistic monetary policies" were having on jobs creation

Cosatu called for the urgent structural readjustment of the central bank to reflect the country's demographics and the championing of national interests

"We have been calling for some time for the restructuring of the role of the South African Reserve Bank, the creation of a more representative board and a shift in the role of the governor

"It is common cause that Chris Stals's sadistic monetary policies are having the effect of choking economic activity through the use of excessively high interest rates," said Nowetu Mpati, Cosatu's spokesman

All sides may have to make concessions

Conflict over the Basic Conditions of Employment Bill is set to run and run. Deputy editor **Alan Fine** looks at the possible outcomes (166)

BD 3/7/97

WHICHEVER way you look at it, the next couple of months are going to be a period of vocal strife between business and organised labour And Labour Minister Tito Mboweni will need to use whatever agility he possesses to combine the role of mediator with that of a third player in the "golden triangle" under attack from both sides How will the great Basic Conditions of Employment Bill affair transpire?

Articles on this page last week by both Mboweni and Congress of SA Trade Unions (Cosatu) general secretary Sam Shilowa offer some clues, but little certainty (Employer reactions are more predictable and therefore less in need of interpretation)

Cosatu has evidently decided that it should make the bill a key test case for government and for the Cosatu/African National Congress (ANC) alliance But the nature of that test needs to be carefully assessed.

Shilowa's argument, and to a lesser extent Mboweni's, contained emotive rhetoric about the new bill being part of the struggle against apartheid laws

Shilowa, in particular, seems to forget that apartheid labour market policies were not solely about the exploitation of cheap black labour Their primary purpose was to protect the then white labour aristocracy from competition from the mass of black labour This it did through, most crudely, job reservation, in combination with the setting of high minimum standards, either in basic conditions legislation or the extension of industrial agreements to non-parties The obvious point now is that excessively high minimum standards will, even if this is not the intention, have a similar effect on today's more racially integrated labour market

In a similar vein, excessively generous paid maternity leave conditions would benefit a small minority of women — mostly the better-off whose skills are less replaceable For the most part, employers would simply stop employing women That may not be the intention of Cosatu's leadership, but it would certainly be the effect

The Basic Conditions of Employment Bill is not about race The issues are more universal than that — not dissimilar to the debates being fought out between the Anglo-American world (the US and UK) and Europe over the best route to economic prosperity and improved quality of life

There, in the post-Thatcher and post-Reagan world, the New Labour/social democrats/US Democrats debate among themselves the choices between more flexible labour markets, less equality, higher growth and less unemployment on the one hand (the Anglo-American model), versus more protected labour markets, more social equality, lower growth and high unemployment — and a whole range of policies between the two extremes of that pendulum In the US and UK, the advent of the shifts to the left means a focus on the social contract which was not an issue for Reagan and Thatcher

The additional question in the debate's SA context is whether and how the country's lower-middle income economy status affects these questions

None of these nuances concern Shilowa and Cosatu — certainly not as far as their public statements are concerned. If there is any nuance to be found in Shilowa's article at all, it is in discerning whether the piece is an "opening demand" in this phase of negotiations or a seriously intended final position

If it is the latter, and Cosatu is really staking its uncompromising all on getting the ANC to support a bill which offers a 40-hour week, six months' maternity leave fully paid by the employer and no scope for unions and employers to negotiate downward variations of particular aspects of legislated minimum conditions, there is cause to worry about the future of SA's labour movement

It is unlikely that the final version of the bill will differ substantially from the draft currently on the table. There may be some give and take, but no changes of the magnitude demanded by Cosatu ANC policy makers know that, whatever their inclinations, the economy cannot afford it. Acting secretary-general Cheryl Carolus last Thursday put it as gently as possible in explaining to Cosatu it should not ask whether government was committed in principle to a 40-hour week but rather whether its implementation was possible now

If Cosatu is truly incapable of grasping this, it would mean the federation will soon find itself marginalised due to its inability to engage with the real world of the late 20th and early 21st century. It could be put down, among other things, to the loss of skilled leadership over the past five years to government and the private sector, and a failure to regenerate those leadership skills

This may please those who like unions But such pleasure would be short-lived because industrial relations would become, again, a series of adversarial skirmishes with no real winner, or advantage for both sides to be gained from constructive deals encompassing the compromises Shilowa says he is unwilling to countenance

There is, however, another scenario — one which still promises a hectic few months but which ends, like the Labour Relations Act affair, with a deal

This scenario takes account of the triennial Cosatu congress coming up in September and the sabre-rattling that usually accompanies such events, and of the federation's belief that the most favourable possible outcome on the bill for it depends on a hard-line negotiating stance. This view would be reinforced by business's emotional response to Cosatu's strike threats From Cosatu's perspective, this response confirms labour's view that its actions would soften up business in the negotiation process

Refusing at this stage to talk directly with business and instead interacting with allies rubs salt into Business SA's wounds Furthermore, however "unreasonable" the growth, employment and redistribution strategy is making the ANC, it is likely to be easier to squeeze concessions out of it than out of BSA, which already thinks Mboweni has gone too far

There is, indeed, scope for deal-making by Mboweni, and he is skilfully positioning himself to play that role, not least by saying many things, some which will please Cosatu and other points which will give business hope

So there is, on one hand, the "anti-apartheid struggle" card and the quite legitimate point that labour market policy is but one aspect of the employment growth debate On the other, there is his acknowledgement that "labour costs have an effect on employment" and his attack on restrictions on Sunday work.

But, in practice, what deals are available? First, on maternity leave, the rhetoric ignores the fact that Mboweni has appointed a task team to investigate whether maternity benefits paid by the Unemployment Insurance Fund can be improved Presumably, some potential improvements, however small, will be identified

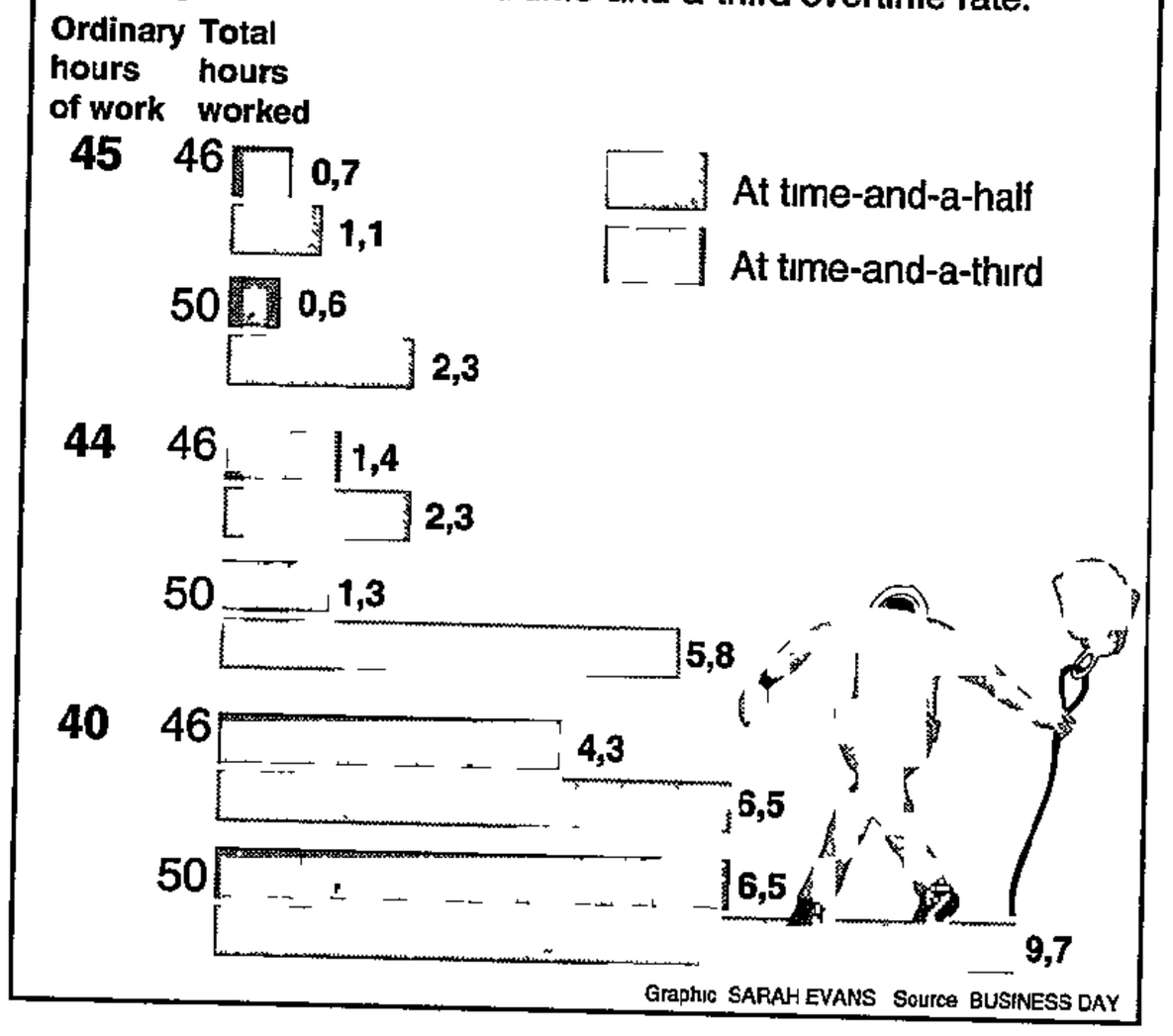
Second, what about working hours (see table)? Where most employees are concerned, the one-hour reduction in ordinary weekly hours represents for employers no more than a 1% increase in costs. For the security industry, where hours would be reduced to 45 from 60, greater adjustments will be needed. But that is a burgeoning sector, and 60 hours a week seems excessive in anyone's language

The real danger is the proposed increase in overtime pay from time-and-a-third to time-and-a-half It is more likely to reduce output and overall man hours worked than increase employment as its protagonists hope

It may be worth everyone's while to contemplate, for example, an additional one-hour cut in the working week in exchange for a retention of the old overtime rate Add to that an in-principle commitment from government to a 40-hour week whenever this becomes feasible, and a deal begins to look more likely

Employment costs and hours of work

% rise in employment costs of various scenarios, compared with existing 46-hour week and time-and-a-third overtime rate.



Graphic SARAH EVANS Source BUSINESS DAY

Towards a better life for all

(166) MtG 4-10/7/97 (BM)

South Africa's policy-makers should look beyond the propaganda of business — that improved labour standards prevent job creation Society as a whole will benefit from new employment laws, argues **Vishwas Satgar**

SOUTH African economic history has been afflicted with amnesia The symbiotic relationship enjoyed by monopoly business with the apartheid state has become opaque in the context of policy-making and particularly the transformation of the labour market

Economic benefits for a few — stemming from the politically engineered migrant labour system, a dualistic and racist industrial relations system for the greater part of this century, fragmented and extremely low non-wage labour standards, the widespread use of scab labour and most importantly low wages — are being forgotten

Understandably, the protagonist behind the obliteration of this past is business (old and to an extent new "non-racial" business) Wielding simplistic economic theory that propagandistically highlights an inverse relationship between improved labour standards and job creation has allowed business to muster a chorus of voices against the "spectre" of improved labour standards being demanded by labour

It would be preferable to supply reasons (drawing on some of the current international literature on labour standards) in support of a direction for labour market policy reform that improves labour standards beyond the flexibility that currently prevails

With this attempt it is hoped South Africa's policy-makers and new rulers will apply their minds to the Employment Standards Bill more objectively beyond the propaganda of business — that improved labour standards prevent job creation There are basically 10 reasons to be considered:

1 Through apartheid the socio-economic reality in South Africa was disfigured Inequalities in living standards and incomes, which largely intersected with race, emphasise labour standards are not "luxury goods" Actually, improved labour standards are a policy imperative to ensure redistribution and the building of a society where there is a better life for all

At work: Worker quality and training are essential in increasing output

PHOTOGRAPH THEMBA HADEBE

2 Within an enterprise, labour standards become contextually embedded This means economic adjustment does not have to lead to the shedding of labour into the external market

Rather, through standards like those that promote training and a reduction in hours, the functional flexibility of the enterprise is enhanced

Essentially the internal labour market is able to make adjustments and thus retain and even possibly expand employment

3 Labour standards are easily perceived as rigidities in the context of price competition Such predatory market behaviour lends itself to short-term gains at the expense of sustainable and long-run benefits and efficiencies

In other words, by pushing labour costs and standards downwards, price competition prevents enterprises from finding competitive (or even co-operative) advantages that reside in work reorganisation, efficient management and innovative product development

4 Coding labour standards merely as costs diminishes its political value Labour standards are not considered to be norms or rights that are essential entitlements to ensure a durable political order, and in the South African sense a stable democracy

5 Many benefits of labour standards are indirect, hidden, intangible and difficult or impossible to measure, delayed, and non-local It is only in the absence, limiting or violation of standards that the extent and effect of damage on workers, enterprises and society at large, come to the surface

One such example is South Africa where intergenerational deprivation of labour standards, particularly for black workers, has prevented accumulated learning and skills development

6 It is a misjudgment in micro-economic terms to expect a downward spiral of labour standards to be conflated with overall societal gains and interests

Actually, the under-valuation of labour inhibits multiplier effects Essentially, undervalued labour translates into under-consumption, the foregoing of economies of scale and constrained growth

7 Even in orthodox economics it is acknowledged that worker quality and efficiency are essential to increase output

This means health and safety standards, hours of work, training and so on, are necessary incentives to improve the quality of output, overall productivity of workers and, in the ultimate sense, growth

8 Cost-cutting through depressing labour standards merely passes on externalities into wider society For example, a local community that pursues a strategy of marketing its low labour costs and docile unions will merely attract those firms that would contribute the least to economic revival

In other words, low labour standards maintain low or even shrink consumption so that the tax base is limited for the financing of infrastructure and public works programmes, for instance.

9 In the context of globalisation, with its new global division of labour, notionally it would seem there are two policy responses for countries of the south

One is protectionism, mainly through high tariffs, and the other the downward adjustment of labour standards However, there is a third way, which promotes labour standards through instruments like the social clause and improved national standards, such that foreign direct invest investment increasingly comes to the south, on the labour market policy terms of countries of the south

In short, comparative advantage based on cheap labour is abolished

10 In the Southern African and wider African setting, employing the upward harmonisation of labour standards as one of the main policy planks in a response to globalisation, is also about contributing to and advancing the "African renaissance"

Deflating the "spectre" of improved labour standards is necessary to reveal the real spectre confronting South Africa's rulers and policy-makers This is really the spectre of perpetuating the inequalities of the past under the rubric of political reconciliation

It is time for a policy reorientation that moves away from win-win solutions to policies that vindicate the aspirations of the previously oppressed

in Bristol Street, Bennni — Tryphina Mahlabo (front) and her fellow workers

An ongoing role in the LRA

CT(BR) 4/7/97 (166)

Nedlac was heavily involved in the creation of the Labour Relations Act before it came into effect on 11 November last year and this work has been ongoing since the act's implementation, said Wendy Dobson, a co-ordinator of Nedlac's labour market chamber

"This included advising the president on the appointment of judges to both the Labour Court and Labour Appeal Court, as well as nominating members of the Rules Board of Labour Courts, which regulates the conduct of proceedings in court," she says

Dobson explains that although the responsibility of facilitating nominations to the Labour Court and the work that went into the implementation of the act has been completed, Nedlac continues to be involved in the appointment of new judges.

The council assures that nominations of people to positions in institutions, which were established by the new act, are reached by consensus between Nedlac's constituencies.

Nedlac has also been involved in work related to the establishment of the Commission for Conciliation, Mediation and Arbitration (CCMA) and the nomination of its governing body.

"We have on-going liaison with the CCMA in terms of which the council's labour market chamber has received briefings on how the commission is functioning

"If there were any problems Nedlac's social partners could help alleviate those problems," says Dobson.

The labour act establishes an essential services committee, under the auspices of the CCMA, to conduct investigations into and to decide whether a service can be designated an essential service.

The committee also handles disputes about whether a service is an essential service and also determines whether or not the whole, or part, of any service is a maintenance service. Nedlac nominated members of the essential services committee.

The council is busy with "codes of practice" negotiations involving picketing and retrenchments

"Nedlac has an ongoing role in respect to demarcation. Whenever there is an application to register a new council the registrar refers the application to Nedlac and we have to consider whether the demarcation is appropriate or not," Dobson says

In addition, Nedlac facilitated a substantial programme of education on the new act for the benefit of workers and small businesses It successfully secured funding for this purpose. A substantial amount of funding for the three trade union federations was obtained from the African-American Labour Centre, and an additional amount was made available from Nedlac's own funds to small business organisations

Wisdom of latest labour proposals questioned

(166)

The government's plan to increase the number of artisans in SA is receiving strong criticism, writes SVEN LUNSCHE

ST(BT)6/7/97

NEGOTIATIONS between business, labour and government on the proposed Skills Development Act started at Nedlac this week, with Labour Minister Tito Mboweni attempting to increase the number of artisans entering the economy.

However, Mboweni's approach is seriously flawed by enforcing skills training through a payroll levy and a centralised training system, argues the SA Institute of Race Relations in a series of articles

The Green Paper on Skills Development — the precursor to the Act — relies on three pillars

- Employers will pay a levy of 1% to 1.5% of their payroll into a central fund raising an estimated R1 5-billion to R1 9-billion a year
- A National Skills Authority will determine the funding, composition and pay levels of trainees in proposed sector Education and Training Organisations for most industrial sectors
- A standardised system of learnerships in 12 areas, to replace the current industry-run system of apprenticeships

The Green Paper estimates that SA companies are producing only about 5 000 artisans a year compared to 1-million in Germany SA companies spend about 2 7% of payroll on training but this is heavily biased towards large companies About 40% of firms do not provide any structured learning or training while the remainder offer mainly initial induction or informal training, the paper states

'The result is that smaller firms willing to offer apprenticeships at lower pay are prevented from doing so'

While very few analysts dispute the need to train skilled artisans in South Africa, SA Institute of Race Relations chief executive John Kane-Berman attacks the basic premise of Mboweni's proposed legislation

He says while people with skills are more likely to find jobs than those that don't, the skills revolution itself will not necessarily lead to increases in employment and economic growth "Is it wise then to introduce a complex new training system under centralised control on the basis of what seems to be a little more than a wing and a prayer? Is it wise to introduce a system when there is a risk that the payroll levy may in fact have the perverse consequence of encouraging employers, especially in labour-intensive industries, to reduce the size of their payrolls?" Kane-Berman asks

He also attacks the Labour Department for dismissing market forces as a catalyst for companies to raise their skills levels The Green Paper warns that "if we wait for market reaction, there is a danger that it will be too little too late" Kane-Berman counters that "the alacrity with which various companies have adapted to international competition and new markets in the post-sanctions era suggests otherwise"

His colleague Colin Douglas warns that the skills bottleneck is a result of too much government intervention, not too little

Douglas says even the current apprenticeship training system, "far from being a free-market phenomenon, is a creature of the Labour Relations Act's bargaining council structure accordingly it features government intervention and statutory minimum wages "

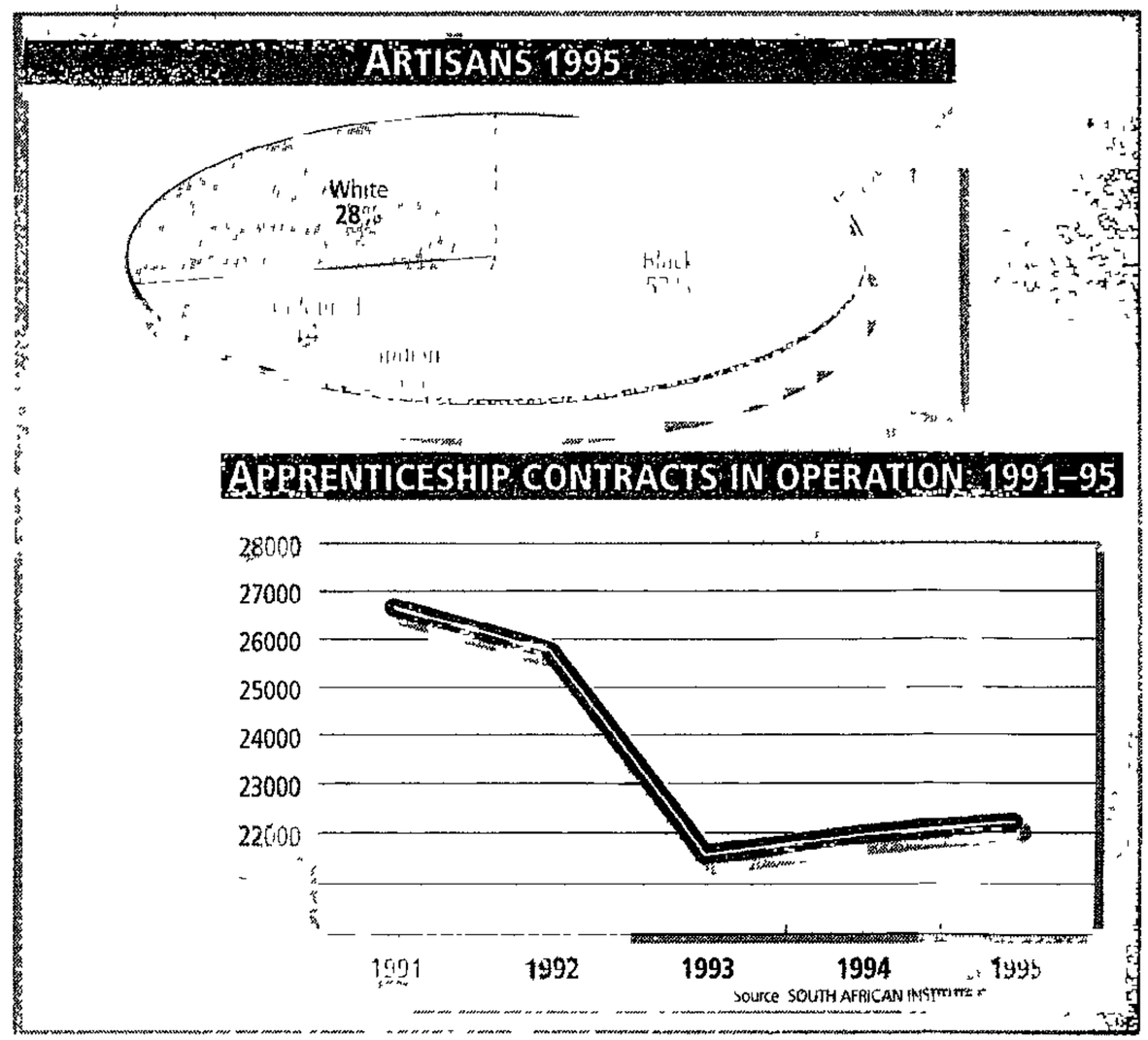
Furthermore, the terms of the council can be extended to non-members by the decree of the Labour Minister, which has been a source of difficulty for smaller employers who cannot afford the wages of their larger competitors "A free-market solution to the skills shortage has been blocked by this system, as bargaining councils have concluded minimum wage agreements for apprentices which are way out of line with market demand," says Douglas

He quotes the example of the metal and engineering council which enforces a minimum wage of R1 300 a month for apprentices even while they are studying full-time at technical colleges "The result is that smaller firms willing to offer apprenticeships at lower pay are prevented from doing so."

A more successful scheme is run by Iscor, which received the Labour Department's permission to bypass the statutory minimum wage The company has introduced a trainee scheme in which school leavers are engaged for six months at R350 a month and live in hostels At the end of six months Iscor tests the trainees and has the option of offering them formal apprenticeships

Douglas says hundreds of school leavers have signed up with the Iscor scheme, which limits the wage bill for the company and provides them with a pool of proven competence.

"Deregulation might have the added advantage of promoting innovation and quality, which tend to be chilled in a centrally planned system," he concludes



Mboweni breaks labour bill deadlock

BD 9/7/97 (166)

Reneé Grawitzky

LABOUR Minister Tito Mboweni took the initiative to break the impasse around the Basic Conditions of Employment Bill, meeting a high-level business delegation last night and a labour delegation today

The labour ministry said the meetings were intended to explore areas of possible agreement

The bilaterals take place at a time when business attitudes have begun to harden and labour has endorsed a programme of protracted mass action

In the current climate sections within business had begun to question overall concessions granted, not only in terms of the Bill, but also other proposed labour market legislation which cumulatively raised the cost of labour

A business source said the plummeting gold price could impact on attempts to resolve the impasse as this had major implications for the economy as a whole Gold's drop affected not only the mining industry, but other industries such as metal, explosives, plastics and timber, which all relied heavily on the industry

SA seen as riskiest investment destination

BD 9/7/97

SA IS regarded as the most precarious investment destination among the 10 largest emerging markets in the world evaluated by DRI/McGraw Hill, a US economic forecasting and consulting service which is part of the Standard & Poor rating group

In a statement yesterday, DRI/McGraw Hill said SA ranked as the "riskiest" of the 10 emerging markets it examined on issues, from government policies to political and economic risk

DRI/McGraw Hill said Argentina offered the lowest investment risk of the emerging markets, followed by Poland, Mexico, Turkey and India.

Trailing SA on the list of countries with the highest investment risk are China, Indonesia, Russia and Brazil

Based on an evaluation of 50 variables, SA was declared the riskiest investment destination because economic growth was declining while unemployment was increasing Inflation was also cited as a major negative.

"SA's mineral and agricultural output are also stagnant, or declining, and consumer debt has reached dangerous proportions," DRI/McGraw Hill said

Nariman Behravesh, chief international economist at DRI/McGraw Hill, said that SA's high level of violent crime and "factionalism" was disrupting its political process

"Notwithstanding a number of positive developments in SA — including the upgrading of its sovereign foreign-currency debt rating and the 51% increase in SA's foreign (exchange) reserves during the month of May — the generally dismal fundamentals of the SA government and economy are expected to lead to poor long-term prospects for this country," he said

Behravesh said the outlook for Argentina was far more encouraging.

"Solid economic growth — fuelled by a rapid increase in exports as well as sound fiscal and monetary policy, a stable peso and relatively low interest rates — lead us to believe that over the next five years, Argentina will pose the lowest business investment risk of the 10 largest emerging markets," he said.

"Poland is also considered one of the lowest risks because of the country's upswing in industrial output and construction activity and the nation's declining inflation and unemployment."

China ranked high on the list of risky emerging markets, because of "a large percentage of nonperforming bank loans ...Chinese banks have been crippled by policies that force them to make questionable loans to state-owned companies. A Chinese banking crisis could have a serious impact on developing Asia." — AP-DJ.

Mboweni breaks labour bill deadlock

BD 9/7/97 (166)

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Lack of consensus 'will halt jobs bill'

(166) BD 10/7/97

Reneé Grawitzky

LABOUR Minister Tito Mboweni warned labour and business yesterday that if consensus was not reached on the Basic Conditions of Employment Bill it would not be tabled in Parliament this year

Addressing a news briefing after meetings with labour and business, Mboweni said he was optimistic that consensus could be reached as some differences had narrowed

A failure to reach consensus would be problematic as "we do not want to put ANC (African National Congress) parliamentarians in a difficult position" This view was in sharp contrast to demands by the Congress of SA Trade Unions (Cosatu) that the bill be referred straight to Parliament

Bilateral meetings with labour and business focused on their major areas of concern with business highlighting cost implications of the bill, night work, family responsibility leave, the reduction of working hours and the minister's powers

The meeting with labour focused on a 40-hour week, maternity leave, age of employment, Sunday work and variation of standards

Mboweni said there was a possibility of reaching "an accommodation" with labour on variation

He said he had yet to persuade business that there was no link between the bill and the proposed presidential job summit, a forum to facilitate agreement on employment and growth

An employment strategy had to be tabled for discussion with labour and business The summit would be postponed if it became evident that labour and business were not committed to it

Mboweni stressed the importance of support for the bill as opposition could pose a danger of it withering away It would be of concern to the ANC if it did not go through Parliament this year as it was intended to change the lives of vulnerable and marginalised workers

The bill is to be introduced in Parliament on September 15 A failure to meet parliamentary deadlines would result in the bill being withdrawn

Possible changes to the bill could concern variation of standards and the implementation of the averaging of hours worked In terms of this, hours of work could be unequally distributed between weeks if the average number of hours worked in the cycle was not greater than a specified amount

See Page 12

Mboweni is sure labour and business can strike a deal

CT(BR) 10/7/97 (166)

Roy Cokayne

Pretoria — Business and labour would be able to sort out their differences over the controversial labour standards bill, enabling it to be submitted to parliament on September 15, Tito Mboweni, the labour minister, said yesterday.

He was confident the core areas of disagreement — the reduction in working hours, the overtime rate, and pay for work on Sunday — would be resolved before the Basic Conditions of Employment Bill went to parliament this year

Mboweni said he would insist the parties reach consensus, and he was adamant the bill would not be submitted to parliament without sufficient consensus.

"Consensus is an important facet of our work," Mboweni said. "We don't want to deviate from that.. Where we can't find accommodation, it is important for the parties to support the bill with certain reservations rather than being opposed to it."

Mboweni was speaking after the labour ministry held separate meetings with business and labour over the past two days in an effort to give new momentum to ironing out the differences over the bill.

Labour and business have hardened their attitudes in recent weeks, leading Cosatu, the labour federation, to hold a 24-hour strike last month and to threaten six more in August.

Mboweni met Business South Africa and the National Federated Chamber of Commerce and Industries in Johannesburg on Tuesday night. He met Cosatu president John Gomomo and general secretary Sam Shilowa yesterday

"Both meetings could be described as extremely difficult, yet containing the seeds for a possible accommodation But for this to occur all parties will need to show commitment and readiness to make a workable deal," he said

"I am convinced the prospects of a successful settlement are still within reach, because the issues have now been firmly narrowed," Mboweni said

He said further meetings would be held with the parties within the next two weeks The labour ministry would also be requesting a meeting with the National Council of Trade Unions and the Federation of Unions of South Africa

Labour and business pushing government to take a stand

BD 10/7/97 (166)

The Basic Conditions of Employment Bill is mired in uncertainty, writes labour reporter **Reneé Grawitzky**

THE public spat between the Congress of SA Trade Unions (Cosatu) and business on the Basic Conditions of Employment Bill overshadows an equally significant battle within government over the extent to which it should intervene in the labour market

While Cosatu supports more regulation and business is in favour of greater flexibility, government's failure clearly and consistently to spell out its labour market policy has created a vacuum in which the contending parties can swipe at each other

Labour Minister Tito Mboweni correctly argued (Business Day, June 27) the bill was being unfairly used to malign labour market policies Government's position on the bill is clear and the broad thrust reflects government's mandated position But this has failed to satisfy either labour or business and bred antagonism between the two

But what is less clear is government's view on the labour market commission report published last year, which developed recommendations for overall labour market policy for the country

Observers have questioned government's year-long delay in responding to the initial recommendations, and claim it is equivocating A government source says, however, that the majority of the recommendations have been accepted by the cabinet and announcements will be made soon

The source argues that the issue is not a lack of policy, as government, in theory, knows where it is going The concern lies in a lack of consistency by government in articulating that policy Government departments tend to reflect different constituencies and, more particularly, the constituency which lobbies them most effectively.

The absence of a common approach within government is central to the debate on the Basic Conditions of Employment Bill.

The bill will, largely, not have a direct effect on constituencies of the main negotiators At a push big business will live with it as it provides for variation while most of organised labour operates at standards above the minimums laid down in the bill The bill, rather, points more clearly to governments' overall approach to the labour market as in the growth, employment and redistribution strategy (Gear).

Mboweni wants the parties to reach agreement before the bill enters the parliamentary process in September. A failure by the social partners to reach an agreement could result in internal battles within the African National Congress (ANC).

Mboweni is, however, caught in a "catch 22" situation

Mboweni is conscious that some members of the cabinet, including the finance and trade and industry ministers, have questioned the effect of his legislation on job creation and on SA's ability to compete in the global economy. On the other hand, he would prefer not to be seen to be siding with either labour or business He walks a fine line between business's demand for flexibility and labour's for regulation

A balance of sorts between flexibility and regulation might well have been achieved in drafting the Labour Relations Act, where such issues could be fudged as it dealt with rights and procedures The difference here is that this bill deals directly with working hours, specific overtime allowances and leave entitlements

The ministry argues, however, that the bill does achieve a balance through its promotion of "regulated flexibility". This phrase reflects government's dilemma and has come under attack from various quarters It fails to satisfy either of the main interested parties — or elements within government who tend to lean towards the idea of the less regulation the better, but who might not have a real understanding of the labour market

It seems obvious that labour and business (and possibly also elements within government) are not happy with government sitting on the fence

Labour and business are testing to see who can effectively gain government's ear This has created a level of tension which has prevented the parties from embracing a spirit of social partnership in favour of traditional point-scoring. The result is that negotiations on the new bill have turned into a national collective bargaining dispute

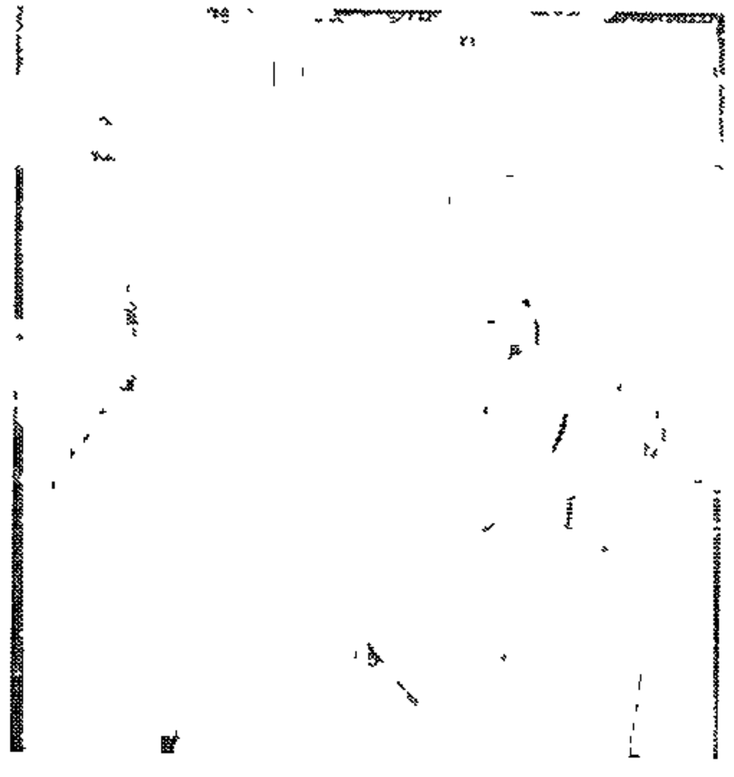
A union source said labour wanted government to "come clean" on flexibility and there was no middle ground on this "Government must take sides," he said Cosatu was receiving "mixed signals" which were not helping the situation

At the heart of the dispute is an attempt to test business's claim that "for far too long people have been convinced that we cannot have a government which is pro-labour"

Another problem is finding a common understanding of what the terms regulation and flexibility mean in practice

Compromise positions proposed to break the deadlock on the bill are likely to be symbolic in nature rather than a true resolution of the wrangle on flexibility and regulation. Such a compromise is also unlikely to satisfy Cosatu's claims that the bill is a translation of Gear into the labour market

Cosatu's decision to use the bill as its "battlefield" is problematic, a labour source close to the process said The original green paper reflected labour's position and the labour ministry had tried consistently to



MBOWENI

defend it, a government source said However, Cosatu now wanted a symbolic gesture from government in relation to Gear and to do this has reasserted unacceptable demands Cosatu, he said, was attacking the one ministry attempting to promote its vision of transforming the labour market

It could be argued that Mboweni's five-year plan sets out a coherent plan to transform the labour market and its broad thrust was endorsed by the labour market commission report The commission, established in February 1995, was entrusted with formulating a labour market policy which complemented the objectives of an industrial and macroeconomic policy

The report's release was overshadowed by the unveiling of Gear, which implicitly accepted the commission's major recommendations relating to labour market flexibility, negotiation of a social accord on employment and growth and human resource development

Although the proposals were, on the surface, the same in Gear and the commission report, the drafters of Gear changed the language to hint at a different nuance. This resulted in a change in emphasis in Gear — away from regulation towards flexibility

A year down the line we still await public confirmation of the recommendations accepted by the ministry, although there is talk of certain of the recommendations being implemented relating to changes to the Labour Relations Act in relation to the extension of bargaining council agreements and exemptions and approval of the job summit The proposed changes would make the system more flexible

A former unionist says government is engaged in a balancing act which is especially problematic at a time when labour and business are warring over the core issues around the bill and the framework in which the labour market should operate

This conflict, he argues, partly as a result of government's failure or reluctance to spell out its position, had created the discord between labour and business and between labour and government

Wits Sociology professor Eddie Webster says: "Part of the problem is the style of social partnership we have What happens when you cannot get agreement?" The first prize, he says, is consensus But a failure to achieve this illustrates that people have not fully made the shift into the idea of social partnership which requires different styles of operating The parties, he says, are falling back into traditional point-scoring instead of problem-solving mode

But both parties believe they have the power to sway government through mass action or lobbying instead of sitting around a table

Government is being pushed by both labour and business to take a stand and show its hand It will be a test of Mboweni's mettle to see if he can break the deadlock

Key players set to amend employment legislation

Star 11/7/97 (166)

Impasse over contentious clauses can be overcome, says Mboweni

By Jovial Rantao
Political Correspondent

The controversial Basic Conditions of Employment Bill, currently a subject of intense talks between the Government, labour and business, is set to be substantially changed to accommodate the concerns of the parties.

Labour Minister Tito Mboweni has hinted that draft legislation, unveiled in April, could be amended.

Mboweni would not disclose the likely changes, which he said had to be tabled and ratified by the ANC national executive committee

"There are some hard and difficult issues on the table I'm confident that we will reach some understanding or accommodation before September 15 (when the bill is scheduled to be tabled in Parliament)," Mboweni said.

After meetings this week with business and labour, Mboweni said he felt confident that the current impasse over contentious clauses in the bill could be overcome

"Both meetings (with business and labour) can be described as extremely difficult, yet contained the seeds of a possible accommodation. I am convinced the prospects of a successful settlement are still within reach. An indication of this is that the issues have been narrowed and further meetings will be held with both parties within the fortnight," he said

He was optimistic that if Cosatu's concerns could be addressed there would be no need for the trade union federation to proceed with its call for a strike.

Despite being optimistic, Mboweni has warned that failure to reach agreement on the core issues would lead to the bill being withdrawn He also cautioned that lack of consensus would "see the bill withering away"

He urged both parties to show commitment and readiness to strike a deal.

Business South Africa has voiced its objection to the proposed reduction of the working week to 40 hours and compensation for overtime with extra pay or time off

Cosatu has remained insistent on the reduction of working week to 40 hours, increased maternity leave and extra pay for work on Sunday, which the union demanded be double the rate

Mboweni said he still had to convince business that there was no link between the bill and the proposed presidential job summit, a forum to facilitate agreement on employment and growth

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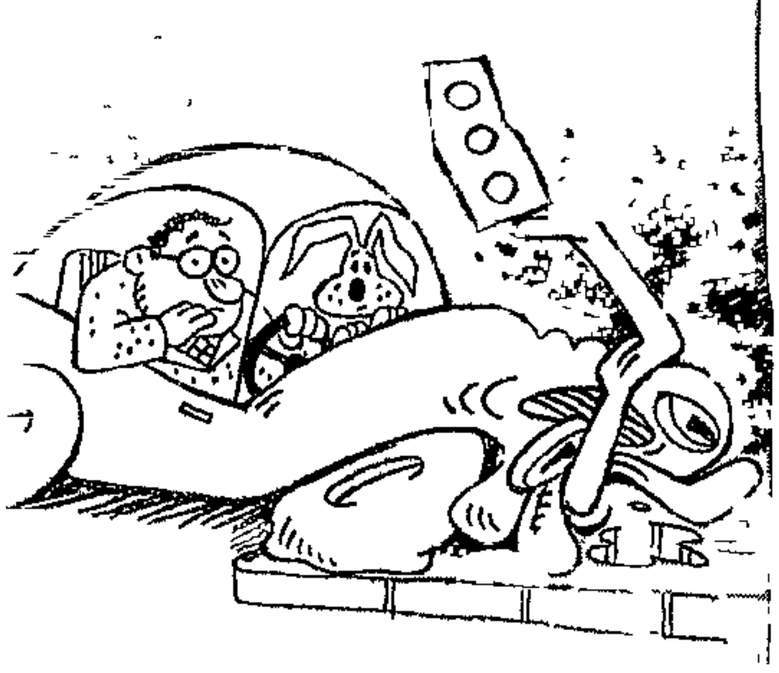


IEN STORY

Know your ri

'New' labour act ensures

THE GOOD NEWS FOR JOB SEEKERS IS THAT EMPLOYERS ARE BEGINNING TO EXAMINE DISCRIMINATORY HIRING PRACTICES, AS LITTLE-KNOWN ASPECTS OF THE LABOUR RELATIONS ACT RECEIVE MORE PUBLICITY
DAVID YUTAR REPORTS

While Parliament, trade unions and employers are focusing attention on the new Basic Conditions of Employment Bill, important aspects of the Labour Relations Act (LRA) – which came into force in 1995 – are at last beginning to have a profound influence on employment practices

Based to a large extent on the new constitution and on international conventions, guidelines and practices, the LRA (which can still be considered "new" as far as laws go) has introduced changes which have been described as "more wide-ranging than most employers realise"

The act provides important relief to job applicants who claim they are the victims of unfair discrimination According to a schedule of the act, an "employee" includes an "applicant for employment"

The effect of this is that any job applicant, like an employee, will have the right not to be subjected to any unfair labour practice including "unfair discrimination" based on "any arbitrary ground" such as race, gender, sex, ethnic origin, sexual orientation, age, religion, disability, political opinion, culture and marital status

Not only does this section of the act afford relief to first time job applicants, it also comes to the aid of those who feel they have been discriminated against when applying for promotion within a company

Frank Horwitz, head of Human Resources Management at the University of Cape Town's Graduate School of Business, agrees that "we are likely to see an increase of disputes in that area"

Says Professor Horwitz "Up until this act was promulgated (in 1995), the LRA did not include an applicant for a job as an employee and therefore if you were looking for a job, you did not have any rights in respect of whether you felt you were being discriminated against"

Clive Thompson, head of UCT's Institute of Development and Labour Law agrees that the media have tended to ignore the section but that it "does have universal impact because everybody is a job applicant at some stage of their lives

"It has been lost in the fine print You can see infringements in every classified ads section of the newspaper and it will certainly be the subject of increased litigation," says Professor Thompson

Says labour analyst Gavin Brown "We expected an avalanche of disputes following the legislation but that hasn't been the case so far"

He adds that employers "will have to become very careful about their hiring practices" to ensure they do not fall foul of the law

Avalanche there might not have been, but there have been a few important decisions flowing from the law

Professor Horwitz cites a recent (March 1997) Pretoria High Court decision which has become something of a landmark

It involved "all departments of the Ministry of Justice" Several prosecutors in the Department of Justice – white males with extensive experience (between 15 an 20 years) were informed that they shoul not apply for promotion because onl black applicants would be considered

The prosecutors – all members of th Public Servants' Association (PSA) toc the matter to court, using the constitu (on which the LRA is based) and argue that the Department of Justice's affirma tive action policy (implemented in 199 discriminated against white male attor neys They asked the court to declare th appointments of 30 senior State attorney invalid as only women and blacks ha been appointed

Earlier in 1995, the department ha advertised the posts, including positi for State attorneys and State advocates

The prosecutors argued the action w procedurally unfair, on the basis that eve if the posts were affirmative action pos tions, nonetheless they were entitled to considered for the posts irrespective race

The prosecutors won their cou action The court found that the appoin ments were "not in line with the constitu tion, which demanded efficient publi administration".

The court said it appeared "candidate appointed to the positions were someti not as well qualified as applicants wh were turned down".

It found that the male applicants fro the PSA had been unfairly discrimina against and declared the 30 appointme invalid Accordingly, it ordered Justi Minister Dullah Omar to "ensure that posts were filled in accordance with th provisions of the Public Service Act"

Professor Horwitz predicts the decisio is the beginning of a new trend – "one many cases that are bound to occur"

He points out that the unfair discri nation clause in the legislation will ha ramifications for every stage of the job recruiting process It will affect the word ing of job advertisements, the complet of the application form (here perhaps gen der issues will be even more vital th racial ones) and of course the conduct o the job interview itself, during which "only questions pertinent to the perfor mance of the job will be permitted"

Always the crucial question will b "was the job application process procedu rally fair?" says Professor Horwitz

For example, during the job interview "what the act is going to make very clear that only questions which are pertinent the performance in the job and the objec tives of that job are important", says Pro fessor Horwitz

Even questions relevant to gende such as "Do you really think you can b considered for this job because you ha two young children?" could be conside unfair and discriminatory, says Profess Horwitz, because if the woman can sh that she is competent to do the job in ter of qualifications and experience then w is that a relevant question?

What about stipulations in a job adv that the applicant will be required speak Xhosa or some specified langua Is that a form of discrimination?

"That is a potential area of dispu says Professor Horwitz "If it is very c that the job definitely requires such skill, then it is fine and there is no disc

hts as a job seeker

(166) ARG 14/7/97

fairness and outlaws discrimination

COLIN DANIEL

mination The job function is always the critical factor The key question is 'Is the requirement to speak a particular language an essential function of that job?' "

Similarly, with gender, says Professor Horwitz, the LRA and the constitution make a distinction between "acceptable and positive discrimination (affirmative action) and adverse or negative discrimination"

"What the Pretoria High Court decision tells us is that while it (affirmative action) is allowed, an employer must always act procedurally fairly, should always consider all applicants for the position and should not unreasonably exclude others because of their race or gender "

> ***'Only questions which are pertinent to the performance in the job and the objectives of that job are important'***

But it is not difficult to see that there is indeed a very fine line between what is permissible and what is not, and Professor Horwitz and others agree that it is likely that we will still see several cases in which this grey area will need to be clarified

What will an applicant's remedy be where he or she can show that he has been the victim of discrimination in the job application process?

Most experts agree that the remedy is more likely to be the reinstatement of a fair procedure (for example by requiring an employer to grant the applicant another interview), but in certain cases the tribunal, usually the Commission for Conciliation, Mediation and Arbitration (CCMA), might grant an award of damages against the employer and in favour of the job applicant

Cape Argus spoke to several job recruitment agencies and asked them how the new law had already affected their practices since its inception

Sue Milne, MD of Milne & Associates stressed her company "could only advertise according to what the competency requirements for a particular job were"

In certain cases such as that of a chartered accountant or engineer, such requirements will of necessity be that the person applying for the job have certain qualifications such as a diploma or degree

"In addition to that, he might have to have so many years' experience We are very careful never to use gender or age as a requirement and to ensure all applicants are treated the same way," said Ms Milne

But she stressed that that excluded cases where gender might be an intrinsic requirement of a particular job

"And when we are taking an ad response, before we answer that phone we have to know what the requirements are – they are written down in front of us

"So if the CCMA or the Department of Labour were to come to us and complain that we had been unfair in some way, we could produce that form and show that for that particular job, every applicant was asked the same questions and subjected to the same criteria and you can see why those three people were put forward and those not "

Ms Milne said her firm had set up "transparent" systems according to which applicants for a job could be accepted or rejected Asked how the legislation had changed the recruitment practice, she said that her firm had "become more efficient and paid more attention to detail"

"We write down all particulars, competencies for a particular job are taken down and unless an applicant meets all the criteria they will not get the particular job "

Ms Milne said that if a company requested personnel using sexist or racist criteria, her firm would immediately inform them that it would have to alter its advertisements so as to conform with the LRA "We do this partly in order to protect ourselves," she said

In a recent article on the LRA, Elizabeth Milne argued that the new act "potentially offers great benefit to employers, if only because (it) forces thorough thought and preparation for recruitment and selection"

She cited a major financial institution which "assessed the average cost of an avoidable resignation at almost R44 000 The 336 (avoidable resignations) they experienced in a year cost the organisation an estimated R14-million It is widely accepted that a primary cause of avoidable resignations is poor selection

'Finance not undermining labour'

(166) BD 14/7/97

Reneé Grawitzky

FINANCE director-general Maria Ramos has denied her department is undermining the labour department's work, and insisted that the Labour Relations Act and the Basic Conditions of Employment Bill do not contradict government's growth, employment and redistribution strategy (Gear)

Ramos said this at the 10th annual Labour Law Conference in Durban at the weekend during a debate between labour, business and government representatives on whether labour market policies and Gear could be reconciled

It was "nonsense that the labour department was being undermined by finance" Gear was a broad macro-economic strategy with the labour market section brief and vague so that the labour department could develop its own policies SA should not be a low-wage economy and basic worker rights should be protected, she said

Head of Cosatu's parliamentary office Neil Coleman said Gear was using labour market flexibility to undermine worker unity, while Oupa Lehulere of Khanya College said it was not consistent with the policies espoused by the democratic movement

Reacting to threats by Labour Minister Tito Mboweni to withdraw the bill from Parliament if sufficient consensus was not reached, Coleman warned that this would amount to sabotaging his own five-year plan Mboweni would be well-advised to reconsider his position, he said

During the conference debate, Business SA representative Adrian du Plessis said it was important to talk about the creation of jobs before talking about job regulation SA's labour market reform ran the risk of losing sight of job creation, he said

The rest of the debate focused on a challenge by Coleman and Lehulere to the government's adoption of Gear, which reflected a shift in policy

Ramos denied this She said Gear had been drafted as a means of implementing the reconstruction and development programme, and that government could not adopt economic policies which flew in the face of those of the rest of the world

See Page 4

'Labour law powerless against globalisation'

BD 14/7/97 (166)

Reneé Grawitzky

INTERNATIONAL experience had shown labour law was becoming almost irrelevant in the face of globalisation, Harry Arthurs, professor and president emeritus at York University in Canada, said at the weekend

He told the 10th annual Labour Law Conference in Durban the capacity of law to transform society was close to zero. Globalisation, he said, was shaping the relationships and culture of societies

As the world came to terms with the negative effects of globalisation, there was a growing realisation, even among "its enthusiasts", that their interests would be best served by growth of democracy and decent working conditions in the Third World

Investors, he said, were "disquieted by repeated scandals in unregulated international financial markets", while governments were "defeated because they have presided over a period of declining salaries, employment benefits, job security and workers' rights"

Ultimately, Arthurs said, strategies to achieve a "more benign version of global capitalism" could well depend more on self-interest than on idealism.

It was the responsibility of states to ensure globalisation was more humane, responsible and worker-friendly Governments had "some margin of choice" not to be locked into regressive labour market policies, and to try to carefully manage and "marginally diminish the potential harm wrought by globalisation".

This margin could be achieved by building social partnerships and consensus-seeking But people should not deceive themselves "The margins for choice are not very great and there will probably be more sharing of pain than of gain "

SA was in a unique position in relation to other developing countries in that its economy was largely dominated by major SA companies and had not yet experienced the deep penetration of global capital This provided the country with a small window of opportunity for the social partners to negotiate the terms of its entry to the global economy

This had to be achieved within a corporatist structure, but it appeared that the parties were not yet able to take that leap of faith required to enter such a process Government, he said, could only pay a limited price to preserve social partnership

Arthur said the social partners in SA had to make an internal deal, giving the country a sense of solidarity, before SA entered the global economy fully SA, he said, was acting correctly by approaching globalisation with a commitment to minimum standards

Staff shortage of 13 500 in health services 'no crisis'

BD 14/7/97 (~~[illegible]~~)

BISHO — The advertisement of more than a thousand jobs in government health services does not indicate a staff crisis, say health service officials

Nursing posts alone, ranging from enrolled nursing assistants to chief professional nurses, accounted for 850 of the recently advertised posts

Meanwhile health department spokesman Khulekile Bata said the department was short of 13 500 staff but this was no crisis

"The services have problems but they are not insurmountable"

"The health facilities are there, but not with 100% of their staff, maybe 60% "

The Eastern Cape health and welfare departments have never hidden their staff shortage

In MEC Dr Trudy Thomas' 1996/1997 annual report, presented in April, she said of the 52 100 posts in the sector, only 38 640 were filled

Thomas said some backlogs were "critical" and in some cases there was "not a single doctor in an isolated rural hospital, no pharmacist in big ones, no social worker to visit an abused child"

The Eastern Cape has one doctor for every 4 000 residents Other provinces have a ratio of 1 doctor for every 700 residents

Bata said the long term solution was for the province to produce its own doctors and nurses and a limited number of bursaries were available for this — ECN

Labour standards, production levels linked, says ILO expert

Reneé Grawitzky (166)

THE link between enhanced labour standards and increased labour production was not sufficiently emphasised in SA, Pete Peek, director of the International Labour Organisation's multidisciplinary advisory team in Harare, said at the Labour Law conference in Durban at the weekend.

International experience had shown that, even in the face of intense global competition, adopting a "pro-labour" strategy had contributed to equity and production, he said

Peek urged hundreds of delegates at the Labour Law Conference that there were alternatives to the repressive labour market policies of southeast Asia.

He said the World Bank had acknowledged the damage of structural adjustment programmes and recognised the need for labour market equity.

Peek said some believed current labour policies would price SA out of the global economy, while others believed such policies were essential.

"To bring the two groups together we need to enhance labour standards and productivity," he said.

Enhancing worker protection, workplace democracy and improving working conditions not only increased costs, but also yielded benefits in the form of increased labour productivity He warned that this link was not emphasised sufficiently in SA.

BD 15/7/97

Govt seeks consensus on labour bill

Stephen Laufer (166) BD 15/9/97

LABOUR Minister Tito Mboweni yesterday confirmed his intention of tabling the Basic Conditions of Employment Bill in Parliament on September 15, saying he would continue consultations with business and labour in an effort to bridge the gap between them over the legislation

Mboweni was speaking following an African National Congress (ANC) national executive committee meeting which backed him in urging labour and business to resolve their differences on the legislation.

Deputy President Thabo Mbeki said the legislation put SA "among the first or second in the world regarding working conditions". The bill was being discussed further with all concerned "precisely because we feel (SA) should have consensus around it rather than us as government moving ahead alone".

Acting secretary-general Cheryl Carolus said the ANC was concerned that if talks failed, the bill might have to be withdrawn This would be to the detriment of the most vulnerable and unprotected workers, including seasonal employees and young people.

Mboweni said the message to all sides was: "Let us face our responsibilities in Nedlac (the National Economic, Development and Labour Council) in resolving the issues."

'Law will not help the poor'

BD 15/7/97 (166)

Reneé Grawitzky

ANTIDISCRIMINATION legislation in the US and Europe had been ineffective in bringing about real changes in the lot of the poorest and most disadvantaged communities, Cambridge University professor Bob Hepple said at the weekend

Hepple told delegates at the 10th annual Labour Law Conference in Durban that international experience had shown antidiscrimination legislation had broken down barriers for some individuals in their quest for jobs and housing However, "the familiar cycle of cumulative racial disadvantage is as entrenched a social fact as it ever was"

Hepple said achievements of antidiscrimination measures should not be lightly dismissed

However, he said the lack of social change after antidiscrimination legislation in US and Europe "was characteristic of most legislation which sought to advance those who lacked economic and social power through the mechanism of individual rights enforced by private litigation".

With reference to the drafting of SA legislation on employment equity, Hepple said the concept of employment equity was too limited to deliver substantial social change on its own Hence the realisation on the part of the drafters that other, broader measures had to be implemented

All parties had to recognise the limits of the law so that they could realistically "seek to structure legislation in a way which harnesses the self-interest of employers and employees towards the achievement of employment equity"

Employers would find ways of avoiding or thwarting the legal requirements unless it was seen to be in their own self-interest, he said.

Proposed legislation should set clear standards and have vigorous enforcement mechanisms, while the results achieved by employers should be objectively measured

Hepple said legislation should impose a liability on both employers and those responsible for making employment decisions, but also ensure employers benefited from compliance

SOWETAN Wednesday July 16 1997

Govt gets tough with companies

(166) Sowetan 16/7/97

Employers told they will have to enforce new laws or risk prosecution

By Abdul Milazi

THE Government said yesterday it would take tough measures on employers who did not comply with the new labour legislation to ensure that previously excluded sectors benefited.

Department of Labour director-general M. Sipho Pityana said the new Labour Relations Act and the Basic Conditions of Employment Bill were aimed at extending basic rights to sectors such as agriculture, domestic, part-time and public service workers previously excluded.

"To ensure that these pieces of legislation and all other laws that we pass are effective we have to be proactive. We need to monitor and enforce them," said Pityana.

The Government's plans to get tough include criminally prosecuting and imposing heavy fines on employers for not complying with legislation and jerking up its labour inspectorate. It will also help trade unions and non-governmental organisations working with farmworkers.

Statistics from the Central Statistical Service (CSS) reveal that a significant number of workers are found in those types of employment which are newly regulated such as agriculture, public service, mining and domestic work," Pityana said.

He said regulated and unregulated labour markets accounted for more than 50 percent of the national workforce. The agricultural sector employed at least two million people, the public sector 1,9 million, mining and domestic each employ more than half a million people.

Apartheid exclusions

The informal sector accounted for more than a million people. "We are interested in the newly regulated sectors because, under apartheid, these sectors were for a very long time explicitly excluded from major labour laws and institutions.

"Consequently these are sectors where we find working conditions not consistent with the overall economic efficiency or welfare objectives," Pityana said.

Sowetan
BUSINESS

Real power is economic

Labour takes firm stance on Bill

(166) Sowetan 16/7/97

Unions say demands are reasonable and it is business that has to move

By Abdul Milazi

LABOUR HAS REITERATED its position that it will not budge on its demands over the Basic Condition of Employment Bill, saying it is business that will have to move

The general secretary of the half a million-strong Federation of Unions of South Africa (Fedusa), Danhauser van der Merwe, said yesterday that organised labour still believed that its demands were reasonable and that business was not coming out into the open with its position

Van der Merwe said although Fedusa differed with the Congress of SA Trade Unions (Cosatu) on the need to strike, "the demands of labour at the National Economic Development and Labour Council (Nedlac) are one"

Labour is demanding a 40-hour week (phased in over five years), six months maternity leave (with four months paid) and no downward variation of employment standards

The Bill proposes a 45-hour week and a four months unpaid maternity leave, while organised business has argued that a reduction in working hours and increase in maternity leave days would affect productivity

Tito Mboweni

The bickering between labour and business over who should compromise over the Bill follows Labour Minister Tito Mboweni's threat last week that he would withdraw it if the parties did not iron out their differences

However, the Minister has since been quoted as saying that he intended tabling the Bill in Parliament on September 15 while continuing consultation between the parties in an effort to bridge the gap between them over the legislation

Proactive approach

Inside sources have also confirmed that it is unlikely that the Bill could be withdrawn as the Department of Labour is about to adopt a proactive approach and direct the negotiations

The source said Mboweni believes that his leaving the negotiations on the Bill 'as a business and labour matter" is the cause of the delay in its finalisation as the two parties have failed to deliver He now feels that the Department has to take control and ensure that it is passed"

EMPLOYMENT (166) ET(Pm) 16/7/97

Workers' rights come before flexibility

Employment flexibility must not be implemented at the expense of the basic rights of workers, Sipho Pityana, the director-general of the department of labour, said yesterday

Pityana told a workshop on regulating new employment norms that the constitution guaranteed farmworkers, domestic workers, security personnel and other workers in "atypical forms of employment" the right to be treated with dignity and respect. He said the approach to regulating new employment norms was reflected in the draft Basic Conditions of Employment Bill

He added that the department intended, in line with the recommendations of the Comprehensive Labour Market Commission, to set modest sectoral "statutory minimum wages" for vulnerable workers. "We believe the presence of stronger and more stable unions and employer organisations is consistent with efforts to encourage job creation, acceptable working conditions and rates of remuneration," Pityana said. — *Frank Nxumalo, Johannesburg*

Bill may cause ANC-Cosatu split

(166) Sowetan 16/7/97

Labour ready for showdown over Basic Conditions of Employment Bill

By Oupa Lehulere

AT THE END of its executive committee meeting in June the Congress of South African Trade Unions (Cosatu) announced a series of regional and national strikes as part of its campaign to push its demands before the Basic Conditions of Employment Bill becomes law

According to Cosatu there will be five regional strikes from August 4 to 21 Besides these actions, there will be two national 24-hour strikes to coincide with the sittings of the parliamentary committee that will be considering the Bill.

The announcement comes in the wake of the 24-hour national strike of June 2 Angered by a court ruling that its planned marches of May 12 would not be protected under the Labour Relations Act, Cosatu pulled out hundreds of thousands of workers

The BCE Bill represents some significant gains for workers For the first time, all workers, including farm and domestic workers, are covered by the law

Areas of contention

Hours of work in fields such as agriculture, security workers and domestics have been brought in line with other workers, even though in some cases the reduction of the hours will be phased in

There are however still major areas of contention around the Bill Negotiations between labour, employers and government at the National and Labour Council (Nedlac) broke down over four main areas

The first is that Cosatu is demanding six months maternity leave, four of which will be paid The pregnant worker's job should also be secured

The second demand is for a 40-hour week, to be phased in over five years The third is that Sunday work should be paid for at double the going rate

The fourth and most significant is that Cosatu is opposed to a provision in the Bill which allows employers and workers to negotiate worse conditions than those in the Act, or what is known as a downward variation of standards

Notwithstanding the fact that the Bill was approved by the Cabinet, Cosatu has been at pains to emphasise that its strikes are not directed against the Government, but against business

In order to emphasise its separation of employers from the Government, Cosatu called for the Bill to be debated and passed by Parliament It also called meetings with the African National Congress (ANC) in an attempt to reach agreement on the inclusion of the union federation's demands in the final legislation

Although Cosatu has its alliance with the ANC on its side, employers have the Government's Growth, Employment and Redistribution (Gear) programme on their side

Labour Minister Tito Mboweni's wide discretionary powers to vary labour standards downwards, conferred by the Bill, were already mooted in Gear

According to Gear, the minister's discretion to extend or not extend agreements should be broadened and variations on norms set through collective bargaining must be an integral aspect of a system of regulated flexibility It is precisely these discretionary powers that Cosatu objects to

The ANC, for its part, is already under pressure not to retreat from Gear

Fired a broadside

In its latest *Quarterly Bulletin*, the Reserve Bank fired a broadside in favour of business in the BCE war

According to the Reserve Bank the implementation of these proposals could lead to an increase in the wage and non-wage costs of labour This could have adverse implications for the overall level of formal sector employment

Throughout the struggle, employers focused on the supposed implications of Cosatu's demands on existing jobs and on future job creation

According to various newspaper reports, sections in business are questioning even the gains that have been extended to the other workers

Against this background, Cosatu has argued that it is the overall macroeconomic policy that is primarily responsible for the lack of jobs and job losses Employers' tendency towards capital intensive production has also come under fire

According to Cosatu basic labour standards, a minimum wage and training will enhance productivity and therefore lead to job creation

As the countdown towards August 18 begins, the Ministry of Labour is frantically trying to broker an agreement acceptable to both employers and Cosatu The signs are that it will not be easy

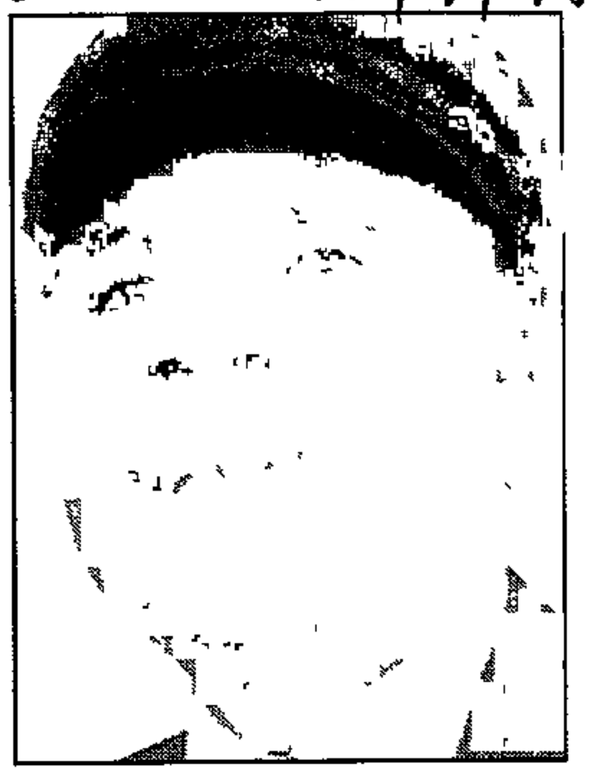
As Cosatu's general secretary Sam Shilowa wrote recently "Even though I do not believe that we will lose on this one, I also believe that it is far better to lose with dignity than settle for an unacceptable compromise

"(In that event) I would be prepared to go to workers and explain that, as in Gear, employers have scored a significant victory"

The developing rift was also evident at the 10th annual Labour Law Conference, where Cosatu clashed with Mboweni and warned that his threat to withdraw the BCE Bill from Parliament would amount to a reward for the intransigence of employers

After this round, the question that will force itself on to Cosatu is how can the alliance with the ANC survive such an employers' victory?

(The writer is a labour educationist at Khanya College, Johannesburg)



Cosatu general secretary Sam Shilowa ... the withdrawal of the BCE Bill will be a significant victory for employers. But there are no compromises yet

Labour Minister Tito Mboweni is trying to broker an agreement acceptable to employers and Cosatu on the BCE Bill.

Mboweni expected to meet Fedusa on Bill

(166) Sowetan 18/7/97

LABOUR Minister Tito Mboweni is expected to meet representatives of the 500 000-strong Federation of Unions of South Africa today to discuss the Basic Conditions of Employment Bill

Yesterday the minister met senior Congress of South African Trade Unions officials in Johannesburg to hammer out a compromise on the provisions of the Bill

Cosatu was represented by its general secretary Sam Shilowa, its chief negotiator on the Bill Khumbula Ndaba and a member of a Cosatu task team appointed to find solutions on the Bill's provisions for maternity leave, Dorothy Mokgalo

National strikes

The Fedusa delegation will be led by its president Ms Mary Malete

The federation, one of three that have been negotiating the Bill in the National Economic Development and Labour Council, has not participated in the national strikes called by Cosatu saying it prefers to keep on negotiating

Main areas of contention in the Bill lie in its provision for maximum working hours payment for overtime and work on Sundays, maternity leave provisions and the age at which minors may be employed – *Supa*

Employment Bill may mean lights out for some

(166) ST (BT) 20/7/97

MANY small businesses will be hard hit if the proposed new law governing employment conditions is adopted by Parliament in September

The Small Business Project, an independent economic research unit which pushes for legislation to promote small business development, says the needs of small business must be examined before the Basic Conditions of Employment Bill is passed

"The government must recognise that the strengthening of minimum standards may increase the costs of employment, and may discourage job creation," says the project's legal economic researcher, Keith Hermann

"Although the Bill provides flexibility in the arrangement of working time, these gains are substantially reduced by the reduction in that time," he says

Proposed elements for the new Bill include

- Despite ordinary work hours being limited, an employee may be required to work up to 12 hours a day without overtime pay;
- The daily three-hour limit on overtime is scrapped, but the weekly limit of 10 hours in any week still applies,
- Payment for overtime is dramatically increased to time and a half,
- Night work is allowed, but employees must be compensated at a premium and transport to and from home must be made available for them

Hermann says more employment flexibility, support for skills development in labour-intensive industries and incentives for raising productivity to counteract the costs imposed by the Bill's proposals have not been considered

"We feel the Bill should provide a floor of basic rights for all workers

"While we do not want to detract from the reasonable obligations that should be imposed on all employers — big and small — the plight of small, medium and micro enterprises (SMMEs) must be acknowledged and adequately reflected in the Bill "

The project suggests the phasing in of overtime and the reduction in working hours, and partial exemption from the requirements for nightwork

It also recommends less administrative requirements and record-keeping than that currently specified, flexibility in applying leave entitlements, and the implementation of simple exemption procedures.

International experience has shown that small firms have grown to account for a major portion of economic activity

A study on our SMME sector conducted by the Department of Trade and Industry estimates that small enterprises contribute 29 5%, medium enterprises 15 3% and large enterprises 55 2% toward private sector employment.

The contribution to GDP is estimated to be 20 8% for small enterprises, 11 9% for medium enterprises and 67 3% for large enterprises

"Considering this, SMMEs should be seen as an essential component of the mainstream economy and a responsible participant in the labour market," concludes Hermann

Debby Reader

Cosatu spurns last attempt at deal on labour Bill

ST (BT) 20/7/97 (166)

LABOUR LEGISLATION

By CAROL PATON

LABOUR Minister Tito Mboweni's last-ditch attempt to strike a deal with labour on the Basic Conditions of Employment Bill by including a commitment to the goal of a 40-hour week in a schedule to the Bill has not won Cosatu's support

The union federation said on Friday that although it was prepared to continue talks with Mboweni, it would not budge

"Cosatu's demand is for a 40-hour week within five years," said Cosatu spokesman Nowethu Mpati

The Bill has proposed a 45-hour week. The schedule would indicate support for the 40-hour week which could be achieved either through collective bargaining or through determinations by the Labour Minister where no collective bargaining exists The schedule would also commit government to a review of working hours after five years at which time it would reopen the issue of working hours for public debate

However, the proposal, which puts hours of work at the centre of wage bargaining while attempting to postpone a political battle with Cosatu, is also not likely to be acceptable to business, which rejected a similar proposal during an earlier stage in negotiations around the Bill

Business leaders are to meet Mboweni next week over the Bill and declined to comment now

Mboweni said. "Business does not want any mention of 40 hours in the Bill Our task is to bring business to accept the schedule No harm will be done by including this commitment in a schedule"

He warned again that rejection of the latest deal by either business or labour or both could lead to the Bill being withdrawn and not being tabled in September as scheduled

"We need to make sure that all parties try to come to the party — it is critical to our collective success We have indicated to them that failure to agree can result in this Bill withering away," said Mboweni.

On Friday, Cosatu repeated its call to Mboweni to take the Bill to parliament without consensus "The (ANC-Cosatu) alliance exists But we won't always be able to agree on everything. As Cosatu we are saying it is better to lose with dignity than to compromise," said Mpati.

But Mboweni said that taking the Bill to parliament without labour's consent "would cause a crisis in the alliance" and call into question the model of social partnership that was being shaped through institutions like Nedlac

Rather than square up to a battle with the unions Mboweni appears serious in his intention to withdraw the legislation.

"We will pass an interim small piece of legislation to extend coverage to all workers until the parties can agree on a new Act," said Mboweni

Officials from the labour ministry and Cosatu have formed a task team to continue with negotiations on the Bill Negotiations will also take place around other areas of disagreement such as variation of standards.

● Meanwhile, trade union federation Fedusa, part of the labour component at Nedlac, said after meeting Mboweni on Friday that it was likely it would change its mandate and support the Bill

Cosatu 'not totally against' schedule inclusion

Reneé Grawitzky

(166) BD 21/7/97

THE Congress of SA Trade Unions (Cosatu) was not totally opposed to the idea of the inclusion of a schedule to the Basic Conditions of Employment Bill to meet the goal of a 40-hour week, a nonunion source close to the process said yesterday

This follows statements by Cosatu that it had rejected this proposal tabled by Labour Minister Tito Mboweni in an 11th-hour attempt to break the logjam to ensure the bill was not withdrawn from Parliament.

On Friday Mboweni reiterated that the bill would not be tabled unless labour and business supported it He also warned that he would consider a "roadshow around the country to hold worker forums" to discuss the bill This, he said, was to avoid negotiations centred only on organised labour and business.

On the other hand, the National Economic, Development and Labour Council was under strain but ultimately the parties had to go back to it, he said. "We have to drive the process of social partnership"

The schedule to achieve a 40-hour week proposes mechanisms to reduce hours through collective bargaining. Every five years government would review progress made to achieving a 40-hour week in light of economic realities

Cosatu is opposed to the formulation of the schedule and wants to see an enforceable timetable stipulating a one-hour reduction a year Business is concerned that a schedule would put pressure on employers to negotiate a reduction every year, and would not comment ahead of today's meeting with Mboweni

In an endeavour to get Cosatu to agree to the averaging of hours worked over a specific time period, he said that if employers wanted to average hours, they should do so at less than 45 hours

The bill currently provides that hours can be averaged over four months, with the average time worked not exceeding 45 hours and five hours overtime a week

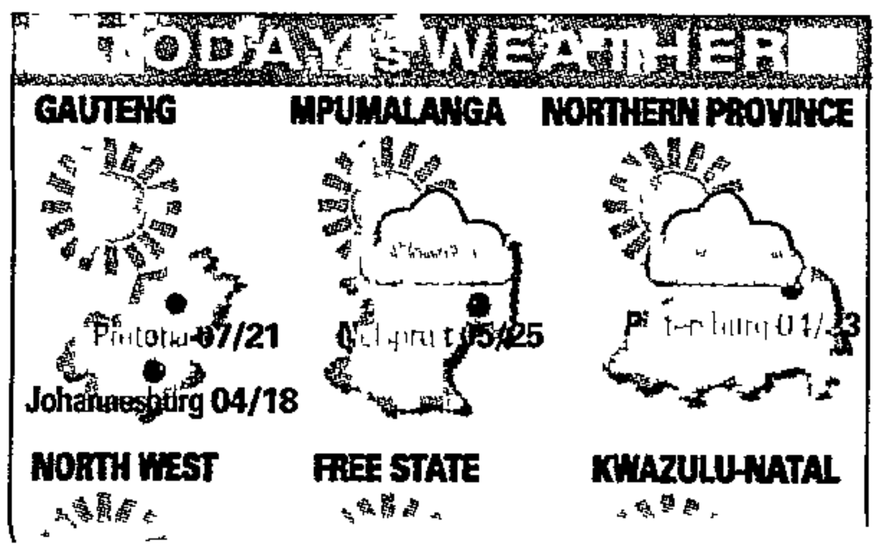
Mboweni warned that the parties were also still very far apart when it come to agreeing on the model for variation "Without an agreement on variation we do not have a bill," he said

In spite of the lack of consensus around these fundamental issues a task team consisting of representatives of Cosatu and the labour department has been established to consider the areas of difference

As an interim measure if consensus was not reached, Mboweni said, he would table a bill covering previously unorganised and vulnerable workers. This option is in line with a proposal tabled by business in June

Sapa reported that National African Federated Chamber of Commerce president Joe Hlongwane warned Cosatu at the weekend to stop demanding a 40-hour working week as it could result in economic collapse

"SA is still a developing country and a developing country should work hard to improve its economy (Cosatu general secretary) Shilowa and company must stop bickering over issues such as the 40-hour working week," he said



Nafcoc slates Cosatu's call for shorter working week

(166)

ARG 21/7/97

ARGUS CORRESPONDENT

Johannesburg – The National African Federated Chamber of Commerce (Nafcoc) has lambasted the Congress of South African Trade Unions (Cosatu) for demanding a reduction in the 40-hour working week.

Speaking at the organisation's conference at Badplaas, Mpumalanga, the president, Joe Hlongwane, said the union federation's demand for a reduced working week would result in economic collapse.

He said it was time Cosatu concentrated on issues that would see the South African economy grow instead of fighting minor issues such as a shorter working week

"South Africa is still a developing country and a developing country should work hard to improve its economy. Cosatu's Sam Shilowa and company must stop bickering over issues like these," Mr Hlongwane told about 300 delegates.

If Cosatu's demand succeeded and became law through the enactment of the Basic Conditions of Employment Bill, the economy would crumble

"We cannot allow people to shrink the economy in our presence," he said, adding that black organisations should support the Government

Meanwhile, the Labour Department is reported to have come out in support of a progressive reduction in working hours to 40 a week

After meeting Cosatu to discuss the Basic Conditions of Employment Bill in Pretoria on Friday, Labour minister Tito Mboweni said the goal of a 40-hour working week should be common to all South Africans

Labour Deputy Director-General Les Kettledas said the department would request authorisation from the Cabinet for the introduction of a schedule into the Bill providing for the reduction.

■ Mpumalanga Premier Mathews Phosa assured delegates that his government was committed to helping small, medium and micro enterprises.

SA NEWS DIGEST

EMPLOYMENT

Business will not agree to 40-hour week in 'controversial' draft bill (166)

Johannesburg — Business cannot accept a legislated 40-hour working week in the draft Basic Conditions of Employment Bill, as this was a "best" and not a "basic" condition of employment, Adrian du Plessis, Business South Africa (BSA) spokesman said yesterday.

Du Plessis was speaking after Monday's meeting with Tito Mboweni, the labour minister, who tabled fresh proposals to break the deadlock over the controversial bill.

Cosatu, the labour federation, has listed a 40 hour working week as one of its key demands. Du Plessis said business would not agree to a statutory 40 hour working week. "Any reduction in working hours would have to be through collective bargaining, as 'best conditions of employment' was the responsibility of collective bargaining and not that of the law," he said.

He said business does not believe that one side (in the Nedlac process) should be allowed to settle issues unilaterally. Du Plessis said business also raised its objections regarding the proposed provisions in the bill for the increases in overtime pay, family responsibility leave, the notice period and other areas of concern. — *Frank Mkimude, Johannesburg*

CT (BR) 23/7/97

Unity needed to survive globalisation

A recent labour law conference emphasised how necessary it is for labour and business to rise above entrenched positions to tackle the globalisation challenge, writes Reneé Grawitzky

(166) BD 23/7/97

NATIONAL labour laws crafted in isolation as the world becomes one borderless competitive market are doomed to fail

This message emerged from the Labour Law Conference held recently, which was intended to consider the application of the new Labour Relations Act Instead, it turned into a mud-slinging match around the adoption of government's growth, employment and redistribution strategy (Gear) and whether SA could escape the impact of globalisation

The majority of speakers, irrespective of their orientation, argued that SA was part of the global economy and and had to adapt to this reality

International Labour Organisation representative Peter Peek said, "It is here to stay Let us meet the challenge " Trade and Industry Minister Alec Erwin made a similar appeal Erwin said the key challenge for government and business was to adapt to change, and he warned unions that if they could not react to the pace of change they would become marginalised

Peek said there were different ways of meeting the challenges of globalisation Some believed current policymaking would price SA out of the global economy while others argued that such policies were essential SA's future, he said, depended on bringing these two views together to find a balance between enhanced labour standards and productivity Insufficient emphasis was placed on the linkage between the two

Canadian professor Harry Arthurs argued that SA was in a unique position relative to other developing countries in that its economy was still largely dominated by SA companies and had not yet experienced the deep penetration of global capital This, he argued, provided SA with a "small window of opportunity" for the social partners to negotiate the terms of SA's entry into the global economy It appeared, however, that the parties were not yet able to take the leap of faith required to enter into such a process

"If we are to preserve the experience of ordinary people, we need a commitment to civilised minimum standards," he said

Another delegate noted "There is no denying the need for basic protection, but ultimately one does no one any favours if workers are given all the protection in the world but remained unemployed " On the other hand SA did not want to go the same route as the US where 100-million workers had no recourse for wrongful dismissal

Peek argued that if SA missed the boat it would find it increasingly difficult to catch it later Parties had to consider that in the current climate, a deal made further down the track could be far less advantageous, to labour especially

This is in fact what has happened with the negotiations around the Basic Conditions of Employment Bill The parties had an opportunity to settle in June/July last year but failed to do so, either because negotiators were not properly mandated or because the publication of a draft bill at a crucial point threw the whole process into disarray

Labour now faces a settlement which does not quite meet its core demands

A compromise deal, largely endorsed by the ANC, goes some way in addressing Cosatu's demands and, far more important, ensures vulnerable workers are protected Is that not the objective of the bill?

Cosatu had however, adopted a positional approach by claiming it would rather lose with dignity than compromise on its demands Business too dug in its heels with attitudes hardening and indicated it had compromised and could not move further

A labour source argued business had found a new confidence to push for its agenda and consensus could not be reached unless some pressure was put on business to recognise that it had to take on some reconstruction and development projects

Some would have us believe that Cosatu, ahead of its congress in September, cannot be seen to be supporting a Bill which does not quite meets its core demands

A far more likely scenario is the desire by some to challenge the ANC In the same vein there is a growing element within the ANC which wants to put labour in its place The longer the situation festers the less the likelihood of a settlement

The negotiations are also occurring within a broader context, with Cosatu wishing to show government up for adopting Gear A source close to the process said that a resolution might have to be sought within this same broader context

The Durban conference brought to the fore the definite cleavages in SA society and the inability of labour and business to rise above their entrenched positions Government and the ANC should show the way and engage their constituencies on the adoption of fundamental policy instead of stifling debate

A delegate to the law conference said that unless the country could be convinced of the importance of Gear, they would seek every possible avenue to raise their objections

Unfortunately, as one observer said of the employment legislation, "the bill is a casualty of Gear", and Gear is a direct response to globalisation

Arthurs warned delegates against oversimplifying or underestimating the effects of globalisation Other countries, other union movements and other business communities were also struggling to understand globalisation

"If we can recover solidarity (we are all in this together) and possibility (we have options even if they are limited), we will survive globalisation with reasonable economic prospects — with a chance to treat all citizens decently, if not with perfect justice "

That, possibly, is the message government should be bringing to labour and other constituencies

Cosatu leads the way in demands for workplace rights

Western Cape makes new LRA

ARG 24/7/97 (166)

Building industry bargaining council agreement

THABO MABASO
BUSINESS REPORTER

The Western Cape has became the first province in the country to have a bargaining council agreement approved in terms of the new Labour Relations Act (LRA) by Labour Minister Tito Mboweni.

The approval this week means that the Western Cape-based Bargaining Council for the Building Industry, will go down in history as the first to have its collective agreement published under the new LRA

The Ministry of Labour said in a statement that it would extend the agreement to cover employers and employees who are not part of the council The council registered with the ministry last year

The agreement is effective for two years and covers areas such as working conditions and terms of employment Four trade unions and two employers' organisations have signed the agreement

The ministry said the trade unions represented about 73% of workers falling within the council's scope, while the employer parties provided work for about 76% of the workers

Construction and Allied Workers' Union (Cawu) regional organiser Lulamile Mqikela said an allowance for employees doing dangerous work had been established in terms of the agreement.

Another allowance for employees who were required to go away for periods to perform jobs had also been established, he said

"We have also agreed to pay workers a retrenchment package, which would be one week's pay for each completed year of service," Mr Mqikela said

Other issues that were still being discussed by the council included the established of an Inclement Weather Fund, to enable workers to be paid when they were unable to work due to the weather, and the setting up of a provident fund

Mr Mqikela said the current agreement replaced one that had been in force since 1921

"The previous one had problems and discriminated against workers on racial grounds It also was restrictive and exhaustive," he added

Master Builders' and Allied Trades' Association president Jonathan Mitchell described the new agreement as "revolutionary and likely to make for better communication"

"Previous documents were very authoritarian and dictatorial and attempted to categorise people so that they could only do certain work The new agreement is far less restrictive and will allow the employer to use his labour more productively The only condition will be that he pay the required rate," Mr Mitchell said

He praised the trade unions for putting the interests of their members and the industry first

"We believe that the new document will give us a far more stable workforce, that was one of the prime objectives in drawing it up," Mr Mitchell said

a first

history

Unions slate govt threat to withdraw employment bill

Pearl Sebolao

BD 25/7/97 (166)

THE National Union of Metalworkers of SA (Numsa) has taken strong exception to Labour Minister Tito Mboweni's announcement that he would withdraw the Basic Conditions of Employment Bill if there was no "speedy" settlement between labour and business

Numsa spokesman Dumisa Ntuli said yesterday Mboweni's announcement was, in effect, a threat to labour because withdrawing the bill would harm labour and "the most vulnerable workers in the country"

There was now no incentive for business to compromise. Numsa saw the decision as an attempt to squeeze workers' right to a decent working environment, he said

Ntuli said Mboweni was taking a position that favoured capital and not balancing the demands of labour and business Mboweni was ignoring the fact that it was not easy to reach an agreement on labour legislation because of the ideological issues involved

"While the ideal situation is that consensus should be sought, however, where deadlock is reached the governing party may not simply take the easy road" and shirk its responsibility to govern the process, he said.

Mboweni "seems to have forgotten that in the past few months he was advocating the bill within the National Economic, Development and Labour Council and Parliament, yet suddenly he wants to withdraw the bill", Ntuli said

The Communication Workers' Union voiced their concern about government's threat to withdraw the bill and have vowed to use "the last ounce of our energy to ensure that the bill is negotiated to finality, through Parliament if need be".

Strikes

The union would embark on a series of work stoppages and 24-hour strikes as part of the Congress of SA Trade Union's (Cosatu) programme of action throughout the country to show the government they were serious

The communication workers also planned a 24-hour national strike at a date still to be announced.

The unions, which were both affiliated to Cosatu, demanded that the bill guaranteed a phased-in 40-hour working week and six-months maternity leave, with four months paid

Man arrested after Shilowa receives death threat

Reneé Grawitzky

A MAN has been arrested in connection with alleged death threats against Congress of SA Trade Unions (Cosatu) general secretary Sam Shilowa

Cosatu said Shilowa had received death threats from anonymous callers for a number of months It was decided to approach lawyers and the police.

In the interim, the labour federation had tightened up security at Cosatu House A man was arrested and brought in for questioning following police investigations.

The SA Police Service confirmed that a suspect had been arrested and subsequently released pending further investigation He was expected to appear in court soon

SECTION 3
Business Times APPO

Employment Bill has business lobby in a froth

(166)

ST(BT) 27/7/97

It seems no one is entirely happy with the proposed legislation, writes CIARAN RYAN

THE Basic Conditions of Employment Bill is turning out to be one of the most divisive pieces of proposed legislation in recent years

At issue according to business lobbyists, is the entire future of job creation and national economic growth They point to the fact that virtually no new manufacturing jobs have been created over the past 20 years as business migrates towards more capital-intensive production

Labour wants six months maternity leave, at least four of them paid, the phasing in of a 40-hour week double pay for Sunday work and, one of the more contentious demands, no downward variation in conditions This means that standards should only be improved on, not diminished Cosatu has rejected averaging provisions which would allow for greater flexibility in employment and argues that a regular 40-hour week will encourage job creation

The Confederation of Employers of SA (Cofesa) says it has helped reclassify more than 150 000 workers at 3 000 companies as independent contractors rather than paid employees Not only does this circumvent many of the provisions of the Labour Relations Act, it has produced some startling increases in productivity Hein van der Walt, director of Cofesa, says independent contractors also fall outside the ambit of the Basic Conditions of Employment Bill

Van der Walt says productivity improvements of 60% have been recorded after switching from employed to contracted labour

He says SA is up against rampant Asian economies, where 60-hour working weeks are not uncommon and labour rates are substantially lower and productivity rates markedly higher than in SA

SMME Alert, a newsletter produced by the Small Business Project, says in terms of the Bill non-standard employees who work more than four hours a week at a company will qualify for the same basket of rights as permanent employees "The cost to employers of providing this level of minimum benefits to non-standard employees could very easily exceed the contribution they make to revenue, productivity and profitability"

Lenco chairman Doug de Jager, writing in the 1997 annual report, says those who argue that crime is the greatest threat to the country's future prosperity are missing the point It's time, he says, to realise that the real problem is an abundance of factors working against employment creation and that high unemployment, coupled with the absence of a social security system, is a perfect recipe for crime

"When every major employer group should be applying its mind to creating jobs, most are strategising on how to reduce their exposure to labour. Huge capital is expended to achieve a greater degree of automation," says De Jager

Monde Tabata, chief executive of the National Small Business Council, says the Basic Conditions of Employment Bill reflects the interests of big business and labour, but pays scant attention to the needs of small business

"The Basic Conditions of Employment Bill goes a long way towards prescribing what needs to be done in terms of employment conditions, but what we need is more flexibility," says Tabata "We have not heard the last word on this There is a pressing need to get the process of job creation going and we want to start a process looking at the specific interests of small business."

DISTURBING TREND . . . Hein van der Walt says business is converting to contract labour

Weighing up the Labour Relations Act

CT(BR) 28/7/97 (166)

What are the labour market objectives against which the government's actions must be measured? Broadly speaking, we have six objectives First, we want to see more jobs created and employment levels rising Our current unemployment rate — whether you take the official figure of 32 percent or the International Labour Organisation estimate of 20-something percent — is totally unacceptable Youth unemployment is especially worrying, as are the lower formal sector employment rates among women

We want to see increased industrial relations stability This involves a reduction in the incidence of strikes and lockouts, except as a weapon of last resort And it means the elimination, as far as possible, of unprocedural industrial action More generally it means a stable and predictable labour relations environment

We want to promote collective bargaining We see this at two basic levels

First, we want to see meaningful national councils in most major sectors We want to see these emerge, not as replicas of the old industrial councils which were often too rigid and bureaucratic, but as modernised forums for collective bargaining and co-determination as outlined in the act. Second, we want to see realistic minimums set at council level, supplemented by gain-sharing arrangements at enterprise level linked to productivity or profit-sharing agreements.

We want to enhance productivity within the economy This is about increasing both the quantity and quality of employment-related training It is about getting our nation back to work but also, and more importantly, it is about working smarter

TITO MBOWENI

We want to eliminate unfair discrimination in the workplace This partly involves outlawing unfair discrimination, as the Labour Relations Act (LRA) already does And it partly involves measures to promote a more diverse and representative workforce, one which reflects our country's richness

We want to provide basic protections and minimum rights for workers, especially vulnerable workers Domestic workers, farmworkers, construction workers, security guards, cleaners and many, many others receive little protection from unions And their conditions are frequently shockingly low According to the Comprehensive Labour Market Commission, in 1994 10 percent of South Africans in employment earned less than R250 a month, sometimes substantially less

Where these six objectives are not mutually compatible, then we have to balance them in ways appropriate to our economic circumstances and political realities In particular, we aim to avoid measures which may unjustifiably increase labour costs or which may overregulate the labour market

We want to ensure that all workers enjoy basic labour rights and labour security But we want to achieve this in ways which allow appropriate adaptation in their application This can be a delicate balancing act

So how does the LRA measure up? What are some of the positive elements on the LRA balance sheet?

First, the fact that the new LRA emerged out of tripartite consensus has given the law enormous legitimacy There seems to be a willingness from all sides to comply with the provisions of the act This is good for stability, predictability and respect for the rule of law The importance of this achievement should not be underestimated

Second, the labour court appears to be running efficiently and effectively, although perhaps its caseload can still be expected to increase Reading both the majority and minority judgments of the labour appeal court, when Business South Africa challenged Cosatu around its protest action call, I was struck by the subtlety of the arguments and the judges' awareness of the particularities of the labour relations environment There are clearly advantages in having a specialist court when it comes to matters of employment law

Third, the Commission for Conciliation, Mediation and Arbitration (CCMA) is operational The challenge involved in establishing this new institution from scratch is hard for outsiders to appreciate It is currently settling around two-thirds of conciliations brought before it — far better than the old act — with most of the remaining cases resolved through arbitration A number of collective disputes have been resolved which would not have been under the previous dispensation. This has saved the economy millions

Fourth, we have started receiving new-style bargaining council agreements which are simpler and written in plain language

But every balance sheet has negative aspects The act presupposes a mature social partnership But tripartite arrangements are not yet operating as well as they should The result has been delays in finalising some of the codes of good practice referred to in the act and settling the thorny issue of demarcation of sectors

The CCMA is facing a number of problems Operationally it has experienced delays in processing cases efficiently and quickly In some provinces a worrying backlog has developed which is only now being addressed Part of the problem stems from the fact that case referrals are running at twice the anticipated number Individuals and unions are referring matters to the CCMA as a first resort Because of the caseload and because 70 percent of the CCMA's cases relate to individual unfair dismissals, the proactive, preventative role of the CCMA is not getting enough attention

The new LRA has made it too easy to register new unions and employer organisations At the last count there were 385 unions and 238 employer organisations. Many consultants are registering themselves to gain the advantage of special access to the CCMA

So far the unions have shown little interest in workplace forums Only 22 applications to establish forums have been received, with 12 declined because they did not comply with the act

It should come as no surprise, then, that we are drafting some amendments aimed at polishing the LRA and improving labour market effects We intend to reduce the ease of access to the CCMA, at least in instances where internal procedures have not been fully exhausted This should reduce the caseload We are also concerned that some individuals may be alleging unfair dismissal simply to obtain a larger severance payment from their employer

We must also remove obstacles to the expeditious handling of cases by the CCMA We must allow only bona fide unions and employer organisations to register The minister needs greater discretion when it comes to extending council agreements to non-parties The current emphasis on numerical representivity is too mechanistic and insufficiently sensitive to economic development and bargaining stability considerations

Finally, we need to, we must consider an appropriate role for reputable labour advisers and consultants in the labour relations and dispute prevention system We want on the one hand to recognise the often positive role played by consultants or rural advice centres On the other hand, we do not want to alter the basic thinking contained in the act, which is aimed at expediting the conciliation and arbitration process

☐ *This is an edited version of the speech given by the minister of labour at the annual labour law conference in Durban earlier this month*

Ppwawu will support strikes if Nedlac talks fail

(166)

FRANK NXUMALO

Johannesburg — If the government fails to act decisively on the disputes around the draft Basic Conditions of Employment Bill, the only choice left for workers will be to engage in rolling industrial action, the Paper, Printing, Wood and Allied Workers' Union (Ppwawu) said at the weekend.

Ppwawu was reacting to Labour Minister Tito Mboweni's warning that the bill might wither away if there was no consensus between labour and business at the National Economic Development and Labour Council (Nedlac) by the set dates.

Alfred Tshabalala, Ppwawu's spokesman, said the announcement indicated the government was not able to take the process of the bill forward and showed a lack of determination from the minister in creating a policy of regulating the labour market, for fear of business opposition

"The major cause of this stalemate (at Nedlac) emanates from the intransigent attitude demonstrated by business in refusing to acknowledge the need to change and transform labour conditions in South Africa," Tshabalala said

Ppwawu fully supported Cosatu's call for marches, demonstrations and strikes next month.

ET (BR) 28/7/97

Cosatu general secretary Mr Sam Shilowa who says the decision to go ahead with the mass action was taken at a special session of the federation's executive committee on Tuesday.

Mass strikes will go ahead – Cosatu

Sowetan 31/7/97 (166)

By Abdul Milazi

THE Congress of South African Trade Unions (Cosatu) said yesterday that nothing short of a settlement of the dispute between itself and business on the Basic Conditions of Employment Bill would stop the planned mass action by 1,9 million workers next week

The mass action campaign starts with a national one-hour work stoppage on Monday and will be followed by a series of one-day strikes from August 18 to 21 The strikes will be accompanied by rallies and marches to the offices of Business South Africa countrywide

Cosatu general secretary Mr Sam Shilowa said the decision to go ahead with the mass action was taken at a special session of the federation's executive committee on Tuesday

He said the executive committee felt that no significant progress had been made on a number of core issues

"The progress in relation to Sunday work and on maternity leave, in particular the agreement on payment through the Unemployment Insurance Fund was noted" said Shilowa

He said there was still no agreement on labour's demand for a 40-hour week to be phased in over a period of five years, six months' maternity leave (with four months paid), an upward variation of employment standards and, the working age of minors to be set at 16 years

Shilowa said Business South Africa had already sent Cosatu a letter threatening litigation should the federation go ahead with its mass action

Threats won't help

He said the threat of legal action would not break the impasse, but would further polarise workers and employers "The only thing that will stop the planned mass action will be a settlement and not threats of litigation"

He said Cosatu would hold further talks with the African National Congress to try and reach common ground on the Bill

The Cosatu leadership has been mandated to explore possibilities of a settlement with the ANC and, if there is a need, to convene a special executive committee meeting"

Shilowa said the ANC- SACP-Cosatu alliance would hold a two-day summit next month to explore areas of agreement on policy and contentious topical issues

"A joint document will be tabled to the alliance summit, identifying all these areas and processes on how to resolve disagreements if they still exist," Shilowa said

The planned mass action will be the second protest on a massive scale involving Cosatu and business in a year It follows the three-month protests earlier this year over the same issues

Cosatu assistant general secretary Zwelinzima Vavi said although informal talks with Labour Minister Mr Tito Mboweni were promising, they remain just talks until they are formally tabled in negotiations"

The first one-day strike will take place in the Eastern Cape on August 18, followed by KwaZulu-Natal and Mpumalanga the following day

The Northern Cape, Western Cape and the Free State will follow on August 20 and the strike will end in Gauteng on August 21

'The above action will be followed by 24-hour strikes on the days that business and labour make their submissions to Parliament respectively," Shilowa said

Cosatu move revives hopes of deal on bill

BD 31/7/97 (166)

Reneé Grawitzky

THE Congress of SA Trade Unions (Cosatu) has decided to soften its previous uncompromising position on the Basic Conditions of Employment Bill, opening the way for a resumption of talks with government and business.

Business has responded by indicating it would be prepared to review its own tough position Agreement would ensure the tabling of the Bill in Parliament this year

Sources at Tuesday's Cosatu executive committee meeting said the decision followed heated debate on whether it could risk the bill not being tabled, — which Labour Minister Tito Mboweni has threatened to do

However, Cosatu still plans to go ahead with mass action, starting with a one-hour work stoppage on Monday.

Cosatu general secretary Sam Shilowa said yesterday the executive committee had mandated the leadership to "explore possibilities of a settlement with the ANC"

Sources said delegates were forced to rethink Cosatu's position in the face of the African National Congress (ANC) national executive committee's decision to endorse the bill as it stood

A willingness to review positions on a 40-hour working week, four months paid maternity leave, the child labour age limit and variation of standards through private agreements could provide the foundation for an agreement with the ANC

Shilowa said progress had been made during recent talks with the labour ministry on Sunday work, the variation model and maternity leave

Cosatu assistant general secretary Zwelinzima Vavi cautioned that the federation was not signalling it was going to compromise on core demands But, "if presented with a situation that a significant victory can be claimed, we will not shy away"

Settlement depended on a "small show of good faith by government and business", labour sources said

An ANC/Cosatu agreement would lead to pressure on business to review its positions To meet parliamentary deadlines, the parties have until August 16 to reach agreement

Business SA (BSA) official Raymond Parsons said last night Cosatu's willingness to negotiate should lead to business and labour talks. Business was prepared to revisit its positions

Meanwhile, Shilowa criticised BSA for sending a letter this week warning the proposed mass action was contrary to the Labour Relations Act. Shilowa said warnings of further litigation could only harden attitudes BSA decided last week to prepare for possible legal action against Cosatu.

The Cosatu executive committee also endorsed the holding of an alliance summit on August 22 and 23

Focus debate on vision, not numbers

Reducing working hours would benefit workers and employers, but achieving agreement on the issue is going to require creative negotiation, writes Glenn Adler

BD 31/7/97 (166)

THE conflict over a 40-hour week has contributed to the deadlock in negotiations over the Basic Conditions of Employment Bill

All parties accept the need to reduce working hours, but agreement on how far and how quickly to do so is bedevilled by a clash between business's concerns for costs and labour's concern for social justice Caught between these positions, the debate comes down to numbers reduce to 40 hours, as Cosatu demands, or to 45, as business and the draft Bill propose

To break this impasse we need less conflict over numbers and more agreement on vision A 40-hour week may in future be consistent with the concerns of both business and labour, but only if we seek creative long-term solutions The wisdom of working time reductions must not be judged by present conditions only, for these are the products of an unjust order, we must find ways of changing those conditions so that a progressive vision becomes feasible Government has a crucial role to play, not as mediator between business and labour, but as co-author of a progressive solution Without this common vision, a deal on numbers is unlikely to produce either cost reductions or social justice

By any measure, South Africans work long hours According to the green paper on employment standards, the average actual hours worked (ordinary and overtime) in 1992 was 44,7 in manufacturing and 44,3 in building and construction But hours varied by as much as 25% between sectors 40,6 for footwear workers, 51 for workers in basic iron and steel The hours worked by some employees can best be described as perverse, such as security guards' 60-hour week Domestic workers and farmworkers work extremely long — largely undocumented — hours

And according to an investigation carried out by Nic Henwood for a National Labour and Economic Development Institute (Naledi) long-term research project on hours of work, long distance truckers spend up to 57 hours a week driving and 146 hours a week away from home on jobs

To put this in an international context, a survey of total weekly hours in manufacturing in 43 countries cited in the green paper found that just under 75% of countries had shorter working hours than SA, including many of our more competitive trading partners in the developing world

What does a long working week mean in human terms? For the worker it means sheer exhaustion, with attendant health problems and increased risk of injury, limited engagement with family members, heavy burdens on women who must organise childcare in a context of inadequate creche facilities, and exposure to an unreliable transport system and the threat of violent crime while travelling to and from work in darkness Indeed, some night-shift workers surveyed by Naledi preferred working from 6pm to 6am to avoid travelling home at night

The average figures obscure an important feature of long working hours in SA the burden falls disproportionately on production workers According to the green paper, production workers in paper and printing work on average 48,5 hours a week, while their office-bound counterparts work less than 42 hours, in metals and engineering the figures are 49 hours for production workers and 43,5 for other employees

These differences are caused largely by the ways employers use overtime Production workers in paper and printing work 7,5 hours overtime a week, while their office counterparts work 1,9, in metals and engineering the figures are 5,6 and 1,8 hours a week.

SA businesses rank among the highest users of overtime as a proportion of normal hours worked in the world A majority of all employees work regular paid overtime, indeed, more than one-third of employees in manufacturing work more than eight hours' regular overtime a week — nearly equal to a normal working day

Employers would rather work their existing employees longer and harder than hire new workers According to an investigation by Naledi researcher Rob Rees, employers fear the costs of benefits that would have to be paid and the "hassle factor" — strikes and grievances that would ensue if they had to retrench these new workers It is easier to extend employees' hours, with shortfalls filled by "atypical" employees

These hiring practices create a vicious circle for workers, employers and the country as a whole A relatively small core of employees works extremely long hours, while expansion of capacity generates little — or at best highly insecure — new employment

These workers earn increased income, but bear the personal costs of long hours while unemployment is not reduced The fact that production workers are overwhelmingly black and office workers overwhelmingly white gives an important racial dimension to the problem of long hours

Our economic problems are not caused by employees working too little, rather, long hours undermine our economy Exhausted workers, fearful of travelling during darkness, worried about their children's well-being during their long absence from home, are unlikely to identify with the goals of the firm

There is no cheap route to productivity these workers will rather be looking for relief from a working time regime unchanged for much of this century It is a reasonable expectation that democracy should ease, rather than entrench apartheid working hours It is possible to find ways to reconcile the competing demands of business and labour over the 40-hour week A reduction in hours itself brings direct and indirect productivity improvements by reducing worker fatigue (and thereby reducing accidents), and by increasing workers' satisfaction

These gains can help finance a reduction in working time Many firms are already reducing hours turning to creative solutions for their competitive edge, rather than forcing their employees to work long hours

However, there are good and bad ways to reduce working hours Making up the difference by employing atypical workers will increase insecurity for all workers

The 40-hour week may contribute to Labour Minister Tito Mboweni's goal of "more and better jobs", but only in the context of an integrated set of policies, requiring action from the state, employers, and workers on

- Progress on "social wage" issues to improve productivity (cheaper, better public transport so workers can arrive at work fresher and return home quickly and reliably, reduction in crime to lessen workers' anxiety) and measures encouraging employment of new workers (adequate retirement provisions, improved, efficient, lower-cost health care),
- The possibility, as the University of Cape Town's Pete Lewis argues in Naledi's long-term research project, of trading off flexibility on unsociable hours — a benefit for management — with a reduction in overall working time;
- Linking the 40-hour week and employment standards to industrial policy an expanding economy will encourage employers to hire more permanent labour, and
- Attaining the 40-hour week gradually. the green paper's original five-year framework allows changes to be negotiated and for the policies outlined above to come on line together

Long hours are bad for workers, bad for productivity and bad for employment The 40-hour week can contribute to a virtuous circle of "working smarter, not harder" To do so, the debate must shift from a zero-sum preoccupation with numbers to agreement on a common vision and the means to obtain it in five years This path requires creativity and commitment, and an active role for government But in the long term it can bring the benefits of democracy to SA's workers

Adler is an academic staff associate at Wits University's sociology of work unit and a senior researcher at Naledi

Nearly 75% of other countries have shorter working hours than SA

INSIDE LABOUR

Meanwhile, back at the ranch, same yoke

(166) CT (BR) 11/11/96

TERRY BELL

Farmworkers, the lowest-paid and most-exploited sector of South Africa's labour force, will not have much to celebrate with the introduction today of the new Labour Relations act Because private property remains paramount and no special concessions are made for access, they are still likely to remain largely isolated

With only an estimated 2 percent of the country's perhaps 1,2 million commercial farmworkers unionised, there is no trade union presence on most farms in the country The new legislation will do nothing to change this

The act also removes from these workers a right granted them nearly three years ago the right to have a paralegal, usually a volunteer from their area with basic legal training, represent them in cases of dispute

The act might also hasten the closure of the national network of rural advice offices, which often provided farmworkers with their only local access to discovering, let alone fighting for, their rights

This caused some wry chuckles when Gwede Mantashe, the National Union of Mineworkers' deputy general secretary, said last week that the only losers when the act came into effect would be lawyers

"In fact, one can see the hand of the lawyer lobby in this legislation, just as much as in any previous laws," said one attorney involved with para legal services

According to him, the lawyer lobby was protecting an annual R80 million legal-aid payout by excluding paralegal officers from the act's effects

Other officials in the paralegal and rural legal services field maintained a more lawyerly decorum in their comments But all felt the act had dealt a blow to a vital service which had been painstakingly built up over years through organisations such as the Black Sash and Lawyers for Human Rights

"There are about 250 rural advice offices around the country and about 1 800 paralegals," said Motlai Mashiloane, the paralegal capacity development co-ordinator with the Lawyers for Human Rights head office in Pretoria

"And they are already under pressure because of lack of funding"

Mashiloane felt the act might yet be interpreted as not amounting to an effective ban on paralegals

In any event, he considered it might be challenged on the grounds that it removed the constitutional right of workers to be represented by a person of their choice In matters that come to the Labour Court under the new legislation, the act says a worker "may appear in person or be represented only by a legal practitioner, a co-employee or by a member, office bearer or official" of a trade union

"The wording is clear," said Nicky Taylor, an attorney and researcher with the Stellenbosch-based Centre for Rural Legal Studies 'I don't think there is any question that paralegals are precluded"

She also argued strongly that the services of paralegals would be a useful complement to the mediation procedures set up in the act "However good commissioners may be, they are in the role of arbitrators and can not appear to favour one side," she said

Farmworkers, she said, invariably required a friend who had some knowledge of legal processes and the nature of the disputes in the area

But much of this debate, she felt, was academic, because trade unions or advice office personnel's right of access to farmworkers was still in the hands of employers

Workers in other industries can be reached outside the workplace, and have access to trade unions and other assistance

"A trade union organiser, human rights investigator, paralegal or anybody can simply be thrown off a farm and charged with trespass," Taylor said "And it happens"

So farmworkers are unlikely to be involved in any disputes about deficiencies in the act even though they and their families make up nearly 20 percent of the population and have most to complain about

And there will be disputes Trade unionists will not take kindly to employers using the lockout or employing replacement, or scab, labour Yet both of these are provided for in the new act. Provisions allowing for the outsourcing of work also promise confrontation

But any future battles and their outcome will probably once again bypass the largest, lowest-paid and most-exploited group of workers in South Africa

WORKPLACE FORUMS *Co-operation the goal*

New era dawns for industrial relations

CT (BR) 11/11/96 (166)

PIERRE MARAIS & IVAN ISRAELSTAM

The new Labour Relations act, which comes into effect today, imposes a totally new approach to corporate governance and industrial relations After many delays — the act was initially scheduled for promulgation on May 1 this year — the legislators have decided that a combination of workplace democracy and joint employee-employer responsibility for corporate management is essential for socioeconomic development in South Africa

It is a necessary approach for the development of co-operation between employers and employees towards achieving real employee upliftment, corporate productivity, global competitiveness and sound national economy

This revolutionary approach has been legislated through the workplace forum provisions in chapter five of the new act As a result, most employers are now required to make workplace forums part of their strategies

The forum, which is a body representing all employees (unionised or not), has the right to be consulted on certain issues and make decisions jointly with employers on other issues Among others, issues for consultation include matters affecting job security, merit payment criteria, education, training and job grading, product development plans and export promotion

Issues that will affect joint decision-making include disciplinary codes and procedures, rules of conduct, affirmative action and changes to rules of employee benefit schemes

Where a representative trade union applies for the establishment of a workplace forum in respect of a workplace with over 100 employees, the employer is required to co-operate and to conclude a constitution with the employee representatives Because workplace forums, as structures for participative management, are a foregone conclusion in most cases, employers need to know what the pitfalls, opportunities and required strategies are.

Pitfalls include:

- Attempts by employers to resist the forums and information disclosures could result in industrial action and statutory proceedings
- Making the assumption that participative management is only a soft option, true and effective participative management means completely the opposite. It means strict rules, added and joint responsibility and hard work for all parties.
- Failure to understand that participative management is a major departure from the traditional managerial style
- Ignoring the need for thorough preparation for the development of the new system and culture. Most employers and employees do not possess the knowledge, skills, attitudes and strategies necessary to make co-determination work profitably

But opportunities exist for constructive industrial relations, common goals and joint wealth creation, employee development and a globally competitive economy The act is here and it is necessary to implement proactive measures with thorough management preparation via training and workshopping

Pierre Marais is the managing director and Ivan Israelstam is the senior consultant of the Labour Law Group

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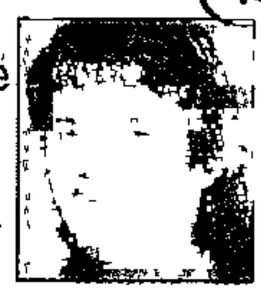
ALL WORKERS PROTECTED

Labour Court seeks seat as act takes effect

(166) CT 11/11/96

FROM TODAY domestic and farm workers are to have the same protection as other employees **PETER DENNEHY** reports



THE Labour Relations Act (LRA) — which does not set a minimum wage — is to come into force today.

However, obstacles still stand in the way of launching the Labour Court — which has the status of the Supreme Court

Chief of these problems is the lack of suitable premises

Mr Justice John Myburgh, who has been given the task of setting up the Labour Court and its registrar's office, said he had been told there was no room for the court in the Supreme Court buildings in Johannesburg, Cape Town and Durban

The Public Works Department had yet to make buildings available In the absence of permanent premises, telephone and computer systems had to be set up in temporary offices, Judge Myburgh said

His temporary accommodation was too small, although he had the required staff.

The Labour Court is to replace the Industrial Courts, which are to finish their present business, which includes about 10 000 cases This is expected to take two years, during which their premises will not be available for the new Labour Court

The act also provides for a Commission for Conciliation, Mediation and Arbitration (CCMA)

The CCMA is to mediate wage disputes, known as "disputes of interest" If mediation fails, the dispute can go to industrial action There is no obligation to go to arbitration

"Disputes of right", which include dismissals, are to be mediated and, if necessary, arbitrated by the CCMA Disputes of right account for most of the work undertaken by the Industrial Court

The Labour Relations Act extends labour-legislation protection to domestic, farm, contract and part-time workers for the first time Trainees are not included

Every employee now has the right to join a union Those taking part in legal strikes are protected from dismissal, unless they misbehave during the strike.

The new law sets out minimum employment standards In some respects it replaces the old Basic Conditions of Employment Act, which was narrower in its scope

It encourages negotiation between employers and employees on a wide range of issues through workplace forums, which are intended to be more broadly based than unions These are to negotiate about work-related issues, but not wages or dismissals

The act is designed to allow employees to have a say, through agreements reached by the workplace forum, in various aspects of running a business These include job grading, disciplinary codes and procedures, rules of conduct, affirmative action and changes to rules regulating employee benefit schemes

The act also makes it easier to strike A strike may be legal even without a strike ballot.

The act allows job applicants recourse if they believe they have been discriminated against unfairly — for example, because they are pregnant.

Discrimination in favour of promoting affirmative action is not regarded as unfair

The way jobs are advertised could be seen as unfair, in some circumstances Gender-specific job advertisements, or columns headed "employment· male" and "employment· female" could be on the way out The CCMA has an advantage over the Labour Court in seeking accommodation as it does not have to abide by public service wage ratios and can approach the private sector for premises without every detail needing the approval of public works officials

● See Business Report

New labour law baffles workers

(166)

Sowetan 12/11/96

By Abdul Milazi

SOUTH Africa's new Labour Relations Act officially became law yesterday but many workers are still confused about what it means

A snap survey by *Sowetan Business* yesterday found that some workers had heard about the new legislation, but still did not know what it meant, while others never heard of it

Adam Lubengo and Alfred Shezi who both work for the Rand Water Board said they did know of the legislation

Cynthia Makhubu who works at Pick 'n Pay at Highgate said "I have heard about it from our shop stewards, but I don't know what it means All we were told was that there was a new law which would be introduced and it would replace the old Labour Relations Act "

Joseph Manaka who works for an electrical company said "All I know is what you (*Sowetan*) have written"

Manaka expressed hope that the new LRA would be a milestone for workers who had for years fought discrimination in the workplace, both in wages and conditions of employment

"Whites enjoyed more by virtue of their skin colour and were treated better than black workers It still happens even now, but perhaps the new law will change that," he said

Manaka said key provisions of the Act were the right to strike, provisions for workplace forums, agency shop agreements and collective bargaining

Another worker Cathy Dodds said "All I know is what I read in newspapers, but it sounds like good legislation It will mean an end to exploitation because employers used to do what they like under the old law

Forced by law

"Now they will be forced by law to pay better wages and to improve working conditions," she added

Department of Labour representative Jerry Majatladi said people should not expect overnight changes in their workplace

He warned that the LRA was just a piece of legislation which needed the involvement of all stakeholders to succeed

Majatladi explained that any law acted as a guideline to regulate a particular situation and people involved had to ensure that it was adhered to

The introduction of the legislation was also marked by a rally which was addressed by Labour Minister Tito Mboweni in Johannesburg yesterday

Labour Minister Tito Mboweni does the jig at a rally in Johannesburg yesterday to celebrate the official launch of the new Labour Relations Act. The new LRA is set to revolutionise the workplace as it gives workers more rights than previous legislation.

PIC ELIZABETH SEJAKE

985

Labour Act gets thumbs-up

(166) Sowetan 12/11/96

LABOUR Minister Tito Mboweni, business and trade unions yesterday hailed the implementation of the Labour Relations Act at a lunchtime meeting at Library Gardens in Johannesburg

Addressing about 1 000 people, Mboweni said he was proud to proclaim November 11 as a day of the 'new revolution' The Act, which came into effect from yesterday, would play a revolutionary role in transforming the relationship between workers and employers

Speaking at a ceremony organised by the National Economic Development and Labour Council (Nedlac) to mark the implementation of the LRA Mboweni said it would bring about transparency and the democratisation of the workplace

The days of unfair dismissals are over This Act will ensure that management and workers work together and it will ensure that no longer are black and white workers separated he said

He said the days of segregated unions were over and called on workers and employers to contribute to the implementation of the Act

SA Chamber of Business director-general Mr Raymond Parsons said although the Act might not please all parties it represented the result of major compromises, especially between business and labour, in the interests of a better labour relations system for South Africa

Parsons said the Act offered a range of tools to managers and employees to take charge of their own destiny and it empowered employers and workers to reach agreements in their mutual interests

Congress of SA Trade Unions assistant general secretary Mr Zwelinzima Vavi praised representatives of the Government, business and labour for the parts they had played during negotiations on the Act – *Sapa*

Labour Relations Act 'marks the beginning of new journey'

(166)

BD 12/11/96

Bonile Ngqiyaza

POLITICIANS, labour and business pronounced themselves satisfied with the new Labour Relations Act which took effect yesterday — describing the occasion as the dawn of a new era

The Act was drafted to create conditions for a mature industrial partnership that would allow sustained economic growth and remove adversarial relations

A controversial section of the new Act is its provision for the disclosure of information — drawn from the fundamental right of access to information provided for by the new constitution

The Act requires an employer to disclose to a representative trade union all relevant information that would enable the union to perform effectively

At a lunch hour gathering in Johannesburg yesterday National Economic, Development and Labour Council executive director Jayendra Naidoo said the Act marked an improvement in SA's chequered industrial relations

"The LRA does not solve your disputes It in fact gives you the rules of the game," he told worker, business and government representatives at the event

The gathering, at which certificates of registration were handed over to trade unions and employer organisations by Labour Minister Tito Mboweni, was the first of its kind to be organised by Nedlac

A high-spirited Mboweni described the Act as "a truly momentous event" that signalled the start of a third revolution after the Labour Conciliation Act and the Wiehann commission

He moved to reassure employers of domestic workers — who he said had expressed concerns at some of the provisions of the Act — and said the LRA was intended to facilitate dialogue on minimum wages and related issues.

Business SA convenor Raymond Parsons said he found it satisfying that the Act was not a prescriptive but an enabling piece of legislation which gave key players a wide range of tools with which they could take charge of their destinies.

Parsons said employers and workers would have to be educated about their rights and duties under the Act "Today marks the beginning of a new journey for business and labour"

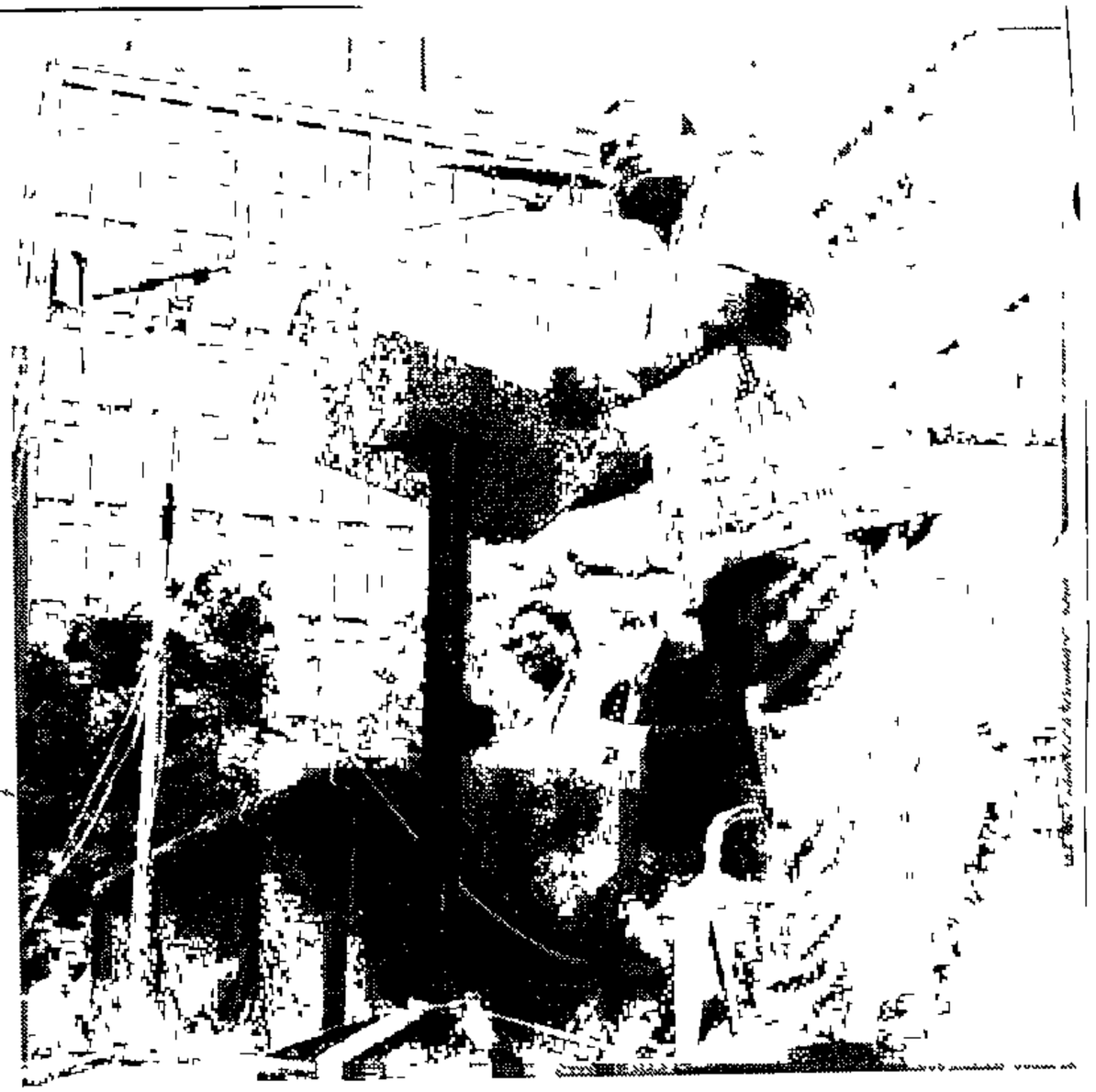
Cosatu assistant general secretary Zwelinzima Vavi hailed the new Act as a victory

He said workers and employers would have to familiarise themselves with its provisions.

Vavi noted that the Act was a compromise, and lamented that it did not provide an outright ban on scab labour and the lockout.

He paid tribute to millions of workers and worker leaders for their contributions

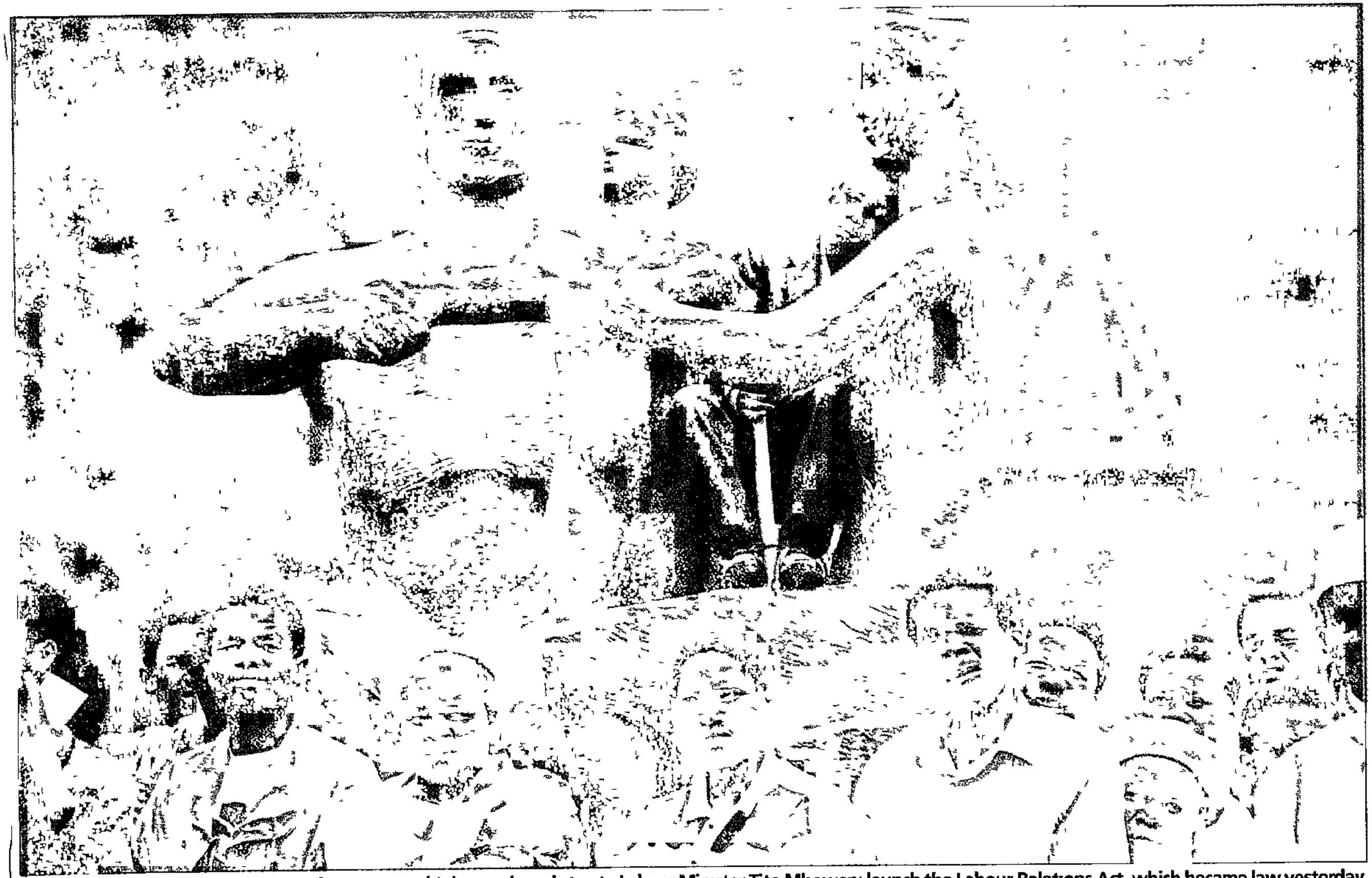
Comment: Page 13



Labour Minister Tito Mboweni speaks at a Nedlac-organised lunch hour gathering yesterday to celebrate the implementation of the Labour Relations Act

Picture GARTH LUMLEY

JOHN WOODROOF



Looking ahead to better times . workers in central Johannesburg listen to Labour Minister Tito Mboweni launch the Labour Relations Act, which became law yesterday.

Labour act a revolution, says minister

(166) Star 12/11/96

Labour Minister Tito Mboweni has hailed the new Labour Relations Act, which came into effect yesterday, as the day of the "new revolution", saying it represents a major shift from the old to the new South Africa.

He was speaking at a rally organised by the National Economic Development and Labour Council at the Library Gardens in Johannesburg yesterday afternoon.

Mboweni allayed the fears of white employers of domestic workers in particular, saying they should not panic because the act was not about setting minimum wages for their employees

"The act is about improving relations between employers and employees so that they treat each other with respect and dignity The same goes for farmworkers, who for a long time were not included in the country's labour relations acts"

Business South Africa representative Raymond Parsons said the act would enable employers and workers to take charge of their destinies in the workplace It provided a wide range of opportunities which would enable employers and employees to work in harmony, he said – Staff Reporter

LABOUR *Discriminatory bodies will not be eligible for registration under LRA*

Racist unions told to clean up their act

ET(BR) 12/11/96 (166)

GUY OLIVER
LABOUR EDITOR

Johannesburg — Tito Mboweni, the labour minister, relegated discriminatory trade union and employer bodies to the annals of history yesterday, and warned that bodies which maintained discrimination in their constitutions would not be registered under the new Labour Relations Act (LRA)

Speaking at a rally at the Library Gardens in the Johannesburg city centre to celebrate the launch of the act, Mboweni said the legislation provided a "wake-up call" for racially based trade unions and employer bodies, which now belonged to the past

The 350 000 strong National Union of Mineworkers became the first organisation to receive its certificate of registration yesterday

However, Hennie Slabbert, the registrar for labour relations in the labour department, said all bodies would have until April 1 next year to rewrite their constitutions to conform with the act and South Africa's post-apartheid constitution

He said the initial three-month deadline from the implementation of the act had been extended because of the Christmas holiday season

IT'S OFFICIAL *Tito Mboweni and happy unionists celebrate the awarding of a certificate of registration to the National Union of Mineworkers in Johannesburg yesterday* PHOTO JOHN WOODROOF

There are 286 registered trade unions and 198 employer organisations in South Africa They will all automatically be re registered The window period until April 1 will allow time for all the constitutions to be rewritten to conform with the act

Slabbert said he expected the number of trade unions to drop because some were the counterparts of South African unions in the former homelands

He said that if a union or employer body failed to comply with the terms of registration, its registration would be cancelled

"If anyone is denied membership on the grounds of race, gender or religion they can take that union to the Constitutional Court," he said

He said the traditionally white Mine Workers' Union had started to change its membership scope

AC van Wyk, the deputy general secretary of the Mine Workers' Union, said that as far as he knew the union did not stipulate in its 1975 constitution that members should be white, but it was "a de facto white trade union We look after a minority group interest We are quite proud of the fact that we represent white minority action"

PROOF OF THE PUDDING

FM 15/11/96

Hailed as "historic" by organised labour, business and government, the new Labour Relations Act, adopted by parliament last December, finally came into effect this week It is, as Sacob's Raymond Parsons notes, the first piece of legislation processed through Nedlac

Though the Act may not please all parties, "it nevertheless represents the result of major compromises, especially between business and labour, in the interests of a better labour relations system for SA," says Parsons, the overall business convener in Nedlac

In line with Labour Minister Tito Mboweni's aim of achieving a less adversarial labour culture based on what he terms "regulated flexibility," Parsons points out that the Act is an enabling rather than a prescriptive document the test of its efficacy resides in what the key actors do with it

The Act indeed offers managers and employees a range of instruments — such as workplace forums and statutory conciliation procedures — to fashion mutually beneficial agreements However, it remains an open question whether rank and file workers, if not the Cosatu leadership, will tailor their approach to meet the demands of the global marketplace rather than a hitherto stridently socialist agenda

Tito Mboweni

There are also signs that the labour movement led by Cosatu is not as cohesive and influential as it has been According to consultant Gavin Brown, much higher levels of worker apathy towards unions are now apparent Cosatu, whose recent Gauteng conference was poorly attended by accredited delegates, has not surprisingly appointed a commission to inquire into the future direction of the federation

Cosatu has this year been worsted over the privatisation battle with government — and the report of the Labour Market Commission earlier this year came close to proposing a dual labour market entailing more deregulation, decentralisation and ministerial discretion in the extension of wage orders and collective agreements to lower barriers to entry for would-be employers and work seekers

More significant, government's macro-economic strategy is based on a brand of market economics that only three years ago would have been "unthinkable" as ANC policy, as Cosatu's Sam Shilowa has observed

Says Parsons "We will want to work smarter and more effectively — in a modern way — and negotiate new work practices to meet changing circumstances We will all test the new Act to identify its strengths and weaknesses "

In this regard, he welcomes Mboweni's assurance that the Act is not cast in stone, adding that it could well be necessary to amend it to iron out any procedural or practical difficulties that may surface as the Act comes into operation And as the collective bargaining agenda has broadened, encompassing industrial policy, the Act has to be flexible to respond to these dynamics

The Act would have to be evaluated by results over the next five years, say, on whether it has led to more co-operation, reduced conflict and come to terms with economic realities (see page 21)

Parsons has drawn attention to the positive, often overlooked, aspects of the Act, such as simplified dispute procedures, the rights of employers, provision for small business representation on bargaining councils, and the scope for employers and unions to arrange their relationships in the most appropriate way for their specific circumstances

Despite the view that the Act is pro-union, Cosatu (though having described it as a "victory for exploited workers") is disappointed that unions did not win an outright ban on the use of "scab" (replacement) labour and the employers' recourse to the lockout

It naturally welcomes union organisational rights, centralised bargaining, statutory councils, strike and secondary strike action, closed shops, information disclosure through workplace forums and provisions for dismissals

As the *FM* has argued, the provisions relating to centralised bargaining, picketing and sympathy strikes in particular are inimical to job creation, economic growth and stability ■

FINANCIAL MAIL NOVEMBER 15 · 1996

Domestics benefit from new Act

(166)

Labour relations laws bring these workers on a par with all other employees

Star 18/11/96

By Goba Ndhlovu

Domestic workers stand to receiver greater protection from the new Labour Relations Act (LRA) but poor understanding of the act could prevent them from making the most of the opportunities

Unions and industrial relations experts said ignorance of the act, which became effective last Monday, coupled with a lack of organisation among some of the unions, would stand in the way of domestic workers receiving any benefits.

Former treasurer of the 50 000-strong South African Domestic Workers' Union (Sadwu) and its only remaining active national executive member, Myrtle Witbooi, praised the Government for "the best law" ever to be made for domestic workers

But she said her union was in disarray and unable to grab the opportunities available to its members.

The Congress of South African Trade Unions (Cosatu) last year called for the reorganisation of Sadwu following allegations of mismanagement of funds and maladministration This was followed by a mass resignation of senior officials and staff

Witbooi said that Sadwu could not take full advantage of the privileges provided by the new LRA because it now lacked the manpower to reach the great majority of its members

Business economist Mathew Grossett said the act provided domestic workers, who "were victims of quick and easy dismissals in the past, greater protection"

He agreed with Witbooi that the main problem was how the new information could be "filtered down" to the majority of domestic workers, who, according to 1994 union figures, numbered more than 1-million countrywide

Union in disarray, unable to mobilise

He said the situation was worsened by the fact that more than 90% of them could neither read nor write

Alexander Durandt of Cape Labour and Industrial Consultants said the new act had "drastically changed the legal relationship between the domestic workers and their employers"

Durandt warned employers to familiarise themselves with the act because ignorance could cost them financially

He said that while domestic workers received protection for the first time in 1994 when the Basic Conditions of Employment Act was extended to cover them, unfair dismissals and unfair labour practices were not covered in the act

The new LRA brings workers on a par with all other employees, forcing employers to heed the law Like other workers, domestics could only be dismissed for misconduct, failure to do work because of incompetence and through retrenchment One of these reasons must be present for a dismissal to be valid

In the past all that an employer needed to end a domestic's employment was to give her a month's notice

During such a dismissal, they said, a domestic was entitled to all the facts at her employer's disposal

She should be given the opportunity to state her case to her employer either by representing herself or by representation from a union official or a fellow-worker

A dismissal which touched on a domestic's fundamental and constitutional right, such as not being discriminated against and participating in a legal strike, was automatically declared unfair by the new LRA and carried heavy penalties for the employer

Domestics also had access to the new labour body, the Commission for Conciliation, Mediation and Arbitration where they had no contact with a union or had no representative

Another important gain for domestics was that employers should pay them severance pay at the rate of one week's salary for each completed year of continuous service

This payment applied irrespective of whether such a dismissal was fair or unfair

Grossett said "This is a really great act Although it does not set minimum wages for domestics and makes no provision for pensions, it has lifted these workers to the level of the rest of employees in the country

"There are still companies which have no pension schemes, the same applies to minimum wages – some industries do not have such minimums"

He said unions for domestic workers needed to work hard to educate them about their rights, possibly through the medium of workshops

Committee set up under labour act

(166)

Reneé Grawitzky

BD 19/11/96

THE essential services committee — operating under the auspices of the Commission for Conciliation, Mediation and Arbitration — will be calling shortly for written submissions on whether a service should be designated essential or not.

The committee, an important administrative structure provided for in the new Labour Relations Act, has been established and has already begun its work.

The committee's main function is to determine whether a service is essential or not. Parties operating in essential services will be prohibited from embarking on industrial action In terms of the right to strike and lock out, the act makes a distinction between an essential and designated maintenance service.

The interim three-man committee set up by Labour Minister Tito Mboweni consists of labour lawyer Dhaya Pillay, the chairman, former National Union of Metalworkers of SA legal adviser Sunil Narian; and University of Cape Town Graduate School of Business director Kate Jowell.

The act provides for the appointment of a committee after consultation with the National Economic, Development and Labour Council

However, Mboweni indicated in September he was not happy with the nominations and in the interim appointed the three-man committee for six months.

Until the committee had completed its investigations and designated which services were essential or not, the definition of essential services in the old Labour Relations Act and the Public Service Labour Relations Act would apply

Pillay said the committee would also deal with disputes about whether a service was essential or not

Dismissed worker helped by new Act

Sowetan 20/11/96 (166)

By Abdul Milazi

AN Eastern Cape farmworker who was unfairly dismissed last week in Uitenhage was reinstated within 48 hours of his firing

This followed an intervention by the newly established Commission for Conciliation, Mediation and Arbitration (CCMA).

CCMA Eastern Cape provincial registrar Max Madlingozi said the new Labour Relations Act (LRA) wanted the number of labour disputes reduced and the commission was doing just that.

The Eastern Cape dispute was not the only one Three other disputes involving unfair dismissal, discrimination and unfair labour practice were resolved in KwaZulu-Natal and Western Cape, all within three hours

"This sends a clear message. South Africa can bid the prolonged disputes of the past goodbye. Although we have set ourselves a maximum of 30 days to settle a dispute, we will strive to settle each case in the shortest time possible," said Madlingozi

Before the introduction of the new LRA last week, disputes took as long as three years to settle, while the maximum time set for settling a dispute was even longer (180 days)

"We want to deal with cases as they reach our offices With our experienced commissioners disputes do not take long and both parties leave our offices satisfied," Madlingozi explained

Significant feature

Madlingozi said the significant feature of the Eastern Cape case was that it was brought by a farmworker in a sector which had been excluded from previous labour legislation.

He charged that the commissioners reacted to cases with expediency and the cases took less that two days to settle.

"That is from the time the case is referred to us, the hearing is set up and the dispute is settled."

According to Madlingozi the farm worker's hearing took three hours

JUST 10 days old, the new labour law sits like a depth-charge in the vast ocean of industry. The resources of both managements and unions will be tested to the full. YAZEED FAKIER reports.

"I have faith in the Labour Relations Act. I am committed to it. I think this is going to be the answer for the working class." *— Dan Matsapola, Commission for Conciliation, Mediation & Arbitration.*

"Embarrassment about the apartheid wage gap is a major obstacle to effective communication between employers and employees." *— Labour law expert Neil van Zyl.*

Pump up performance with communications

(166) CT 20/11/96

ONE of the main enemies of transformation in the workplace is lack of communication and sharing of information — cross-culturally and between employers and employees

The disclosure of information stipulated by the Labour Relations Act will start to change all that

For the first time, the sharing of important details about companies and their performance, until now well-hidden from the eyes of workers, will be required by law

The change has been greeted with a mixture of nervousness and expectation

IT'S just not going to be good enough, in the transformed labour relations arena, for companies simply to disclose complicated financial statements to their workforce as a way of complying with the new labour law, says industrial relations and labour law expert Mr Neil van Zyl

"If employers want the disclosure of information stipulation to lead to meaningful negotiation, they are going to have to be involved in sharing information throughout the year — and not just during wage and salary negotiations

"It's going to involve a process of education"

This is certainly a quantum jump to the left of traditional South African business practice

The only information ever really shared with employees is the rands and cents figures and hours of work reflected in their pay-slips at the end of the week

Now all relevant information will have to be disclosed to the unions, says Van Zyl

"They will be entitled to that information and it would be in the employers' interest to present it to the negotiators and the workforce in an appropriate manner"

It certainly makes sense, Van Zyl says, for an employer to disclose information in accordance with his legal obligation not only to the union, but also to the workers After all, workers are one of the major stakeholders in the performance and success of any organisation

"The Act says that when an employer is involved in wage negotiations or collective bargaining, the trade union and employees are entitled to all relevant information

"All of this is designed to make the negotiations more meaningful, to get negotiating parties to start fighting about achievable objectives and not about unrealistic demands — which has often served to fuel industrial action in the past"

The recent clothing industry strike was one such example where common sense reigned

"It had to do with rands and cents," Van Zyl says

"The fight ultimately was about 2%, which was in reality a sensible fight

"Everybody acknowledged it was a pure dispute about wages

"For the first time there weren't unachievable proposals or unreasonable expectations There wasn't anything else fuelling the industrial action, such as political motivations, or heightened expectations that simply weren't capable of being achieved"

Employers now have a responsibility — as do the unions — to get everyone focused on "real issues"

Central to this goal is the process of education and transparency, through disclosure and the sharing of information

How that information is translated effectively for employees on the ground is a pivotal challenge for managements to whom this concept is alien

Most have never been in the habit of disclosing to their employees any significant information about the day-to-day running of the company

"They have been loath to talk about their performance," Van Zyl says "The only time they ever talked about their performance was when they weren't performing well — and then they used it as a justification for not giving an increase

"But when they *were* performing well, they weren't prepared to disclose figures or information"

Managements have come to realise that the only way "to get everybody focused on real issues, is through transparency — and transparency entails disclosure"

The onus will be on the employer to translate information about performance in a way that enables the worker to understand why the company is performing well or badly

For employers who do not feel compelled to embrace this practice, the result is costly

The absence of such procedures leads to repercussions on the work floor It affects the quality of communication between managers and workers, more often than not, it is the direct cause of crippling strike action

"If, for example, employees see the amount of work that they are required to do and the overtime they are required to put in leads to an additional product being produced, they expect a greater return and greater remuneration.

"It's only through making information available that the employer's going to be able to persuade the employees that, yes, perhaps our productivity is up, or our production figures are up, but our margins aren't up, the market's being hit by foreign imports and so on"

Van Zyl says embarrassment about the apartheid wage gap is a major obstacle to effective communication between workers and employers

"Many employers are embarrassed by that — and the wage gap that does exist isn't necessarily attributable to apartheid

"You find it in the United States and the United Kingdom, where senior managements' earnings are much higher than the average worker's

"But there is still a sensitivity and an embarrassment about that — it's something which is going to have to be addressed"

Despite the many efforts of employers and unions, the communication gap separating the two was still a yawning chasm that prevented the establishment of a workable middle ground for both

"It's going to take a while before that gap is closed," says Van Zyl.

Herein lies the big difference

IS S I S that are most likely to n c a significant and sub t t d difference in the workplace a provision relating to

- Disclosure of information
- Unfair discrimination
- The introduction of legislation governing affirmative action
- The introduction of participative management structures [illegible] created through other platforms

"These are probably going to be the key to bringing about transformation in the workplace," says city industrial relations and labour law expert Neil Van Zyl

INDUSTRIAL LAWYER: Neil van Zyl has worked in the field for over 10 years PICTURE: GARTH STEAI

Worker power still force to be reckoned with

CT 20/11/96 (166)

STRIKE! Synonymous with worker struggles against apartheid-era bosses, this most widely-used form of '80s protest is still a firm feature of modern-day industrial relations, despite a changed political environment Is it realistic to expect that with the new, worker-friendly Labour Relations Act, this powerful union tool is on the way out?

The stipulations of the new Act, just 10 days old, have revolutionised the approach to labour relations When the full range of the legislation finally is exercised, the resources of managements and unions will be tested to the full.

"I must make one point about strikes," says Mr Ebrahim Patel, SA Clothing and Textile Workers' Union spokesman

I had probably been harping on about it and Patel had noted this The irony of seeing workers still resorting to industrial action, laying siege to a Parliament of the very people they had elected to power

"In every democracy — Germany, United States, Britain — you have strikes," Patel says

"So we mustn't equate strikes with the old South Africa and lack of strikes with the new South Africa "

Patel says it is regrettable that workers "still have to fight every battle through strikes, where they lose wages and there is not a sufficient preparedness by the business community to initiate the necessary changes"

"But strikes are part of the tools of a modern industrial democracy

"You can't have in any society — even in a democracy — a situation where government regulates every tiny issue at a workplace "

Accordingly, either one accepts that workers will have to rely totally on government to regulate everything (alternatively, that they have to rely on the goodwill of business) — "or you create a mechanism for business and labour to talk to each other"

"When they succeed, you capture that agreement in some legal form

"When they fail, you give them ordinary tools to address these problems "

Striking should not be seen as dysfunctional in a society, says Patel — "if used sparingly and in instances where negotiation in itself is unable to achieve the objectives of the parties"

"The test is whether you can have strikes only in instances where you have explored every other possibility before you resort to industrial action that is essentially non-violent in character "

This, Patel says, was the case in the clothing workers' strike "where we bargained to exhaustion, we had mediation, we brought in an outsider, had a series of informal meeings, but were not able to crack the issues"

"It's really important that one ought to walk away from a strike without people having been killed, without deaths

"These are the tests you apply — can you introduce a higher level of discipline in the resort to power in the industrial relations environment?

"I'm confident that on those tests, when one looks at the clothing strike as an example, it was — even by the admission of the employers — by the standard of industrial relations, a peaceful strike."

Even so, could this resort to power be avoided?

"You could certainly reduce that resort to power in two ways," says Patel. "One is to modernise your conciliation machinery in the country and that has been (enacted) in the form of the Commission for Conciliation, Mediation and Arbitration (CCMA), a statutory body which mediates between labour and business in disputes

"Before the parties can resort to power, they will have to refer the dispute to the CCMA, which will seek to find bridges between the parties

"Where they fail, well, unions will be entitled to call for a strike Workers are entitled to vote for that "

Industrial consultant Neil van Zyl says that the continuing strike action in post-apartheid South Africa is attributable at least in part to unions establishing and retaining their independence.

"They need to be independent of the government and some of that (strike action) at least is attributable to their flexing their muscle," Van Zyl says

"They are keen to show the present government that they are a force to be reckoned with — despite a lot of the unions having lost many of their organisers to Parliament "

A city human resources consultant says that under the present political set-up, it should not be necessary to "get to the situation of strikes — that's really bad industrial relations"

"People now know they have freedom and power to bring about a change in our social scenario in terms of their being able to exercise that option "

This would be a particular test for managements

"People, having been in an authoritarian, autocratic management situation, don't like being challenged in terms of the way they've been conducting business.

"But those challenges are there today and they are healthy

"Democracy has brought about the right of choice "

On another level, resentment and consequent strike action often could be avoided by applying common sense

Among the examples of what causes resentment is when employees see the owner of the company "rock up in a brand-new car while they (workers) are paid salaries which in their eyes are not worth the job they're doing"

Other than wages, it is often day-to-day workplace issues which can be resolved easily that also cause resentment

"A secretary will go to her boss and say she needs a new chair because the old one is uncomfortable and causing her backache "

The response invariably is that nothing can be done because of budgetary constraints

"But when it comes to the boss's needs, he makes pretty sure that he gets his new car because he's vying with the financial director for the latest model.

"The employee has to struggle along with her chair."

So are sown the seeds of greater problems in industrial relations

Cont

DISCUSSING STRATEGY: Two workers in conversation at the height of the clothing workers strike in July

Labour laws made easy as ABC for all

LIKE the South African cricket team that is touring India, Dan Matsapola has had to invoke the Gogga magic to do the trick

His 12-year-old cricket-mad son, Phenyo had settled comfortably into the Transvaal under-12 team, so dislodging him for the gale-force winds of the Fairest Cape drew on the full range of Matsapola's negotiating skills

"It wasn't easy to convince him that coming to Cape Town was a good idea — but I must admit I capitalised on the fact that Paul Adams is from here," Matsapola says

The 42-year-old Randburg father of three boys specialises in generalist human resources

"Watsegoed!" I hear you cry It's the area of study that involves just about any issue related to human resources development — be it industrial relations, personnel issues, social and professional responsibility you name it

That s what Matsapola has been trained in — perfect for his demanding task as Cape Town's first provincial registrar for the new (and very wordy) Commission for Conciliation, Mediation and Arbitration (CCMA)

With the official launch of the Labour Relations Act 10 days ago, the CCMA, an independent body, opened for business at its 78 Darling Street offices in the city Right opposite the Castle

Replacing the refereeing functions of the Industrial Court and Labour Appeal Court, it is designed to help employers and employees sort out their labour disputes speedily and fairly

And that's the task of Matsapola and his 42-member staff

The proverbial new kid in town, Matsapola took the plunge in July and moved to the Cape from the corporate environment in Gauteng (where they do business even before they've had their Weetbix)

No walkover softie himself, the tough-talking and versatile Matsapola is, however, instantly likeable and disarmingly frank

And he'll walk that extra mile for the sake of peace

Matsapola had his baptism of fire when he found himself in the middle of the national Pick 'n Pay strike in the mid-'80s

The experience has prepared him well for the complexities this side of the Grape Curtain, a challenge he has readily accepted

Matsapola is passionate about the new Labour Relations Act "I have faith in it, I'm absolutely committed to it," he says

"Having spent some time in the workplace on the management side, having experienced issues on the ground, both at home and elsewhere outside the working environment, I think this is going to be the answer for the working class"

Matsapola says the best feature of the Act is that it is written simply "It is a dramatic change from the statutes that we're used to in our country where you couldn't understand a single sentence"

NEW KID ON THE BLOCK: Dan Matsapola, the provincial registrar of the Commission for Conciliation, Mediation and Arbitration (CCMA) Behind him provincial administration manager Ms Pamela Crowley talks to interpreter Mr Jabu Madala *PICTURE THEMBINKOSI DWAYISA*

(166) CT 20/11/96

The law governing the CCMA "clearly dictates to us to keep a balance and to be independent, not to slant towards any of the parties"

Matsapola and his staff have been on an "aggressive campaign" these past few weeks, making contact with the "social partners" — government, business and labour — to explain the role of the CCMA

Matsapola says the first thing that struck him about this province was that racial polarisation appeared to be widespread

"It is just this one sad fact that worries me, because the Western Cape is a wonderful province It has a lot more to offer than many other provinces

"But one should not be pessimistic, one should rather look at the things that can make a difference"

One area where he clearly hopes different attitudes will start to take root is in the approach of management

"Speaking generally, management will always harp on the same economic issues — 'what is the bottom line?' — especially when dealing with social issues, where it matters most

"But circumstances will put a lot of pressure on managements to be much more flexible in addressing serious issues like the social reality gap

"It will not augur well long-term, economically, if we are going to keep on saying 'what is the bottom line?'

"I know that business has survived because of the bottom line — but what matters most is the human element We're dealing with people who have to survive and if people have to give their effort unreservedly to enhance economic productivity, the least we can do is to respect their well-being They must become part of the economic mainstream"

Does Matsapola foresee that legislation eventually will have to be used in the workplace to enforce measures like affirmative action quotas?

"That is a great concern on the part of business, but I think there is no option but to do that eventually

"I personally feel that stricter control from the state is going to happen because of the history that we have

"Management has paid more lip service than anything else — and with the great skills shortage in our country it is clear that if government is not going to intervene in addressing these issues from a statutory point of view, we will get nowhere"

Management reaction to such a move was expected to be antagonistic initially

"We know that most of business is not really happy with the Act — that is fact But the reality is that this is the way things are going to happen to address fundamental issues of an economic nature

"We're talking about the low level of the economy in South Africa which stems from a lack of adequate productivity from the labour force

"And the only way to enhance productivity is to put structures in place in the workplace where this productivity can be enhanced — and how better to do it than by means of a statute?"

Matsapola says it is not enough to rely on the goodwill of business Working conditions in many instances still are appalling, he says

"There's nothing that motivates employees to feel that they are part of the business We really need to drive our efforts towards that end — that's where it matters most"

Productivity will never improve if conditions are left as they are So far, there are not many who are confident that business will do anything to address these issues

Matsapola hopes to ensure the Labour Relations Act is understood well by every person, whether literate or illiterate, educated or uneducated, economically viable or not

"It may not be as fruitful if it isn't understood by everybody because it hinges on very, very important elements of everyone's life, the key issues being that it has to address working conditions and impact on the economy long-term"

As it stands, the Labour Relations Act is trying to influence all the parties to move away from confrontation to a more co-operative relationship to influence productivity

It will add value to the economy and it is hoped that this will have positive ripple effects for the economy at large

"And," says Matsapola, "that people will start being able to buy bread and start living like human beings."

New labour law swings into action

(166) Star 21/11/96

By Goba Ndhlovu

The newly established Commission for Conciliation, Mediation and Arbitration (CCMA) has chalked up four victories in the week since the implementation of the new Labour Relations Act (LRA).

Described by Labour Minister Tito Mboweni as the "engine" of the LRA, the CCMA swung into action last Tuesday when the case of Margaret Uys became the first to be registered after the act was implemented

Uys, a Western Cape credit bureau employee, was dismissed by her employers, Ardenelle, last Monday without a reason According to Western Cape CCMA registrar Daniel Matsopola, Uys was just told "she had to go".

On Monday this week, the Western Cape CCMA settled the dispute and she was reinstated

But when she returned to the company, she found her working conditions so different that she went back to the CCMA for help

She was then paid out by the company after she had lodged a dispute of unfair labour practice

In fact, the first case to be settled by the CCMA took place in Uitenhage in the Eastern Cape last weekend A citrus farm foreman had been retrenched the previous Wednesday

The foreman approached a Congress of South African Trade Unions (Cosatu) branch dealing with farmworkers the following day On Cosatu's advice, he had his dispute referred to the CCMA the next day

After only three hours the matter was settled The foreman was reinstated and the farmer employing him was, according to the CCMA, comfortable with the outcome

CCMA officials said that the time it took to resolve the dispute was a record, and that using the old apartheid labour relations procedures would have been more cumbersome and taken longer

In another case, in KwaZulu Natal, the CCMA settled a complaint of alleged unfair discrimination, but was unable to furnish full details

A Johannesburg labour consultant who did not want to be identified said the four cases would have taken between six months and a year to be resolved using the old laws.

He also said that with the old system the parties involved in the dispute each carried half of the mediation or arbitration costs, and had to pay for their own legal counsel if the case went to the Industrial Court

With the new law mediation and arbitration was free to both parties, he said It is still not clear who will bear Labour Court costs

New act sinks three strikes

ARGUS CORRESPONDENT (166) (52)

ARG 27/11/96

Johannesburg – The two-week-old Labour Relations Act is already making its presence felt, ensuring that workers do not resort to strike action without going through all avenues covered by the act.

Three wildcat strikes failed to go ahead because union members did not comply with the requirements of the act during protest action over the past two weeks

On Monday readers of the 124-year-old Eastern Cape newspaper, the Daily Dispatch, received their morning read several hours late after a production delay caused by members of the Paper Printing Wood and Allied Workers Union, who downed tools at midnight on Sunday over a wage dispute.

Most of the members are in the print and distribution department

However, according to the Daily Dispatch managing director, Basil Haddad, the union was unaware of the strike, but urged its members to return to work.

At the Rand Mutual Hospital, Johannesburg, about 200 nurses and clerks were forced to picket outside the premises of their workplace when the hospital management drew their attention to the fact that they were breaking the new law.

They were pursuing wage demands

Their union, the National Union of Mineworkers, said the staff involved had been asked to stop.

In the third incident, about 4 000 members of the SA Agricultural, Plantation and Allied Workers Union (Saapu) countrywide were forced to stop wildcat strikes after Sapekoe Tea Estates management won a Supreme Court interdict However, the union has since used the correct procedures and resumed industrial action.

New act putting brake on workers

By Goba Ndhlovu

The two-week-old Labour Relations Act (LRA) is already making its presence felt, ensuring that workers do not resort to strike action without going through all avenues covered by the act

Three wildcat strikes failed to go ahead because union members did not comply with the requirements of the act during protest action over the past two weeks

On Monday, readers of the Eastern Cape newspaper, the Daily Dispatch, received their morning read several hours late after a production delay caused by members of the Paper, Printing, Wood and Allied Workers' Union (PPWAWU), who downed tools at midnight on Sunday

Workers demanded a 14,75% across-the-board increase while management offered 7,5% Most of the members are from the print and distribution department of the newspaper

However, according to Daily Dispatch managing director Basil Haddad, the union was unaware of the strike but urged its members to return to work when it became aware of the situation

PPWAWU regional organiser Phumzile Mshumi confirmed that the strike was illegal and said the region had called the workers to order, telling them they had violated the new LRA

Three wildcat strikes had to be called off

"Our members were angry that negotiations were slow and the gap between the union and management was still too wide Without following procedure they went on strike," he said

Haddad said that although the strike lasted a few hours, it cost the company R100 000 and delayed distribution of at least 40 000 copies of the newspaper

"We heard nothing from the union until they actually went on strike at 2am on Monday morning," said Haddad, "but they were clearly acting in contradiction of the spirit of the new labour law"

At the Rand Mutual Hospital in Johannesburg, about 200 nurses and clerks were forced to picket outside their workplace when the hospital management drew their attention to the fact that they were breaking the new act They, too, were taking industrial action to back up wage demands

In the third incident, about 4 000 members of the SA Agricultural, Plantation and Allied Workers' Union countrywide were forced to stop wildcat strikes after the Sapekoe Tea Estates management had succeeded in having an interdict served on them This was shortly after the implementation of the new act

SAAPU has since gone through the correct procedures and resumed industrial action on Monday

(166) Star 27/11/96

Firms face female revolt over uniforms

New labour law cited

(166)

ESTELLE RANDALL
LABOUR REPORTER ARG 29/11/96

Companies which insist on corporate uniforms for only some of their staff, often women, may face formal complaints of unfair discrimination in terms of the constitution and the new Labour Relations Act.

Institutions like banks, where tellers and other female staff are often required to wear uniforms, may find these employees formally exercise their right to resist this requirement

The new Labour Relations Act outlaws gender and other forms of discrimination

If women refuse to wear corporate uniforms which apply only to them, companies will not be able to dismiss them

The act says automatically unfair dismissals are those where the reason for dismissal is unacceptable.

These unacceptable reasons include pregnancy and discrimination on the basis of race, sex, age, disability, religion or other issues.

The act also prohibits anyone from discriminating against employees or work-seekers on the basis of union membership

Daniel Matsopola, head of the Commission for Conciliation, Mediation and Arbitration in the Western Cape, confirmed that a dismissal for refusing to wear a corporate uniform would be unfair

The commission began operating as a dispute-resolving mechanism on November 11, when the Labour Relations Act came into force

Mr Matsopola said his own stance was to question why, if a corporate uniform enhanced the company's image, only women were required wear it

Elizabeth Milne, a consultant with the Affirmative Action Alliance, said that during workshops she had run for large organisations, employees had complained that they felt it unfair that only women had to wear uniforms

"Once people start to feel something is unfair, sooner or later someone is going to lodge a formal complaint," she said

This had not yet happened because South Africa's rights culture was relatively new and people were still getting used to the idea that they had rights they could exercise

Ms Milne's said her own view was that the whole idea of uniforms minimised individuality and reduced people to being members of a brigade

She questioned what place this had in the private sector

"It has a place in the army, where men and women in uniform are regarded as soldiers and treated as prisoners of war if they are captured by enemy forces in times of conflict," she said "But outside of this context it is questionable "

Commenting on situations in which only women were required to wear corporate uniforms, she said "Is the way men dress so uniform and boring anyway that there is no need to get them to wear a particular uniform?"

Labour paper out today

(166) (B) Sowetan 1/7/96

By Mokgadi Pela

THE much-awaited Green Paper on Affirmative Action is to be published in Pretoria today

The document is expected to suggest ways of eradicating all forms of discrimination based on race, gender and disability in the workplace

The policy formulation process has now reached a point where a Green Paper on Employment and Occupational Equity has been drafted and is published for further consultation with the public

The comments received will be analysed and then taken into account when preparing a draft Bill

The Green Paper, which has already been tabled before Cabinet, will be the subject of negotiations by members of the National Economic Development and Labour Council

Terms of reference

Communications director in the Department of Labour Mr Jerry Majatladi said yesterday the terms of reference for the Employment Equity Drafting team were to

- Advise the department on key elements of employment equity policy that could serve as a meaningful intervention towards removing discrimination in occupation and employment.
- Advise the department on how provisions of the International Labour Organisation could be integrated into policy formulation processes in order to ensure that South Africa meets her obligations in this area and,
- Advise the department on how to translate the Constitutional provisions of equality, human dignity and freedom into labour policy.

Majatladi said the Green Paper will be out today at 2 00pm.

Adapt or be fined, employers warned

Star 2/7/96

(166)

By Justice Malala
Political Staff

Employers will have to eradicate discrimination in the workplace, according to Government proposals released yesterday.

The proposals establish plans to ensure the hiring, training and promotion of women, black people and disabled people by all employers. These affirmative action plans will be monitored by the Government. Employers may be fined or face other legal action if they fail to implement the plans.

But the Government's proposals on an employment and occupational equity statute released by Labour Minister Tito Mboweni yesterday did not call for any quotas or targets to be met by employers for the implementation of affirmative action policies.

Instead, the document promises to grant incentives to employers who promote the equity laws. The proposals are still to be discussed and refined by stakeholders in the National Economic Development and Labour Council and other concerned parties before they become law.

Unveiling the draft green paper on employment equity yesterday, the Department of Labour's Equal Opportunities Director, Mpho Makwana, said the Government was not proposing any quotas for the filling of posts because "that is to ignore the material conditions on the ground.

"We want the forces in the workplace to agree that we want such a target by such a year, then we will monitor them on that

► To Page 2

Adapt or be fined, employers warned

► From Page 1

basis," he said, adding that the negotiation of such targets would be done in workplace forums

Mboweni said "I must make it clear that this is not reverse discrimination, but a vision that is aimed at ensuring that discrimination does not remain a permanent feature of our society

"We are not blowing the whistle for anyone to start packing for Perth That is not the intention We are, however, blowing the whistle for the need to change to begin."

The document says the measures to accelerate hiring, promotion and training will be directed at black people, women and people with disabilities

Talks on the proposals will define how much to "differentiate within these groups to meet specific needs and how to ensure accelerated measures for designated groups without re-installing an oppressive classification system" it adds

The Government has proposed that employers keep an organisational audit to give information on employment, pay and benefits in major categories by race, gender and disability, and to show programmes and policies on human resources development, including levels of expenditure and certification within these groups.

The document says employers should develop plans according to a timetable to minimise barriers against people from historically disadvantaged groups and accelerate their hiring, training and promotion

It also says that as far as possible "Government action will favour employers who promote employment equity"

Incentives include consideration for tenders for government and parastatal contracts, and direct or indirect subsidies like training grants and investment incentives from the Department of Trade and Industry

The labour department will develop "substantially stricter penalties" for repeated non-compliance

The document proposes a prohibition on harassment, in line with constitutional protections against discrimination It also prohibits employers from "using recruitment and selection methods and criteria that discriminate unfairly"

There is no affirmative action legislation in place at the moment and Mboweni said the initiative "goes to the very core of the transformation of the workplace"

The denial of equal employment opportunities was an "outright violation of human rights", he said

Affirmative action plan lauded

CT (BR) 2/7/96 (166)

By Christo Volschenk
ECONOMICS EDITOR

Cape Town — The Green Paper on employment and occupational equity released yesterday by Tito Mboweni, the minister of labour, drew an early positive response from business and labour

Both camps lauded it as a "reasonable and balanced approach" to the emotional issue of affirmative action

But the model for affirmative action proposed in the Green Paper is a much tamer and more flexible approach than the one proposed by the Black Management Forum (BMF), labour experts said

The Green Paper proposes that every employer be compelled to have a comprehensive affirmative action plan for the accelerated hiring, training and promotion of black people, women and the disabled.

The plan must also include goals and timetables for implementation, it says

A few hours after the release of the Green Paper, neither business nor labour was in a position to comment in depth on the government's proposed model for affirmative action

Business South Africa (BSA) and the Afrikaanse Handelsinstituut (AHI) said they were quite happy with the general direction taken

The Federation of South African Labour specifically welcomed the fact that quotas have been rejected

Bokkie Botha of BSA said there were no surprises in the Green Paper and a spokesman of the AHI said the fact that penalties for non-compliance have been dropped was encouraging

Both camps promised to respond comprehensively in the coming weeks

The one organisation that may have most reason to distance itself from the Green Paper, the BMF, could not be reached for comment yesterday

The BMF, for instance, insists on quotas while the Green Paper specifically rejects quotas

In a previous position paper on affirmative action, the BMF said "experience has proven that voluntary targets and quotas do not work – they should be enforced by law"

Some resistance to the Green Paper must thus be expected from the BMF

The Green Paper also does not propose to penalise non-performers or slow performers with big fines

While the BMF model is primarily aimed at rectifying past injustices at the white-collar level of middle and senior management, the Green Paper model has a wider perspective aiming to assist all levels of employment

The BMF wants 30 percent of non-executive directors and 20 percent of executive directors of companies in the company register to be black by the year 2 000 — and not only for companies listed on the stock exchange

The Green Paper merely suggests that employers report regularly on progress made

In other respects, the Green Paper model seems to be less directive and prescriptive, and better at balancing the interests of the employer and employee

The Green Paper model identifies the end goal and then gently nudges employers in the direction of that goal — to be reached by employees more or less in their own time and along routes they choose for themselves

Considerable resistance is expected from the Black Management Forum

"At this stage the need for affirmative action to rectify the wrongs of the past is not in dispute any longer The only issue up for debate is how best to tackle the problem," said Botha

The model contained in the Green Paper is not government policy but a starting point for discussion

"We look forward to the debate," said Bokkie Botha.

A lot is at stake for business and the debate on the most appropriate affirmative action model for South Africa will no doubt drag on for months and become emotional at times

CT(BR) 2/7/96

Green Paper backs carrots and sticks

(166)

By Thabo Leshilo

Johannesburg — The government plans to favour companies that promote affirmative action and to punish those who do not comply

These and other far-reaching proposals were announced yesterday by Tito Mboweni, the minister of labour, in the Green Paper on employment equity

Besides being favoured for government business when tenders and contracts were awarded, affirmative action companies could also receive subsidies in the form of training grants from the department of labour or tax incentives from the department of trade and industry

In terms of the proposed law, companies that fail to comply could be fined and stricter penalties applied in cases of repeated discrimination and the failure to develop "acceptable" employment equity plans.

Mpho Makwana, the director of equal opportunities at the department of labour, said the Green Paper was aimed at redressing "disadvantages emanating from past racial policies and, as far as possible, to ensure the accommodation of differences between people in the workplace"

The paper proposes that measures to achieve employment and occupational equity should be centred on eradicating unfair discrimination in hiring, promotion, training, pay benefits and retrenchments

Employers should also be encouraged to remove unjustified barriers to employment and to speed up training and promotion for the previously disadvantaged

Makwana said the employment and occupational equity policy, once adopted by government, would be part of broader measures to promote overall social and economic equality.

Income

He said the need to promote employment equity was made more urgent by the deep inequalities in income between blacks and whites, with blacks, especially women, at the bottom and whites at higher income levels

Makwana said at least one in three black employees earned less than R500 a month in October 1994, compared with less than one in 20 whites A third of black people earned under R500 a month, against only 5 percent of whites

Disparities in occupational categories showed that "in top management, only half of black people earned more than R2 000 a month, compared with three-quarters of whites"

The Green Paper calls for the accelerated training and promotion of blacks, women and people with disabilities to foster equity while promoting greater productivity and economic growth. It also calls for the prohibition of racial and sexual harassment.

The institutional framework and enforcement mechanisms proposed include a directorate of equal opportunities to guide policy formulation and implementation and to monitor compliance with the proposed law; a labour inspectorate to monitor and enforce activities that do not require highly specialised knowledge; and bargaining councils to handle sector-specific issues such as training and education schemes

Mboweni denied the allegation that the proposals would result in job reservation — this time in favour of blacks He said the paper aimed to bring equity to ensure the country took full advantage of all its people's skills.

☐ **See Personal View, Page 16 and business reaction, Page 22**

Green paper proposes subsidies and sanctions to promote job equity

BD 2/5/96 (166)

Renee Grawitzky

GOVERNMENT has been advised to look at a range of subsidies and investment and tax incentives for training to entice employers to draft and implement employment equity plans, including affirmative action schemes.

The green paper on employment and occupational equity, released by the labour department's equal opportunities directorate yesterday, tries to provide an "enabling environment" in which employers and stakeholders can implement such programmes. The paper is to be discussed with business and labour before the tabling of a draft Bill in the next session of Parliament.

It is intended to facilitate implementation of measures to advance people from disadvantaged groups (blacks, women and the disabled), remove discriminatory practices and create an environment that acknowledges and addresses diversity in the workplace.

The labour department's equal opportunities director, Mpho Makwana, said the proposals in the green paper were intended to shift the focus from affirmative action programmes, which had become discredited, to creating employment equity in the workplace.

This focused on eradicating unfair discrimination in recruitment, promotion, pay, training and benefits, along with encouraging employers to undertake organisational transformation to remove unjustified barriers to employment for all and to accelerate training and promotion for individuals from historically disadvantaged groups".

Labour Minister Tito Mboweni said the proposals should not be seen as reintroduction of job reservation. The intention was to ensure that discrimination did not become a permanent feature of society "We are blowing the whistle for the end to discrimination and to achieve equity" which would lead to efficiency in the economy

In terms of the green paper employers need to conduct internal audits and formulate employment equity plans with employee representatives.

Employers would not have to comply with quotas, but would have to set targets and timetables. Larger employers would have to submit plans to the department and smaller employers would have to submit plans when applying for government contracts Those who failed to promote equity could face fines or be ineligible for government contracts. There would be a legal obligation to implement approved plans.

Employer decisions on recruitment practices, training, grading and pay could fall under public scrutiny. Information from internal audits would have to be given to the department.

Progress made in employment talks

BD 1/7/96 (166)

Renee Grawitzky

LABOUR, government and business are said to be moving closer on four controversial sections of the green paper on employment standards — the phasing in of a 40-hour week, the scope of the proposed legislation, the variation of standards and maternity leave

When the green paper was published, Business SA expressed concerned as to whether it could achieve a balance between maintaining labour standards and ensuring that legislated costs of employment were not imposed to the detriment of job creation In particular it opposed the introduction of a 40-hour week

Negotiations have attempted to trade off between a 40-hour week and increased flexibility Parties are exploring options around the phasing in of a 40-hour week over a number of years, achieved through a national framework agreement

Within this context, various options could be explored relating to working a compressed week, where employees work up to 12 hours per day at normal rates of pay, to averaging working time over a cycle longer than one week

Sources have indicated that disagreement could result over whether the legislation would make any reference to a 40-hour week

Intense debate has taken place around the scope of the proposed legislation and which type of workers and elements of business should be excluded Labour has opposed business's demand for the partial exclusion for small business and pioneer businesses

Business has emphasised the need for flexibility and has demanded that employment standards could be negotiated below the minimum standards through collective bargaining Government has proposed four months (unpaid) maternity leave linked to job security This has been opposed by business which has proposed that the current three months unpaid leave apply Labour has proposed a minimum of six months paid leave Sources indicated that the parties might agree on a lesser, but paid period

Elements within some constituencies feel the negotiations have been shrouded in secrecy This has been greater than that during the Labour Relations Act negotiations, they say

However, National Economic Development and Labour Council executive director Jayendra Naidoo, who was brought in to act as chairman halfway, said parties were attempting to explore options to reach agreement on an overall package of issues, which necessitated that they did not negotiate through the media

Inflation forces new wage talks

Renee Grawitzky

EMPLOYERS and trade unions which are party to the three-year vehicle manufacturing and tyre agreements entered into last year have had to revisit certain clauses of the agreement due to the decline in inflation

National Union of Metalworkers of SA spokesman Tony Kgobe said yesterday that in terms of the three-year agreements signed in both industries, the parties would have to revisit the section relating to the wage model if inflation fell either below 8,5% in the case of vehicle and below 8% for tyre or if it rose above 14%

He said during discussions with the employers, the union had proposed a 14% increase for those workers on the minimum of each grade and 12% for remaining workers Kgobe said employers indicated that they could not go beyond the published inflation rate of 5,9% as it would impact on the wage model, but thereafter proposed a 6% across-the-board increase and an additional 2% to increase the minimum

Auto Manufacturing Employer Organisation chairman George Stegman said that during discussions both parties had concurred with the need to uphold the intent and spirit of the agreement and in that vein would have to find agreement on the wage issue

Spokesman for the tyre industry Juan Dewelzin said the agreement only provided that parties should review the wage model which excluded negotiations on an across the board increase

BD 1/4/96

Erwin denies claim of down-phasing

BD 1/7/96

John Dludlu

TRADE and Industry Minister Alec Erwin has dismissed claims from business that government has accelerated its tariff reduction programme to levels far below SA's offer to the Uruguay round of GATT talks

Erwin told the SA Labour Bulletin· "The notion that there has been a dramatic down-phasing of tariffs is in general not true "

He is quoted as saying only 5% or 10% of SA's tariffs are above the binding offer made by government to GATT Actual tariffs are in virtually all cases below the offer The exceptions were clothing and textile, motor vehicles and certain electronic goods

Some labour sources have called for the tariff reduction programme to be slowed down, especially as it has not been accompanied by supply-side instruments to assist industries undergoing restructuring However, Erwin says no one has made a conclusive case that the sole reason for job loss is tariff protection "The reason is industry is overprotected and will not sustain itself over time "

He points to the motor industry "How are you going to compete in the car industry when you've got seven plants, the average throughput of those plants is 50 000 to 60 000 cars, and a Japanese plant produces 400 000? The longer you leave the delay, the worse your position is "

Erwin says training should have "high levels of generic training portable skills You can't have training that will equip you only for the chemical industry, because that industry will change "

SA to link trade deals to worker rights

BARG 3/7/96 (166)

ESTELLE RANDALL
Labour Reporter

SOUTH AFRICA is to adopt a new foreign policy of insisting that its trading partners protect the rights of workers before entering any trade agreement with this country

This is the effect of a landmark agreement involving business, labour and the government

The "social clause framework", agreed to in the National Economic Development and Labour Council (Nedlac), commits the government to call for the inclusion of trade union rights, collective bargaining and fair employment practices in new trade agreements with other countries

The framework agreement will be monitored by Nedlac's trade and industry chamber through reports from government on all trade negotiations

The inclusion of the social clause in trade agreements would not be used as a barrier to trade, said Jayendra Naidoo, Nedlac's executive-director It was part of a strategy agreed in the social clause framework for South Africa to lead the initiative to enforce compliance with International Labour Organisation (ILO) core conventions on labour standards by member states

The ILO, which consists of government, business and labour representatives, is urging all countries to ratify its seven core conventions on trade union rights, collective bargaining and fair employment practices

"Principles underlying the social clause framework mean South Africa will campaign to improve rights and conditions of workers through international organisations and in bilateral trade talks," said Mr Naidoo There was a danger that world trade liberalisation and globalisation of the world economy would lead to worker rights being downgraded

The social clause framework reaffirmed the principle that economic growth and development be underpinned by commitment to social justice, including respect for universally recognised labour standards as contained in the ILO conventions

As a first step to implementing the framework, South Africa itself must ratify these conventions It will use its leadership and presidency of the United Nations Conference on Trade and Development (Unctad) to advance further the cause of universal respect for labour standards – and South Africa's delegates to the ILO will lead the campaign to enforce compliance with the conventions by member states

Jobs green paper welcomed by range of organisations

Renee Grawitzky

(166) BD 3/7/96

A WIDE range of organisations has welcomed the release of the green paper on employment and occupational equity although the NP, in initial comment, has expressed concern over what it sees as a prescriptive intervention in the labour market

While Cosatu has not yet commented, the Federation of SA Labour Unions (Fedsal) welcomed the sincere efforts by the labour department to address the "touchy issue of affirmative action". Fedsal said the empowerment of disadvantaged groups could be achieved through active training, which remained one of the cornerstones of a successful affirmative action plan.

Business SA spokesman Bokkie Botha said it would respond in due course but emphasised that green paper proposals were not aimed solely at business but at all employers, including the state. He expressed concern at the timeframes proposed for discussion of the proposals which would be insufficient to provide "time to come to sensible conclusions".

Sacob said it welcomed the fact that the paper did not envisage introduction of quotas and focused instead on the setting of voluntary affirmative action targets But it was concerned about the nature of increasing obligations being imposed on business.

Positive

Caroline White of the Centre for Policy Studies and part of the drafting team said the proposals fitted into the general notion of trying to move SA into better practices in human resource development. This, she said, was one reason why the country was so uncompetitive

White emphasised that the proposals were positive in their attempts to focus on the shopfloor. But, sight should not be lost of where the real power lay. Attention should be given to ensuring change at senior levels of organisations, which remained dominated by whites

She said unions tended to see the top echelons of organisations as black elites However such an elite did not have its hands on the levers of economic power, she said

Loyiso Mbabane of the Black Management Forum said figures compiled during last year showed only 3,3% of senior management positions were occupied by blacks.

Mbabane said certain proposals in the green paper were worrying as they tended to provide a relatively high level of flexibility.

Although his organisation and Nafcoc favoured targets, the green paper did not provide parameters or guidelines for targets. Government should have been bold enough to state that companies by year X should reflect the demographics of their surroundings

Comment: Page 12

Green paper to encourage equity in the workplace

(16b) BD 3/7/96

RENEE GRAWITZKY

POLITICAL transformation, it is often argued, has not been coupled with a corresponding transformation of the economy — which still reflects the inequalities of the past. This is despite attempts by managers to promote "equal opportunity" by placing a few black faces in high places

The measures proposed in the green paper on employment and occupational equity released this week are intended to encourage "equity in the workplace in ways that help improve the overall distribution of income while fostering a more productive economy". This, it is argued, requires temporary measures such as affirmative action to kick-start the process.

The green paper, however, makes minimal reference to this politically charged term This poses the question of whether the coyness is a deliberate attempt to fudge the issue in the same way that government, instead of referring to privatisation, speaks about "restructuring of state assets" so that its proposals sound more palatable

Or are the proposals a real attempt to avoid tokenism and give workers on the ground tangible opportunities to improve themselves through much-needed human resource development.

Whichever way the proposals are phrased, one has to question government's capacity to implement them in view of recent labour department budget cuts.

The labour department's equal opportunities director Mpho Makwana says the plan is to shift the focus away from affirmative action programmes, which have become discredited due to the way in which they were implemented, to creating employment equity. This is the goal of the green paper, he says.

The labour ministry firmly believes its new strategy will improve the lot of workers "on the ground" and not merely be seen to benefit aspirant black managers.

The intention of the drafters was to create an "enabling environment" and flexibility by encouraging employers to develop, in consultation with employees, their own employment equity plans.

Such plans would include measures to ensure the eradication of discrimination in recruitment, promotion, pay and grading, training and benefits, along with plans to transform organisations which would remove "unjustified barriers to employment for all and to accelerate training and promotion of individuals from historically disadvantaged groups".

In theory, companies, in formulating such plans, would have to review current practices around grading, qualifications and skills required for particular jobs, hours of work and transport needs to ascertain whether they are discriminatory on the basis of race and gender.

Labour Minister Tito Mboweni says that such proposals will meet demands that have long been made by unions.

Workers on the ground tend to be sceptical of affirmative action measures as they are seen to promote one or two black people to the top without opening up opportunities for the majority of workers Meaningful change for workers would have to come in the form of the removal of old discriminatory practices as well as a real opening up of opportunities for training and regrading If legislation fails to make inroads in these areas, it will merely perpetuate current trends of empowering a few at the expense of the majority.

The green paper stresses that employees internally and externally should be able to question employer decisions relating to recruitment practices, salaries, training decisions and grading.

The attainment of employment equity, would require "employing organisations" — the paper does not define such organisations — to conduct internal audits and the resulting information would have to be submitted to the labour department and could become public knowledge

All employers would be required to provide key data on a regular basis, while large companies would have to submit equity plans for approval to the labour ministry. Smaller companies would only have to submit such plans if requested by stakeholders or to receive government subsidies or contracts.

Those failing to implement such plans could face fines or the denial of government contracts, subsidies and other incentives

Such policy proposals are based on the view that, left to their own devices, private companies would not rectify discrimination in the labour market "The unaided action of market forces seems unlikely to achieve that end."

Therefore, government could give itself substantial powers to demand and process information, monitor progress, enforce planning requirements where desirable and veto employment equity plans.

In addition, government would provide advice and support and foster the resolution of disputes This emphasis on government intervention could prove to be a weakness of the green paper as it presupposes capacity within government to police and enforce compliance

In moving towards ensuring employment equity, all parties involved will have to guard against the trap of "affirming" a minority of previously disadvantaged people — at the expense of the majority

Another tricky area will be in ensuring that measures such as affirmative action do not lead to the development of dysfunctional relationships between blacks and whites in the workplace as a result of there being no incentive to engage in honest dialogue for fear of being "politically incorrect"

Landmark framework for workers' rights

(166) (~~74~~) (~~182~~)

SA trade relationships now linked to promotion of human rights

Star 4/7/96

POLITICAL CORRESPONDENT

The executive council of the National Economic Development and Labour Council (Nedlac) has reached agreement on a landmark framework which, for the first time, links South Africa's trade relationships with the promotion of human rights and, in particular, workers' rights

Nedlac executive director Jayendra Naidoo said yesterday the Government had stalled the signing of bilateral trade agreements since taking office, pending discussions with its social partners regarding the social clause

The agreement now enabled the Government to conclude new bilateral trade agreements.

Naidoo said that central to the Social Clause Framework was the fact that it was not a barrier to trade Rather, it engaged SA's trading partners in a parallel dialogue which linked human rights with trade

"This is in contrast to proposals regarding a social clause advocated by the US and France at the World Trade Organisation which are widely opposed by developing nations as being a non-tariff barrier to trade

"The Social Clause Framework negotiated by business, labour and government delegates at Nedlac reaffirms the principle that economic growth and development must be underpinned by a commitment to social justice, including respect for universally recognised labour standards

"The danger is that with the liberalisation of world trade and the globalisation of the world economy, workers' rights will be downgraded to requirements below the basic acceptable levels The principles underlying the Social Clause Framework mean that SA will campaign to improve the rights and conditions of workers worldwide through international organisations and in the course of bilateral trade talks," he said

Naidoo added that in implementing the Social Clause Framework, SA first had to ratify the seven International Labour Organisation (ILO) conventions which relate to labour standards

"Two of the conventions (freedom of association and the protection of the right to organise) have already been ratified by Government, and Nedlac has recommended that three others (relating to forced labour, the abolition of forced labour and discrimination) be ratified during the 1996 parliamentary session," he said

Country must ratify seven ILO conventions

SA is expected to sign a memorandum of understanding with its new trading partners which would commit both parties to ratifying, upholding and promoting the ILO on trade union rights, collective bargaining and fair employment practices

SA would also use its leadership and presidency of the Unctad IX conference to advance the cause of universal respect for labour standards SA delegates to the ILO were mandated to reflect the spirit of the Social Clause Framework and lead the initiative to enforce compliance of the conventions

Naidoo said regional initiatives to promote the framework agreement would begin by having the issue put on the agenda of the Labour and Employment Commission of the Southern African Development Community and by utilising the Social Charter of Fundamental Rights of Workers in Southern Africa to promote workers' rights

"SA has committed itself to harmonising labour standards in observing the core ILO conventions This is appropriate as the Social Clause Framework is consistent with the history of the struggle for human rights in SA," Naidoo said

It was agreed at Nedlac that political, substantive and technical difficulties involved in promoting universal respect for labour standards called for a creative and multifaceted strategy with the active involvement of the social partners in implementing the Social Clause Framework

The agreement provides that the Nedlac secretariat will co-ordinate and facilitate the development of the strategy based on the commitment of business, labour and government to the Social Clause Framework

New law will protect domestics

(294) (166) Star 5/7/96

Employers must abide by new Labour Relations Act, write Matthew Grossett and Robert Venter

It 1994 was considered important with the inclusion of domestic workers under the Basic Conditions of Employment Act, then 1996 will be doubly so

When Parliament returns from its winter recess it will in all certainty pass the 1995 Labour Relations Act, which is considered a landmark in labour legislation, not least since it provides comprehensive protection for all workers in South Africa, including domestic workers

For the first time, domestics will be afforded the same rights as all other workers in this country The consequences of this new legislation for employers are as far-reaching as they are varied

Without a doubt the most important ramification of this new legislation is that for the first time in South Africa employers of domestic workers will be liable for unfair dismissals In other words, employers wishing to terminate the services of their domestics will have to follow certain procedures, or risk being taken to court on charges of unfair dismissal

The net result of this could be that the court will either levy a fine on the employer, which could be up to 12 months' remuneration, or order that the employer re-employ the domestic in his/her original job, or both

This does not mean that employers of domestic workers will no longer be entitled to terminate the services of their domestics

The law does facilitate the termination of contracts of employment for two broad reasons

■ Disciplinary reasons Where the domestic worker has committed an offence which is so serious as to make the continuance of the employment relationship impossible, for example theft, gross insubordination, assault or a threat of assault, continued warnings for the same less serious offence, etc

■ Non-disciplinary reasons (operational requirements) More often referred to as retrenchments or redundancy, these terminations are based on the fact that the employer either can no longer afford his/her domestic worker or is no longer in need of a domestic worker

The act allows for two categories of unfair dismissals – those that are automatically unfair and those that are ordinarily unfair

Automatically unfair dismissals include those for taking part in, or contemplating, strike action, for exercising a right conferred by the act, for being pregnant, or by virtue of a matter based on discrimination.

Dismissals are ordinarily but not automatically unfair if the employer failed to provide adequate and just reason for the dismissal, or failed to follow the stipulated procedures set out by the act.

It is important to note that domestics alleging an unfair dismissal may have recourse to the Industrial Court The onus will then fall on the employer to prove that the dismissal was fair.

In order for the Industrial Court to accept an employer-initiated termination (for either disciplinary, or non-disciplinary, reasons) as being fair, it must be both procedurally and substantively fair

The former refers to the correct procedure being followed as laid out by the Labour Relations Bill while the latter refers to fair and adequate reason being present in justifying the dismissal

However, in addition to the concept of the unfair dismissal, is the fact that the 1995 Labour Relations Bill gives effect to the labour rights contained in the 1994 interim constitution, which affords domestics the right to strike and the right to freedom of association

This means that domestic workers now have the right to join a registered trade union (the Cosatu-affiliated South African Domestic Workers Union being the union in question), without fear of reprisal from the employer, and have the right to participate in legal strike activity while being protected from dismissal while on strike

With regard to strikes, it is envisaged that, rather than individual household domestics striking in isolation, it is more likely that localised neighbourhood secondary or sympathy strikes (which are also protected by the 1995 bill and support the right of workers to strike in support of a fellow worker's dispute) will take place

Therefore, should one household's domestic worker institute unsettled dispute proceedings over wage increases, domestics at other households within the neighbourhood might well go on strike in support of this dispute and be protected by the law from dismissal for striking

Finally, it is important to note that our courts maintain that ignorance of the law is no excuse and any infringement will incur serious penalties which may turn out to be expensive

Due to the inadequacy of legal protection, employers of domestic workers have in the past managed by and large to escape legal scrutiny

However, with the impending new labour legislation, it is now essential that employers of domestics, like their counterparts in industry, will need a working knowledge of both their and their workers' rights so as to minimise the impact of costly legal battles

■ *Matthew Grossett and Robert Venter are lecturers in the Department of Business Economics at Wits University*

EMPLOYMENT EQUITY PROPOSALS (166)
FM 5/7/96

STICKS AND CARROTS

Affirmative action "goals and timetables" rather than fixed quotas for the hiring and promotion of historically disadvantaged groups, are at the heart of the Employment & Occupational Equity Green Paper, released by Labour Minister Tito Mboweni this week

This approach, reflecting that of labour market commission, is backed by (at this stage vague) guidelines on incentives and sanctions. For instance, only employers who establish a good employment equity track record will be considered for government and public corporations contracts and be eligible for training grants or investment incentives An employer who denied an employee promotion on discriminatory grounds will be required to promote that employee


Tito Mboweni

Moreover, says labour law consultant J D Verster of Webber Wentzel Bouwens, "there is no reason why this approach will not also find application in the selection and recruitment stage, which could lead to a new employee being foisted on an unwilling employer "

The Green Paper will be debated by Nedlac before a Bill is introduced in the next session of parliament Public comment is also invited

The labour department's equal opportunities director, Mpho Makwana, describes the proposals as a "revolutionary" vision for achieving employment equity and a "culture of diversity and democracy" in the workplace He says they go beyond traditional approaches to affirmative action The department seems to recognise that over-regulation based on quotas is problematic and won't work Instead, the preferred route is based on flexible regulation

The aim is to redress disadvantages as a result of apartheid policies and to try to accommodate differences between people in the workplace A two-pronged strategy towards this end involves eradicating unfair discrimination in hiring, promotion and training, and measures to encourage employers to transform their organisations by removing barriers to employment for all and accelerate training and promotion for blacks, Indians, coloureds, women and the disabled

Larger firms are singled out for submission of "employment equity plans" for ministerial approval They will then be legally obliged to implement them Smaller firms will only have to submit such plans if requested by employees or "other stakeholders," or if they wish to pitch for State subsidies or tenders

It is suggested that employers develop an employment equity plan which should lay out measures to reduce barriers, speed up training and promotion for the identified groups, and provide key indicators to track its success The proposed antidiscrimination measures will apply to all employers The idea is to outlaw the inclusion of criteria not related to job requirements in career planning The department intends to regulate employment equity by issuing "codes of good practice "

Other interesting proposals are

- That employers use advertising media circulating in as a wide an audience as possible for job advertisements,
- Employers define criteria in terms of skills rather than formal education, and demonstrate that psychometric tests used in selection procedures do not have an antidiversity bias,
- An organisational audit to identify existing shortcomings and barriers to change, and
- Employment equity disputes be referred to the Commission for Conciliation, Mediation & Arbitration

The proposals are, generally, not as extreme as some feared, but underestimate the difficulties involved with affirmative action, which various companies committed to it have found They require close debate ■

Black bosses angry that quotas won't be enforced

ST (BT) 7/7/96

(166)

By THABO KOBOKOANE

THE lack of imposed quotas and targets in the Employment and Occupational Equity Green Paper is a blow for black business groups which have lobbied for quotas in legislation

The paper, released this week, opts for negotiated targets and quotas and employment equity plans within various businesses and provides for incentives for those that do so

Tax and training incentives and government contracts are on offer for companies which implement employment equity plans

The approach was welcomed by the SA Chamber of Business, but it was slated by the Black Management Forum for its lack of "clear cut" affirmative action policies

Hazel Ralefeta, managing director of BMF, says the organisation is "totally unhappy and dissatisfied" with the proposals

"Affirmative action has been deliberately omitted to appease white business. If it eventually becomes law, the status of blacks will not improve in any way — in fact they will be in a worse situation," Ralefeta says

Janet Dickman, labour affairs and social policies manager at Sacob, welcomed the decision to move away from rigid targets, but raised concern at the extent to which the government will "interfere" and at the nature of obligations being imposed on business

Mpho Makwana, director of the Department of Labour's directorate of equal opportunities, which drafted the proposals, says the green paper provides for an "enabling environment" for business and stakeholders

"The shortcoming of legislated quotas is that we would have to revise the statute regularly if targets were not in line," Makwana says

The proposals, aimed at redressing social and economic inequalities, ban unfair discrimination of any kind in hiring, promotion, training, pay, benefits and retrenchments They encourage employers to undertake organisational transformation and accelerate training and promotion of individuals from disadvantaged groups

ENABLING: Mpho Makwana of the Department of Labour Picture: HERBERT MABUZA

However, larger employers will have to submit employment equity plans to the Minister of Labour for "approval" Smaller firms will have to do so if requested by employees and other stakeholders or to gain certification to gain government subsidies or tendering rights.

Makwana says employers will have to conduct internal audits and negotiate employment equity measures with employees, in line with the Labour Relations Act requirement for workplace forums

Further, he says employers will have to comply with negotiated targets and timetables

"The requirements are non-negotiable, but we are flexible on the time frames," Makwana says

Failure to implement will result in fines and exclusions from government contracts

Dickman says Sacob is concerned about how the plan will be implemented as it could lead to corruption and undue influence

The green paper will be discussed by the National Economic Development and Labour Council, after which a Bill will be drafted, submitted to Cabinet for approval and again tabled in Nedlac for negotiation Makwana says it is likely that the Bill will reach Parliament early next year.

Labour and big business continue fight over lockout clause at Constitutional Court hearing

Star 9/7/96

(166)

By Patrick Bulger and Helen Grange

Organised labour and big business, addressing the Constitutional Court yesterday, resumed their battle over key clauses in the new constitution dealing with labour relations

Business South Africa (BSA), on behalf of big business, argued that the 11 Constitutional Court judges should refuse to certify the constitution because individual employers had been overlooked by the constitution's drafters and because the watered-down provision of a "lockout clause" was in itself unconstitutional

The trade unions, represented by the Congress of South African Trade Unions, argued that employers did not need the right to lock out striking workers as they could resort to a range of other options to impose their will. Workers, on the other hand, could only withdraw their labour power

Cosatu scored a constitutional coup over its business protagonists when, in the midst of a one-day stayaway in the runup to the adoption of the constitution on May 8, it pressured the negotiators into dropping the "lockout clause". Instead, the negotiators inserted a provision referring to the Labour Relations Act, which allows for lockouts under certain specified conditions.

The Constitutional Court judges must now decide whether any of the 34 constitutional principles thrashed out at the Kempton Park talks in 1993 have been transgressed. The National Party, the IFP and the Democratic Party are arguing alongside BSA that the principles have been transgressed and that employers enjoy significantly fewer rights under the new constitution compared with what the principles intended

Martin Brassey, arguing for Cosatu, told the court that the right to strike was not unfettered It was curtailed by the limitations clause and by labour legislation procedures. He said the right to a lockout was not universally accepted and that it was not as important to employers as the right to strike was to employees

Employers had the right to implement changes in terms and conditions of employees They could also fall back on the established definition of an unfair labour practice and on the property clause, Brassey said.

Martin Wallis, for BSA, argued that workers had the right to strike but that there was no equivalent right for individual employers acting outside organised employer groupings

"They are precluded from joining employers' organisations because of the competition between them and the constitutional text leaves employers with no constitutional protection"

Unless the Constitutional Court could devise a process whereby adjudication was effectively part of the constitution, it would be left only with the option of rejecting the text, Wallis argued

'No fair deal for the bosses

(166) (82)

Sowetan 9/7/96

IF THE proposed final Constitution is to be certified the principle of individual rights to fair labour practices has to be entrenched, the Constitutional Court heard yesterday

Counsel for Business SA Mr Malcolm Wallis, SC, told the court the proposed final Constitution could not be certified because it did not allow individual employers the right to collective bargaining

The right to strike enabled workers to exercise economic power in support of their bargaining position, he said Employers, however, had no similar right

Rights on both sides

Wallis said the debate was not an argument of "strike versus lockout" but involved an analysis of whether collective bargaining included both the right to strike and the right to lock workers out.

Counsel for the Congress of SA Trade Unions Martin Brassey argued earlier in the day that the proposed final Constitution did not protect the individual employer's right to collective bargaining He said the constitutional principles gave sanction only to bargaining through association

Brassey was debating the point of whether or not the constitution complied with the principles of the interim constitution

The principles protecting employees and employers' rights to collective bargaining gave sanction only to bargaining through associations, Brassey told the court – *Sapa*

(166)

Employers lockout right 'inferred'

BT 9/7/96

JOHANNESBURG: Employers should be given the constitutional right to use economic power as a bargaining tool in their dealings with employees, Business South Africa said yesterday.

BSA counsel Mr Malcolm Wallis told the Constitutional Court that the interim constitution provided for collective bargaining, which inferred employers' right to lock employees out of company premises in the event of a labour dispute.

The court is hearing argument on whether the proposed final constitution complies with the 34 constitutional principles set out in the interim constitution, which is required for the final constitution to be certified.

Wallis said the interim constitution entrenched every individual's right to fair labour practices. This included workers' right to use the economic impact of a strike as a bargaining tool, and employers' right to use the corollary power of the lockout

Counsel for the Congress of SA Trade Unions, Mr Martin Brassey, argued earlier in the day that the disparity of social power between an employer and employees nullified the need for constitutional protection of employers' right to lockout. — Sapa

Cosatu and business square off

Battle over labour clauses in constitution

BD 9/7/96 (166)

Susan Russell

COSATU urged the Constitutional Court yesterday to approve the labour provisions in the constitution, arguing that the inclusion of a right to strike clause without a similarly entrenched employers' right to lock out had to be seen against the historic power imbalance between labour and capital.

The union federation was responding to objections from Business SA, supported by the DP, NP and IFP, to the provisions they claim violate the constitutional principles agreed to by multiparty negotiators in 1993

Business SA has objected to three aspects of the new constitution·

- The omission of a lock-out clause,
- The absence of an express right of individual employers to engage in collective bargaining as this applies only to employer organisations; and
- Section 241, which allows the Labour Relations Act to supersede the constitution until the Act is amended or repealed, puts the Act above the constitution contrary to the principle that the constitution is the supreme law

Both Cosatu and the Constitutional Assembly have defended the labour provisions, arguing that they comply with the constitutional principles

Business argued that omitting an express right to lock out rendered the practice unconstitutional

Business SA counsel Malcolm Wallis said the issue was not about the right to strike versus the right to lock out, but about the right of labour and employers to exercise their respective economic muscle. The constitution removed employers' rights to wield their economic power

By restricting the right of collective bargaining to employers' organisations when 80% of employers were not members of, or unable to join, such organisations meant the majority would be left with no constitutional protection of their collective bargaining rights.

Judge Ishmael Mohamed asked Wallis if the provision did not contain more threat than substance for employers. "Why not form an employers' organisation with a subsidiary?"

"With all due respect," Wallis replied, "we don't claim constitutional rights with that kind of chicanery."

Cosatu counsel Martin Brassey countered that the absence of a right to lock out did not necessarily render it unconstitutional All that could be inferred was that the Constitutional Assembly preferred to leave it for the court, guided by the principles, to decide to what extent, if any, the lock-out could be regulated.

He said the omission of a lock-out clause did not violate any of the prin-

Continued on Page 2

Labour

(166)

Continued from Page 1

BD 9/7/96

ciples since they contained no express injunction that collective action should be protected constitutionally, but left the choice of how to proceed on the issue with the drafters of the text

Inclusion of a right to strike without similar protection for the lock-out was not strange, he argued, given the historic imbalance of power between labour and capital.

"Collective bargaining without the right to strike may be collective begging, but collective bargaining without the right to lock out can nevertheless be a very effective method by which management can pursue its interests"

Responding to complaints that the new text excluded individual employers from collective bargaining, Brassey said this was conferred on them by the entrenchment in the constitution of everyone's right to fair labour practises. Alternatively, there was nothing in the principles that required constitutional protection for the collective bargaining rights of individual employers.

Providing the right only to individual employers would jeopardise centralised bargaining because they would be able to opt out on the grounds that they had a right to bargain at an individual level.

However, Brassey reiterated that constitutional protection of collective bargaining for employers' organisations did not exclude bargaining at the level of individual employers.

Comment: Page 10

Dispute process nears completion

BD 12/7/96 (166)

Kevin O'Grady

NEDLAC had completed a series of tasks implementing new labour dispute resolution processes as required by the new Labour Relations Act, executive director Jayendra Naidoo said yesterday. These included:

- Nominating members and an independent chairperson for the governing body of the Commission for Conciliation, Mediation and Arbitration;
- Advising Justice Minister Dullah Omar on the seat of the new Labour Court;
- Advising President Nelson Mandela on who the Judge President and deputy Judge President of the new Labour Court should be;
- Submitting nominations for the rules board,
- Submitting nominations for the essential services committee, and
- Approving and finalising the Labour Relations Act Amendment Bill

The process for finalising regulations and schedules to the Act was expected to be completed next week

Codes of practice for picketing and retrenchments and setting of criteria for demarcations of sections and areas were still being drafted

Five nominees for the rules board, which sets rules of conduct for the Labour Court and the Labour Appeal Court, and six nominees for the essential services committee — which decides which public services are essential, therefore prohibiting workers from striking — had already been submitted to Omar and Labour Minister Tito Mboweni for approval.

"Announcements regarding appointments to these two new structures should be made by the minister in the near future," Naidoo said The appointments of Judge John Myburgh and Judge Froneman as Judge President and deputy Judge President of the Labour Court had been confirmed, as had those of the 10-man governing body for the commission, chaired by attorney Ray Zondo.

Johannesburg had been approved as the main seat of the Labour Court, with satellite courts operating in Cape Town, Port Elizabeth and Durban. Nedlac had also recommended that the commission and the Labour Court be housed in the same buildings.

Employers vote for lock-out right

(166) (152)

Renee Grawitzky

BD 12/7/96

FOR the first time in the history of the clothing industry, the majority of employers have voted overwhelmingly in favour of the right to embark on a lock-out if they so decide, spokesman for the Cape Clothing Manufacturers' Association Peter Cragg said yesterday.

A wage dispute between clothing employers and the SA Clothing and Textile Workers' Union has led to balloting by both parties — for a lock out and strike respectively — despite behind-the-scenes discussions

Cragg said 100% of employers in KwaZulu-Natal and 91% of employers in the Western Cape voted "to acquire the right to lock out". He said the other regions had not yet completed balloting However, 85% of employees were employed in the provinces balloted

Cragg said employers would meet next week to decide whether they would "utilise the right to lock out acquired through the ballot". Clothing employers, he emphasised, were still open to discussions with the union

"The most recent informal discussions have left employers feeling disappointed, since they believe progress could have been made and the gap between employer offer and union demand narrowed considerably"

Cragg said employers remained open to exploring all options to resolve the dispute in order to prevent a strike or an employee lock out.

Expert calls for workplace forums

Reneé Grawitzky (166)

BD 15/7/96.

DURBAN — The establishment of workplace forums in non-unionised environments and a higher level of information disclosure to such forums should have been provided for in the new Labour Relations Act, a German labour expert has said

Manfred Weiss, professor of labour and civil law at JW Goethe University in Frankfurt, was addressing the 9th annual labour law conference in Durban at the weekend.

Weiss said that for the first time in SA, structures were being created which were intended to promote co-operative relations and could be a step towards democratising the workplace

He said such structures could have a positive spill-over effect in the political arena as they were the source of basic consensus-seeking for the restructuring of society.

They could also lead to greater efficiency and increased legitimacy in the implementation of decisions. Once workers were involved in decision-making, the implementation of decisions would be easier, he said

Participation

Weiss said workplace forums with lower statutory powers should be established in non-unionised environments. He said contrary to union fears that this would prevent unionism, such initiatives could serve as a stimulus to workers to form unions so that such forums could be transformed into and granted the same powers as forums in unionised environments.

Worker representatives should obtain access to all information to take meaningful decisions and to create a climate of trust and participation, Weiss said.

He said the new Act should not restrict the flow of information. Employers could safeguard themselves by building in a secrecy clause so that sensitive information was not disclosed to the whole workplace

Weiss stressed that successful implementation required intensive training, the possible use of independent experts and the willingness of both parties to start the process

Germany's relative prosperity, he said, largely resulted from the establishment of workplace forums

Weiss said forums were not only a question of creating a second channel for decision making and consultation, but of creating a better framework for investment and job creation

"We have to bring alive this law and we have to build up between management and workers a culture of trust and confidence," he said.

Search for affirmative action policy runs into the realities of apartheid legacy

Anti-discrimination laws aim to alter rules of the game

17/7/96 (166) CT(BR)

By Lynne Duke

Pretoria — Many employees of the apartheid era have accepted new posts or taken severance packages amid the massive restructuring of South Africa's public service But too many skilled whites want to leave government service, at a time when too few blacks are available to fill their jobs

Until the skills level of the black majority increases, government ministers are in the awkward position of asking some whites to stay

"I had to tell them, 'We need your skills'," said Zola Skweyiya, the public services minister "In deciding who goes and who remains, the interests of the state must prevail whites have got skills, and we need those skills to run South Africa"

Skweyiya's statements illustrate how South Africa's search for the right affirmative-action policies has run smack into the realities of apartheid's legacy

Mindful of the dearth of skilled blacks — and watchful of the roll-back of affirmative action policies in the US — South African policy-makers recently announced a blueprint for the country's first anti-discrimination legislation to govern the racial transformation of the public and private sectors

Officials are steering clear of the term "affirmative action," and say their intention is not to put a few black faces onto employment rosters but to change an entire system

There is truth in Lyndon Johnson's warning that people hobbled by chains cannot be expected to go to the starting line and compete effectively, says Mpho Makwana, a labour department official who led the drafting of the legislation But South Africa hopes not just to unshackle the runners but to change the rules

"The rules also have to be defined to suit a majority culture," he said "You want to ensure that it's not another number-crunching strategy"

President Nelson Mandela's government inherited a skewed system of education and employment Under apartheid whites were groomed to lead Blacks, in the main, were groomed to follow

The process of hiring employees included legislation reserving the best jobs for whites

Apartheid's legacy is devastating Today adult blacks have had half the educational years of whites, their salaries are barely a third of whites' salaries, and their unemployment rate is eight times higher Though blacks run the government, whites still run the economy, whites, which make up 13 percent of the population, own 90 percent of the nation's wealth, according to government statistics

The proposed legislation would regulate for the first time the way South Africa attacks these disparities in the public and private sectors It seeks to change the way employers define merit and qualifications among applicants and the way they train and promote their employees

The plan would require large employers to report on their "equity" progress, but it does not call for strict numerical goals or time frames It offers incentives for employers to establish solid plans for advancing blacks, and provides sanctions for those who do not. How it will measure progress, however, has yet to be debated

Black South African officials have watched with concern as the US court system has curtailed affirmative action policies, and hope to avoid similar court battles

The South African Constitution not only guarantees equal protection before the law but also makes provision in its bill of rights for the protection and advancement of the disadvantaged majority

However, the new constitution was only passed by parliament in May, so how its provisions will be interpreted by the courts is unknown One of the first tests may come through a public service union's suit to stop an affirmative-action plan that set aside some state's attorney posts for blacks

Members of the all-white, 60 000-member Mine Workers' Union also are up in arms about affirmative action, saying that whites now are being "disadvantaged"

Stories of the rapid advancement of a small but growing black middle class and elite have fuelled white fears These skilled blacks have emerged through education and training in exile or against-the-odds in South Africa during the apartheid years Such upwardly mobile blacks are hot commodities in the private sector these days

The demand for highly qualified black managers and executives is so great that a new class of job-hoppers has developed

Joe Matuna, who also has a business degree, is a development manager for a paper production corporation — a position he says is substantive, unlike some of the other posts that he has held He has had nine jobs in 13 years, each with a higher salary than the last

"Yes, I have worked in financial services, government, non-government, public sector, private sector," Matuna chuckled "I have been at some stage a black advancement candidate"

17/7/96

There has been little progress in corporate South Africa Blacks hold about 10 percent of management positions in the private sector, though estimates vary.

Hazel Ralefeta, the managing director of the Black Management Forum, believes the government should set numerical goals to push black advancement

"We believe the government should have come out much clearer with targets," Ralefeta said "If you do not set targets, how do you measure?"

But some say that the reality of the nation's demographics means that it is only a matter of time before whites' importance in the labour force recedes and blacks become more prominent — The Washington Post

Tackling SA's disparities

(166)

DURING apartheid South Africa's public service jobs were reserved almost exclusively for whites But in this age of transformation and with a black Government at the helm, the ranks have been thrown open to blacks

Most department heads are black and the rank and file are slowly changing hues too

Amid massive restructuring of the million-member public service, many employees of the apartheid era have accepted new posts – or taken severance packages

But too many skilled whites want to leave Government service at a time when too few blacks are available to fill their jobs

There are few black engineers, for example, or hydrologists, surveyors, to say nothing of nuclear physicists So until the skills level of blacks increases, Government ministers are in an awkward position of prevailing upon some whites to stay

"I had to tell them we need your skills," says Public Services Minister Zola Skweyiya "In deciding who goes and who remains, the interests of the state must prevail Whites have the skills, and we need those skills to run South Africa"

Skweyiya's statements illustrate how South Africa's search for the right affirmative action policies has run smack into the realities of apartheid's legacy

Mindful of the dearth of skilled blacks, South African policy makers have unveiled a blueprint for first anti-discrimination legislation to govern the racial transformation of both the public and private sectors

Officials are carefully steering clear of the term 'affirmative action" and say their intent is not just to put a few black faces on to employment rosters but to overhaul an entire system created to serve a white minority

People hobbled by chains cannot be expected to go to the starting line and compete effectively, says Mpho Makwana, a Labour Department official who led the drafting of the new legislation

But South Africa hopes not just to unshackle the runners but to change the rules of the whole contest

The Government inherited a skewed system of education and employment

Under apartheid, whites were groomed to lead while blacks were groomed to follow

Apartheid's legacy is devastating Adult blacks today have had half the educational years of whites their salaries are barely a third of whites' salaries, and their unemployment rate is eight times higher

Although blacks run the nation's government, whites still run the economy, they are 13 percent of the population but own 90 percent of the nation's wealth, according to Government statistics

Mpho Makwana ... one of the architects of the new employment equity legislation.

Sowetan 18/7/96

The proposed legislation would for the first time regulate the way South Africa attacks these extreme disparities in both public and private sectors

It seeks to change the way employers define merit and qualifications among applicants and the way they recruit, hire train, develop, promote and listen to their employees

The plan would require large employers to report routinely on their "equity" progress, but it does not call for strict numerical goals or time frames

It offers incentives for employers to establish solid plans for advancing blacks and provides sanctions, such as loss of Government contracts, for those who do not How it will measure progress, however, has yet to be debated

The new Constitution not only guarantees equality before the law but also makes provision in the Bill of Rights for the protection and advancement of the disadvantaged majority

One of the first tests may come through a public service union's suit to stop an affirmative action plan that set aside some state's attorney posts for blacks

Stories of the rapid advancement of a small but growing black middle class and elite have fuelled white fears These skilled, educated, aggressive blacks have emerged through education and training in exile or against-the-odds tenacity internally during the years of apartheid

The demand for highly qualified black managers and executives is so great that a new class of job-hoppers has cropped up

But thus far, there has been little progress in corporate South Africa Blacks hold roughly 10 percent of management positions in the private sector, though estimates vary Of 8,401 directors in large South African companies, 32 are black women, 92 are white women, 357 are black men, and 7,920 are white men according to McGregor Information Services

Washington Post

Unions target training

(166) M+G (BM) 19-25/9/96

Unions have received a welcome R2,5-million for training to prepare for the Labour Relations Act, writes Madeleine Wackernagel

Practice in progress: Jayendra Naidoo (centre) assists Numsa on an LRA training programme PHOTO RUTH MOTAU

WHILE the implementation of the Labour Relations Act (LRA) proceeds at a snail's pace, with promulgation next month now increasingly unlikely, the unions have received a welcome boost in preparing for the new order

The African-American Labour Centre has donated R2,5-million to the National Economic Development and Labour Council (Nedlac) to finance training programmes for union leaders and their shop stewards from the Congress of South African Trade Unions, the Federation of South African Labour, the National Council of Trade Unions and their affiliates

And not before time "Training programmes have been put together, but so far most unionists are not well informed Employers, not the unions, are proving to be most *au fait* with the act," says labour analyst Gavin Brown.

This view is echoed by the National Union of Mineworkers (NUM) "The response to the LRA from the shopfloor has been quite enthusiastic, but training has not been to our satisfaction By the time the Act becomes effective, we should have had enough time to implement some basic training programmes The whole process is ongoing, we will soon be taking it to the regions," says a representative

Described by one commentator as a "utopian piece of labour legislation compiled in an enormous rush, full of technical imperfections", the Act could become an embarrassment to Labour Minister Tito Mboweni as constant amendments threaten to delay promulgation until October at the earliest.

"The new LRA resembles the old one more and more — a real patchwork quilt of amendments," says Brown "And without sufficient skills and training to put it to best practice, it could be a lame duck "

But Nedlac for one was optimistic that the new funds would go a long way to boosting the training process

Says executive director Jayendra Naidoo "More than 2 000 shop stewards, union office bearers and organisers will be targeted for training, and thousands more will benefit from an LRA video programme piloted by Cosatu "

Sekoati Mokoena of the South African Commercial Catering and Allied Workers' Union says the delays in implementing the LRA would give the unions more scope to get training programmes up to scratch "The new law is much more understandable than the old one Once the Act is promulgated and the shop stewards are fully conversant with its contents, it won't be difficult to put the Act into practice "

The exact reasons for delays in implementing the Act are hard to pin down But Nedlac, for its part, has fulfilled its side of the bargain "Only two items are still outstanding," says Naidoo "Work on the drafting of codes of practice for picketing and retrenchments, and setting criteria for demarcations of sectors, is due to finish soon, while the other key tasks have been completed in good time "

These include nominating members for the Commission for Conciliation, Mediation and Arbitration, advising on the seat of the new Labour Court and potential candidates for the role of judge president and a deputy, submissions for the Rules Board and Essential Services Committee; and approving and finalising the LRA Amendment Bill.

Setting up these institutions has proved more difficult than anticipated, says the Department of Labour "We're going at full speed to put the framework in place, but so far we cannot put a date on the final promulgation of the Act Unfortunately, the amendments tabled before the end of the last parliamentary session were not passed because a quorum could not be reached, which has delayed things further "

Eight broadcasters

THE Independent Broadcasting Authority has issued broadcasting licences to eight community radio stations which it believes provide services that are important in maintaining community cohesion.

Stations which received licences are Radio Rippel, Radio Soshanguve, Teks FM Stereo, New Pan Hellenic Voice, ALX FM, Soweto Community Radio, Radio TNT and UCT Radio.

REPORTS Business Day Reporters, Sapa

Tariff structure 'must be revised'

BD 24/7/96

WASHINGTON — SA's tariff structure needed "serious review", Land and Agriculture Minister Derek Hanekom said on Monday

"We have one of the most complex tariff structures in the world," Hanekom said after a meeting with US Agriculture Secretary Dan Glickman

The two agriculture ministers were meeting as part of the US-SA binational commission and signed a pact setting up the framework for an agricultural committee

Hanekom said SA was trying to develop an agriculture sector that was much more competitive.

"That is one part of our policy review which we're going through at the moment, to simplify our tariff regime in SA." However he said SA was well within the General Agreement on Tariffs and Trade and that its tariff levels were not extraordinarily high on most of its commodities — Reuter.

Mboweni in talks over green paper

(166)

Renee Grawitzky

BD 24/7/96

THE imposition of targets and quotas in employment and occupational equity legislation formed the focus of discussion between Labour Minister Tito Mboweni and representatives of the Black Management Forum yesterday

The meeting, initiated by the ministry, was held after the BMF indicated its concern about the green paper's "perceived failure to impose rigid affirmative action quotas and targets on employers"

Mboweni said discussions with the BMF revolved around how "we can write into the legislation the issue of targets" The green paper, he said, argued for negotiable targets, and therefore there was no disagreement on this issue

The BMF raised a number of crucial factors which were missing from the green paper.

It was agreed that the labour department's director of equal opportunities would co-ordinate a more structured relationship between the parties

Maize committee calls for higher exports cap

BD 24/7/96

Louise Cook

THE maize advisory committee yesterday called on Agriculture Minister Derek Hanekom to urgently change the maize marketing laws within 10 days, after talk of possible marketing changes for exports had plunged the industry into a state of uncertainty

The committee, an advisory body to the Maize Board, had been contemplating changes to the current marketing scheme set up in May to guide the industry to full deregulation next year.

The scheme had allowed exports through agents other than the board for the first time, but exports had been capped at 1,8-million tons.

The idea of changing the current scheme in mid-season resulted from industry fears of possible domestic shortages resulting from an oversupply to the board's export pools. The SA Futures Exchange was also thrown out of industry meetings when the exchange objected to suggested changes, saying it could cause heavy losses for those who had taken out maize futures contracts

The committee said it now would recommend the cap on exports be raised to 3,3-million tons from 2,55-million tons This week figures showed the crop could be 9 657-million tons or 60 000 tons more than expected

Hanekom was not available for comment and neither was Safex

Mediator optimistic on new LRA

(166) Star 31/7/96

By Goba Ndhlovu

The future of private dispute resolution services in a changing South African labour scenario looked bright, newly appointed Independent Mediation Service of South Africa (Imssa) national project director Alistair Smith told a press briefing yesterday.

Government, in its new Labour Relations Act – due to be passed into law soon – had responded to global as well as internal problems regarding labour, Smith said.

On the home front, there had been an adversarial approach between labour and capital (business), low productivity and increasing unemployment. The country faced stiff international competition economically.

"The new Labour Relations Act is the Government's response to these new challenges In the act, key aspects which affect Imssa relate to dispute resolution, which seem to be covered fully," said Smith.

Smith said that despite making mediation and arbitration compulsory and creating bargaining councils, the act had provision for private dispute resolution "It is here where our future lies Private dispute resolution will grow because it has decided advantages over other forms," said Smith.

There was already growth in the industry: mediations were 252 in June 1995 and they rose to 281 in June 1996. The same was true of arbitrations in June 1995 arbitrations stood at 340, in 1996 they were 407.

Deadlock 'may arise over employment standards'

(166) BD 31/7/96

Reneé Grawitzky

LABOUR negotiators have advised government and business of disagreements which could constitute a deadlock between the parties.

The move, during negotiations on minimum employment standards legislation, this week, came after two months of discussion in the labour market chamber of the National Economic, Development and Labour Council (Nedlac) on the employment standards green paper and a first draft Bill on Employment Standards.

The parties were due to complete negotiations next week. However, Nedlac's management committee agreed yesterday to grant the parties an additional two weeks to study and negotiate on a further draft Bill to be released this week. This could affect the timetable set to ensure a final Bill is tabled in Parliament in September.

Labour emphasised it would not take a decision on declaring a formal deadlock until it had seen the draft Bill to be circulated this week Business SA spokesman Adrian du Plessis said business was looking to negotiation to clarify the parties' positions further

Nedlac executive director Jayendra Naidoo said good progress had been made so far. Vishwar Satgar, assisting the labour team, said labour's concerns related to work hours, maternity leave, variation of standards and the role of the employment standards commission. Although the facilitation process had been successful, it had clouded the bottom-line positions of the parties.

Labour sources indicated that government had shifted from some of its more progressive proposals. It emphasised the process had to move from facilitation mode into negotiating mode.

Satgar said the draft Bill failed to legislate a 40-hour week and six months paid maternity leave Instead proposals related to phasing-in of reduced hours but made no reference to a 40-hour week Government and business have opposed six months' paid maternity leave, with the Bill proposing four months' unpaid leave

Labour's concern around the variation of standards related to ensuring standards could not be lowered while business would like to ensure such flexibility Satgar said the employment standards commission should have the power to investigate wage differentials and inequalities at the top end of the salary scale and the minister should be able to recommend the moderation of salaries at the top end

Doubts grow over LRA

(166) M+G (BM) 4-10/10/96

Much delayed, the new Labour Relations Act could fall flat if a key element, the CCMA, fails to fulfill its brief, reports **Max Gebhardt**

BUSINESS and labour are worried that the new Labour Relations Act (LRA) could trip up before it even gets off the starting blocks on November 11 Its success hinges on whether the Commission for Conciliation Mediation and Arbitration (CCMA) will be able to effectively hold together the fabric of the Act

The commission is integral to the new labour law and the stakeholders fear it may not have the ability and resources to fulfill its intended obligations

Already Labour Minister Tito Mboweni has come under increasing criticism for the many delays and amendments to the Act

Chamber of Mines industrial relations adviser Adrian Du Plessis says the successful discharge of the commission s role is fundamentally essential to the Act

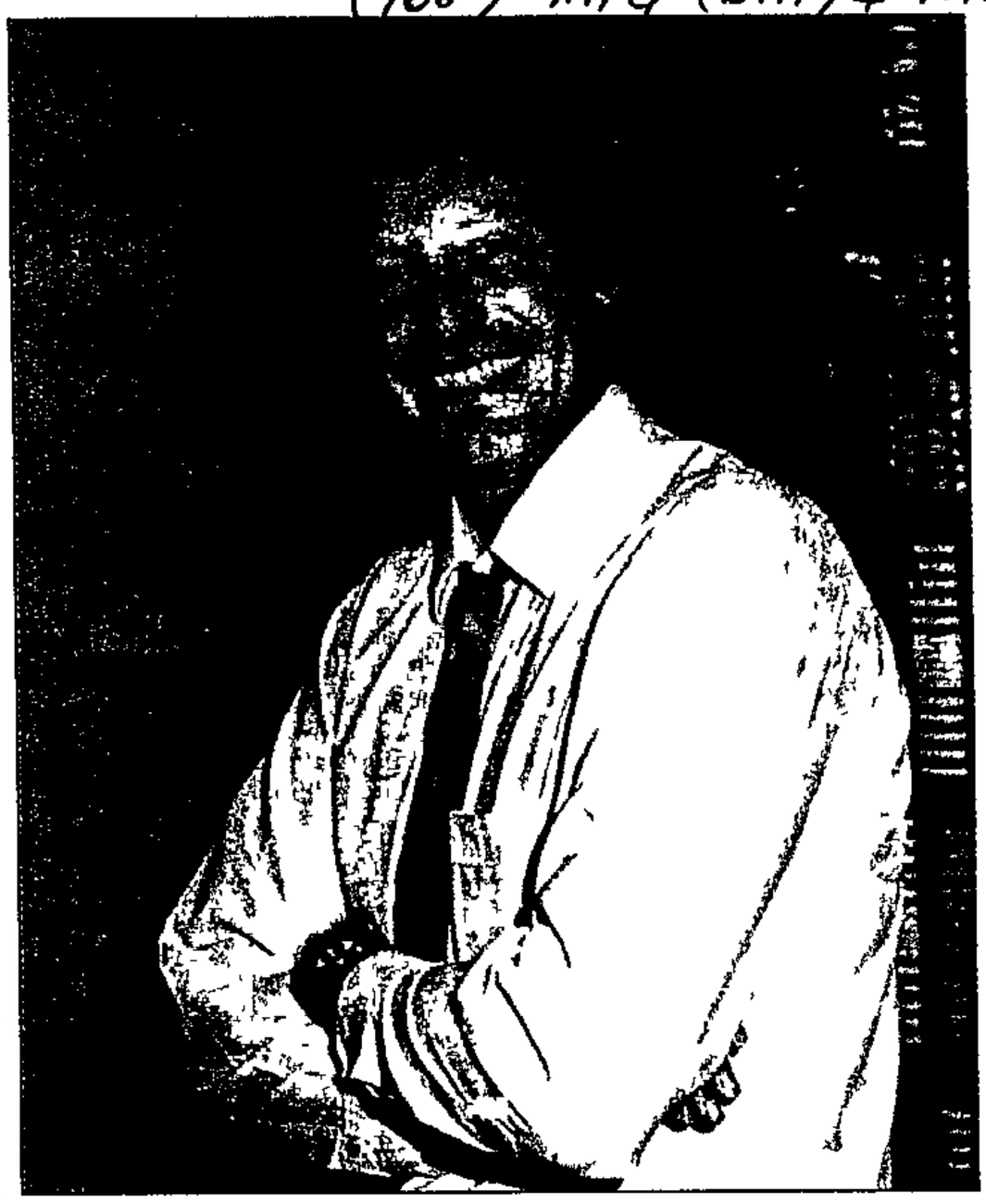
The LRA will usher in a new labour dispensation, together with a set of major new institutions systems and procedures. And the commission, led by Charles Nupen, is a key independent statutory institution in this system

Reservations are, however, being expressed that the newly trained commissioners may not have the experience to handle the sheer volume and complexities of labour disputes referred to the CCMA.

Concern has also been raised over whether the commission will be able to perform effectively given its budgetary constraints Business and labour are adopting a cautiously optimistic view but stress the eventual success of the LRA will rest on whether the CCMA will be able to effectively deliver a speedy mediation and arbitration service

The stated objectives of the CCMA are to prevent labour disputes from arising and to settle disputes that do arise by conciliation and arbitration

The CCMA is expected to handle as many as 30 000 cases a year with a staff of 435, including 91 full-time commissioners It has been allocated a budget of R93 4-million for the financial year to end-March 1997 of which 43% (R39,9-million) will be devoted to salaries and wages Senior commissioners will receive an annual package of R239 000, while junior commissioners will receive R120 000



Charles Nupen: 'We do not have the luxury of time' PHOTOGRAPH THE STAR

But, says Jayendra Naidoo National Economic Development and Labour Council executive director, the initial size of the CCMA may be too ambitious He was worried over whether the commission would be able to handle the administration of such a large workforce

The director of labour affairs at the South African Chamber of Business (Sacob), Gerrie Bezuidenhout, said it had publicly stated its concerns about the level of expertise of the newly trained commissioners, a concern echoed by Steve Lenahan, industrial relations consultant for the Anglo American Gold Division

"We do have a serious concern about the design of the commission, given the budgetary constraints and the number and quality of commissioners," Lenahan said

Industry analysts point out that should the CCMA fail it will place a considerable strain on the effective working of the new Act.

Nupen agrees that a number of commissioners have minimal experience in dispute resolutions He does not feel, however that this should affect the overall running of the commission

"The full-time commissioners will be complemented by access to a body of part-time commissioners with extensive experience in dispute resolution "

The only way his commissioners will be able to gain experience, he says, is through day-to-day exposure to the conciliation and arbitration process

"There are internal devices to decide on the complexity of each individual case and the appropriate commissioner will then be assigned," Nupen said

He conceded that there will be some initial mistakes and some understandable teething problems "The institution is in the process of development. That process will take many months "

The commission has set a target success rate of 50% or higher in the conciliation process — a significant increase on the present estimated 12% success rate achieved by the Industrial Council

Bezuidenhout says Sacob expects the larger institutions to retain their own private arbitrators and industry dispute mechanisms already in existence The statute recognises private agreements and bargaining councils and sanctions the use of private agencies and dispute resolution procedures.

"The bulk of businesses and labour will, though rely on the CCMA, especially smaller businesses," he said

Naidoo said industry stakeholders should not expect the first few months to be rosy He feels it will take at least one or two years before the commission will be running effectively

"One has to set a modest and pragmatic measure of success or failure The function of the commission is to facilitate in disputes They cannot guarantee success, that will be in the hands of the parties involved," he said

Nupen is expecting his commissioners to handle up to two conciliations per day "We do not have the luxury of time that private agencies have "

Harold Harvey, deputy secretary-general of the Transport and General Workers Union, added his concern over whether the heavy workload on staff will affect the quality of service

"The commission should expect a period where there will be a lot of head-butting against the Act from the shopfloor," Harvey said

But Nupen says he will only be able to assess the capacity of the CCMA once it opens its doors "Maybe in the medium term we will have to develop our human resource capacity, depending on the volume we have to handle "

Employment talks, but no Bill in sight

(166) BD 4/10/96

Reneé Grawitzky

A NUMBER of bilateral meetings have been held in recent weeks between labour and business on future employment legislation, but there are no clear indications whether a draft Bill will be tabled in Parliament this year.

Sources close to the negotiations said it would be doubtful whether Cabinet would approve legislation which did not enjoy the support of the main social partners.

Parties have revealed that negotiations within the National Economic Development and Labour Council (Nedlac) were constructive with the parties attempting to iron out a range of technical issues and address some of the crucial areas of disagreement.

A labour source said it was doubtful whether a Bill would go through Parliament this year and if it did, there would not be sufficient time for proper negotiations.

Parties have said that, in contrast to negotiations around the new Labour Relations Act, negotiations on the green paper on employment standards and subsequent draft Bills have been very complex

The labour ministry said the process was at a delicate stage

The core areas of disagreement, evident during the early stages of the process, related to a variation of standards, a 40-hour week, maternity leave, Sunday work and child labour

Labour has argued for six months paid maternity leave while proposed legislation recommends only four months unpaid leave.

On the question of variation, labour has argued for employment standards to be varied upwards through a test of whether such a change would be more favourable to workers.

Traditionally, employers argue for standards to be varied downwards through collective bargaining

Intense debate has taken place over the reduction in work hours to a 40 hour week Labour has argued for a legislated 40 hour week while the legislation has proposed an initial reduction from a 46 to a 45 hour week.

Labour said the legislation did not provide for or introduce a measure of compulsion to reduce hours and instead proposed the phasing in of a 40 hour week through a national framework agreement

During recent discussions, it is believed that lengthy debate revolved around employer concerns as to whether such an issue could be resolved within a co-determination institution such as Nedlac

Collective bargaining clause gets thumbs up

(166)

Sowetan 8/10/96

By Rafiq Rohan
Political Correspondent

THE Congress of SA Trade Unions is in a celebratory mood after agreement on collective bargaining was yesterday given the green light by the Constitutional Committee

The formulation of the Constitutional Committee has given effect to the decision of the Constitutional Court

"We welcome the fact that the Constitutional Committee has rejected attempts to bring the lockout clause in through the back door, and has rejected the introduction of the concept of 'economic power' and 'collective action' into the clause on collective bargaining," Cosatu said after yesterday's historic meeting of the CC

Cosatu said the solution was not an ideal one, that the agreement on collective bargaining was not the preferred option, but "it is the product of negotiation and we accept it as such"

The formulation in the Constitution now reads "Every trade union, employers' organisation and employer has the right to engage in collective bargaining National legislation may be enacted to regulate collective bargaining"

Cosatu says the formulation is reasonably balanced, reflecting the realities of the industrial relations system

Govt warned of dangers of Singapore labour debate

(166) BD 8/10/96

John Dludlu

SA COULD lose its moral high ground among developing nations if it joined industrialised countries in calling for labour standards to be discussed at the ministerial meeting of the World Trade Organisation, trade experts said yesterday

Cosatu has asked Trade and Industry Minister Alec Erwin, as head of the UN conference on trade and development, to initiate international discussion on the link between the promotion of trade and labour standards, as well as environmental objectives

Rashaad Cassim, of the Braamfontein-based trade and industry policy secretariat, a policy research body, warned that while it would be relatively easy to achieve common ground on environmental standards, labour standards was a more contentious subject and caution had to be exercised

A source at the National Economic, Development and Labour Council, which recently hammered out an agreement on the social clause, said if Pretoria were to support US and EU calls for the issue of labour standards to be discussed at the Singapore trade ministerial summit, the country would run the risk of losing its "moral persuasion power as a champion of human rights" among developing nations.

In terms of the Nedlac framework, based on the labour constituency's proposal, SA would ask — but not force — its partners to sign a "side-letter" encouraging signatories to uphold core conventions of the International Labour Organisation, such as a ban on child and prison labour, as well as rights of workers to strike and collective bargaining

The US and EU want labour standards to be discussed at the WTO meeting in December.

However, countries like Japan are opposed to this move.

Although it is not clear what government's official position will be at the December summit, Erwin has invited business and labour each to send a representative with his delegation to Singapore.

Mass departure from public service

BD 8/10/96

Linda Ensor

CAPE TOWN — More than 10 000 Western Cape public servants have applied for government's voluntary severance package so far, administration officials said yesterday.

Thousands of nurses, doctors, teachers and school principals, as well as senior administrative staff, have opted to leave.

Some departments, such as environmental affairs and local government, will be left with huge gaps in the administrative hierarchy.

Government has targeted the removal of 100 000 public servants in a bid to prune the bloated sector

Sources said yesterday that while the mass departure would strip the public service of layers of professionals, it would open the way for more affirmative action. The ANC has complained that affirmative action in the province has been slow.

Of the 10 587 public servants who applied for severance, 2 600 included doctors, nurses and administrative staff in the health sector; 6 679 were teachers, principals and other staff in the education department; and 1 308 were from other departments.

Services body seen as neglected

(166) BD 8/10/96

Renee Grawitzky

THE essential services committee — an important element of the administrative structure of the new Labour Relations Act — has received limited attention in comparison to the commission for conciliation mediation and arbitration and the Labour Court

This was argued in an article in Contemporary Labour Law, published by Gavin Brown & Associates. The article said "little attention" had been paid to the committee that "will also play an important role in the application of the Labour Relations Act"

The committee, as envisaged in terms of the new legislation, was intended to be established under the commission with the labour minister appointing people The committee would be responsible for determining whether a service was essential or not Parties operating in such services would be prohibited from embarking on a strike or lock out.

The article noted that given the fact that the committee had not yet been established it was "highly unlikely that any essential service will be designated as such prior to the Act coming into force".

It was envisaged, the article said, that the committee would be established by now, have conducted investigations and made designations prior to the Act coming into effect.

Labour Minister Tito Mboweni on September 18, at the launch of the new Act, said he had not been satisfied with some of the nominations for the committee made by the social partners. Ideally, he said, the committee should have been in operation months ago.

He said a three-man committee would be established, comprising one representative from each of the social partners, and would operate for a three-month period. "Thereafter, it will be expanded to the larger committee we had originally hoped to appoint."

Mboweni said that the present definition of essential services could apply for three months from the date of commencement of the new Act on November 11.

The article said that although current legislation spelt out what services constituted an essential service, it was not satisfactory.

Unions have right to company information

Renee Grawitzky (166)

BD 10/10/96

[illegible] Labour Relations Act would force employers to disclose certain information central to bona fide collective bargaining and sound industrial relations.

The report highlighted the traditional approach adopted by employers, however, that companies provide information only when required to do so in terms of their right to disclose information which is relevant to the matter.

In terms of the new Act and in order to promote trade union democracy, unions should have the right to request certain information in the report and

The amendment provides for the disclosure of all information required, a union but rather all relevant information which allows the union official to perform his functions effectively. The report [illegible] that the information should be made available to the union official [illegible]

Information which is legally privileged, confidential or the disclosure of which would cause substantial harm to an employer or employee [illegible] should not be disclosed.

In order [illegible] disclosure of information could be referred to the Commission for Conciliation, Mediation and Arbitration if the union and an employer unable to reach agreement [illegible] the parties could refer the matter to arbitration.

Campaign launched as beer war hots up

BD 11/10/96 (182)

Reinie Booysen

SA BREWERIES has launched an advertising campaign in defence against "malicious rumours" about the quality of its products allegedly being spread by Namibian Breweries

SAB public affairs head Adrian Botha said his company was concerned about "completely spurious rumours in the marketplace about Castle (Lager)"

The two most worrying stories were that SAB's brewing process "is very quick, and that SAB adds funny things to the beers", Botha said "It is all total nonsense, but so widespread that it has almost become an urban legend "

He said the rumours had originated with Namibian Breweries, which was attempting to make inroads into SAB's 99% share of the SA beer market

"Does Namibian Breweries ever tell anyone that it uses recycled Windhoek sewage water — treated with hydrochloric acid — to brew their beer?" Botha said

Namibian Breweries MD Bernd Masche denied his company was behind the rumours "How can he say that? That's incredible, absolute nonsense What we are doing is telling people that we are not adding any additives to our beer We declare our ingredients Why can't we say what we are doing?"

Masche denied that the water used to brew Windhoek beer was recycled sewage water "It comes from the Von Bach dam north of Windhoek " No hydrochloric acid was ever added, he said

SAB's double-spread adverts in newspapers emphasised the quality of Castle Lager, its biggest selling brand "What on earth goes into Castle Lager?" asked the advert, answering "All the ingredients in your Castle Lager are nothing short of perfection "

The rest of the advert was devoted to a description of Castle's brewing process, peppered with words like "golden colour", "peak of ripeness", "perfect harmony" and "exceptional quality"

Botha acknowledged SAB beers did not meet the standards required by German purity laws, or Reinheitsgebot The main reason was that these laws prescribed that beer could be made only with malt, whereas SAB — in common with brewers around the world — also used maize

The addition of sulphur dioxide, "to increase the beer's flavour and stability", and the reintroduction of carbon dioxide stored during fermentation also disqualified Castle under the purity laws, he conceded Botha emphasised that some sulphur dioxide occurred naturally during fermentation

SAB sells about 24,5-million hectolitres of beer a year Castle totalled more than 12-million hectolitres

Masche said Namibian Breweries sold about 650 000 hectolitres a year — of which 18% was exported, mainly to southern Africa

Five named for Appeal Court

(161)

Sowetan 14/10/96

PRESIDENT Nelson Mandela yesterday announced the names of the judges who will serve in the Labour Appeal Court and the Labour Court.

The Labour Appeal Court judges include Judge E Cameron, Judge J H Conradie and Judge CR Nicholson

Prof D Basson and advocate E R Zvellas were appointed Labour Court judges

Labour Minister Tito Mboweni said in a statement the appointments followed an extensive process of advertising and interviews by the National Economic Development and Labour Council and the Judicial Services Commission. The president had therefore appointed these judges on the advice of Nedlac and after consultations with the Judge President of the Labour Court, Mboweni said

The president had appointed only two members of the Labour Court after considering the fact that all of the members of the Labour Court were white and no suitable black person was recommended as yet, Mboweni added

Also, recent amendments to the Labour Relations Act would allow for fresh nominations to the above court on a basis which may facilitate, among others, the appointment of a more representative Bench in the Labour Court

The appointments will take effect from October 11 for a 10-year period and the judges will take office from November 11, also for a 10-year period. Members of the Essential Services Commission will be announced today – *Sapa*

Federation to resist proposals in draft legislation

Edward West (166) BD 15/10/96

THE Steel and Engineering Industries' Federation of SA would continue resisting several of the proposals in the draft employment standards legislation being negotiated by the National Economic, Development and Labour Council (Nedlac), outgoing president Johan Trotskie said yesterday

Speaking at the organisation's annual meeting, Trotskie said the green paper to replace the Basic Conditions of Employment and Wage Acts contained a number of unacceptable elements, including proposals on increased overtime rates and reduced working hours

"Many of these issues will come into play in the new year and make management more difficult," he said.

Apprentice intake was the lowest in the history of the metal industry. Legislation for a new Labour Training Act aimed at promoting effective training in SA may be passed next year, he said.

Economic growth, currently at 3,3%, was expected to drop to 3% by year-end.

Trotskie said the electrical and allied industries had been bolstered by the continuing electrification programme, but generally other industry sectors had a slow year with significantly reduced order intake levels.

Labour standards 'vital to sustain economic growth'

(166) BD 15/10/96

Lukanyo Mnyanda

A SET of minimum and socially acceptable labour standards and redistributive policies did not compromise economic growth as suggested by critics but were necessary for sustainable and long-term success, Labour Minister Tito Mboweni said yesterday.

Mboweni said in a speech read on his behalf at the World Trade Centre yesterday that the Labour Relations Act — which comes into effect next month — recognised the existence of strong trade unions as a precondition for industrial stability.

He called on government's social partners to acknowledge SA had a demanding labour force aware of its rights and vocal about its grievances.

"Let us acknowledge this fact openly as the Act does. A well-treated workforce can become a national asset."

SA Clothing and Textile Workers' Union assistant secretary Ebrahim Patel called for the strengthening of tripartism as represented by the National Economic, Development and Labour Council (Nedlac).

Patel, who is also overall labour convenor at Nedlac, said the body had achieved some success in its aims of finding common interest between diverse groups and was also instrumental in enabling stakeholders to address their differences through a process of "active and formal engagement".

Some of its achievements — which included negotiation of a labour relations Act — were unique and came at a time when the rest of the world was moving away from consensus building. "It is becoming a ruthless age and we need to strengthen tripartism."

Sacob director-general and overall business convenor at Nedlac, Raymond Parsons, said the body had to structure its agenda on the foundations provided by government's macroeconomic strategy and "focus on the implementation rather than on the return to a debate about fundamental economic direction".

It was Nedlac's duty to "match and not renegotiate" the strategy, he said.

Like Patel, Parsons called for the strengthening of Nedlac which he said was the "economic dimension" of reconciliation and nation-building.

"Business remains committed to Nedlac as one key structure to facilitate change and transformation in economic and social policy — and to ensure its proper implementation."

Court rules for labourer's third reinstatement

(166) BD 17/10/96

Deborah Fine

SHOULD a Labour Appeal Court reinstate an unfairly dismissed worker in circumstances where an industrial court had already found that compensation would be more appropriate because an enforced relationship would be intolerable to both the worker and his employer?

This was the question posed to Transvaal Division Labour Appeal Court Judge E Cameron in a matter in which dismissed machine operator Lucas Letsoalo sought to overturn a 1995 industrial court decision not to reinstate him at his place of work, MF Woodcraft (Pty) Ltd

This was even though the reasons for his dismissal were found to have been substantively unfair

Letsoala was dismissed by the company on two occasions in 1994 for poor performance but reinstated after it was discovered that the dismissals had been unprocedural He was fired again in 1995 on a charge of dishonesty

The industrial court had overturned the dishonesty charge and found him not guilty. The court had decided, however, not to reinstate him because this would have been intolerable to both parties, and had instead awarded him compensation of R776

Cameron said in his judgment yesterday that the Appellate Division had formulated a test for reinstatement

"Where an employee is unfairly dismissed, he suffers a wrong . The Act provides that redress may consist of reinstatement, compensation or otherwise. The fullest redress obtainable is provided by the restoration of the status quo ante It follows that it is incumbent on the court when deciding what remedy is appropriate to consider . whether there is reason to refuse reinstatement."

Cameron found that the industrial court had been mistaken in its decision that there was reason to refuse reinstatement because it would have been intolerable to both parties

"That (MF Woodcraft) regarded a future working relationship .. as intolerable was clear," he said

But Letsoalo's "persistence in seeking reinstatement indicates that he, certainly, will not find the future working relationship intolerable".

Cameron thus ordered MF Woodcraft to reinstate Letsoalo on terms no less favourable than those which had prevailed at the time of his dismissal.

Govt taking position on new labour laws

Sowetan (166)

By Waghied Misbach
Political Reporter

THE Government is currently finalising its position on new laws that will transform the country's labour market by removing previous discrimination in the workplace

Dr Guy Mahone, Chief Director, Labour Market Policy, said yesterday in Parliament that his task team, which is discussing labour market proposals released in a special report earlier this year, will make final recommendations to the Minister by the end of November

It is expected that new legislation will follow in the new year

Mahone was speaking at a special briefing by the Department of Labour to the portfolio committee on labour and the select committee on the Reconstruction and Development Programme and labour

Two reports

Mahone's task team recommendations will be based on two reports of the Commission to Investigate the Development of a Comprehensive Labour Market Policy, which was conducted by the International Labour Organisation, and released in July

The report has recommended a number of far-reaching changes to the labour market that will end discrimination in the workplace

Mr Dave Lewis, chairman of the Labour Market Commission, outlined a number of changes that the report recommends

This includes

- A social accord, that would not be legislated, between Government, labour and business that will reach consensus on prices, wages and investment, and
- A job summit called by President Nelson Mandela to initiate a coordinated approach to job creation

Workplace forums can achieve a lot

(166) Sowetan 18/10/96

By Abdul Milazi

WORKPLACE forums will empower workers, improve productivity as well as global competitiveness if properly implemented, says labour consultant Gavin Weiner

The forums are provided for in the new Labour Relations Act

Weiner says workplace forums are aimed at promoting the interests of all employees and enhancing efficiency as they require management to consult employees on certain issues affecting them

The prerequisite for a workplace forum is the presence of a majority trade union "In order for a workplace forum to be established at a plant, there must be a representative trade union in place

"Smaller organisations and those which are non-unionised cannot establish a workplace forum However, there is nothing to prevent them from voluntarily setting up a similar forum, although this will have no statutory powers"

Weiner points out that any majority union can apply to the Commission for Conciliation, Mediation and Arbitration for a workplace forum to be established and the employer cannot refuse

Assist parties

"Once the CCMA is satisfied that the requirements are met, it will appoint a commissioner to assist the parties in establishing the forum," Weiner adds

The appointed commissioner then helps the two parties to draw up the forum's constitution, but if they cannot agree he drafts it according to the requirements of the LRA

The LRA stipulates that the workplace forum should meet regularly.

Lonrho welcomes labour law

CT (BR) 22/10/96 (166)

JONATHAN ROSENTHAL

Sun City — Tony Frost, the human resources director of Lonrho, yesterday welcomed South Africa's new Labour Relations Act, which will come into effect later this year.

Frost said the legislation was in line with international trends

The most significant aspect of the new Act was its provision for tripartism through workplace forums, he said

"This country has no chance unless we learn to live with each other," he said

"The most important way of managing our people is through getting their agreement on how they should work "

But Frost warned against "half-hearted attempts at co-determination that could backfire on management

"We must give a sense that this is not a management sham and the only way to do that is if (co-determination) is real "

He also called on companies to invest in the communities around them

"We cannot have islands of affluence in a sea of poverty

"We have to make sure we are assisting the communities around us "

Frost said business was finding it increasingly difficult to recruit skilled people because the national education system was geared to producing public servants

"The only resources we have with which we can make it or break it is the people we employ if we don't invest in communities we will not have markets in which to sell our products and we will not be able to find skilled people

"It is incumbent on us to shake out our cupboards and find the resources to pour into education because we can't wait for the school system to get sorted out "

Frost also called on companies to dedicate more resources to internal education and training

Pointing to a high technology satellite company in the US, he said all the group's executives were required to devote 10 percent of their working time to training colleagues

The Star Thur

Dawn of new era in labour relations

(166) Star 31/10/96

By Goba Ndhlovu

November 11 1996 will usher in a new era in South Africa when the new Labour Relations Act (LRA) comes into force

In terms of the new legislation workers can go on legal strike with the protection of the state All they need to do is to follow the strict rules set out by the LRA, which requires them to seek conciliation with their employers, mediate and go for arbitration if there is still no agreement. A strike is the last resort and workers have to vote through the ballot box to embark on it.

Such a strike is legal and workers who take part in it will have the right not to be dismissed In the past, while workers had the freedom to strike after following the proper procedures, they could still be dismissed for "operational" reasons – that is, the company could dismiss workers if it feared liquidation or could suffer serious losses. But now workers on a legal strike may not be fired under any circumstance.

Workers will also be able to enjoy picketing without fear of action being taken against them by police or company security guards

Previous LRAs – 1924, 1956, 1973, 1979 and 1985 – ruled strikes were forbidden, and workers were arrested and jailed for taking part.

Employers can no longer dismiss employees with ease. The new LRA clearly defines unfair dismissals and trade unions can quickly overturn them.

Workers can look forward to more say

Before a worker can be dismissed the employer must ensure he has notified the worker sufficiently and given him the opportunity to state why he should not be dismissed.

There are schedules in the new LRA which render certain dismissals automatically unfair, such as when an employee is fired for supporting an industrial action or refused to do the work of an employee taking part in a legal strike

Another burning issue of the past was giving information to workers or their representative unions for collective bargaining purposes. Employers have traditionally been reluctant to part with financial details. But now they will have to divulge this.

If the details are regarded as strictly confidential, employers must inform the trade union in writing.

Previously trade unions found it difficult to sign recognition agreements with companies because they were not allowed access to shopfloors for recruiting. All this will change now workers will be playing an important role in running the workplace through Workplace Forums.

Under the new dispensation farmworkers and domestic workers will also enjoy the same protection.

No more 'sweetheart' unions

Chief Registrar has been with department for 34 years, but welcomes change

Star 31/10/96 (166)

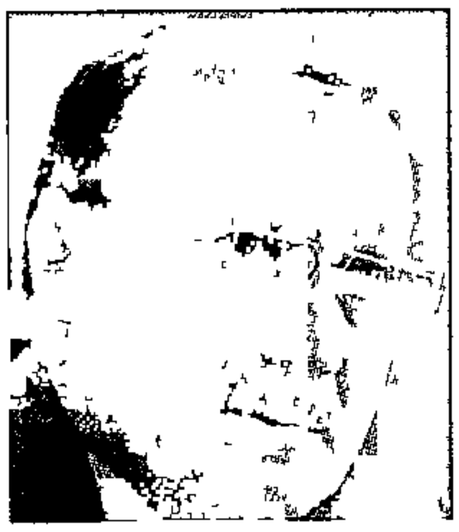
By Goba Ndhlovu

When the new Labour Relations Act (LRA) ushers in changes that will advance workers' interests on November 11, one key figure who will ensure its success is a man who has been with the Department of Labour for 34 years

He is Hennie Slabbert, who has been appointed Chief Registrar of Labour Relations by Labour Minister Tito Mboweni Mboweni has described him as "a great resource of energy and expertise"

Slabbert, who will get into action within the next 14 days, does not see himself either as a "relic of the past" or a "mixture of the new and old" He sees his appointment as a new challenge in his long career and foresees no problems in applying the new LRA after so many years operating under the 1956 Labour Act

For the greater part of his long service, Slabbert registered both workers' and employers' organisations, gave notice of their intended registration so that whoever objected against such registration could lodge his complaint with the department, and kept a list of all these organisations, their office bearers, total membership and financial statements



New laws ... Hennie Slabbert welcomes challenges

"We are moving into exciting times with the pending changes in labour Everyone must accept the changes, although there will be hiccups along the way We must have the will and drive to see us through the coming challenges," said Slabbert

He says he relies on two people who have been with him over the years They are his assistant, Deon Koen, and Ria Hurter, who looks after the department's finances

Slabbert says South Africa has 388 registered trade unions – "but this figure may fall to 358 because 30 of them belonged to the defunct TBVC states and were affiliated to their South African counterparts"

Other important changes Slabbert pointed out related to the current industrial councils These councils settled disputes between employers and employees They were divided according to the nature of the industry such as metal or food industrial councils

But the councils failed to resolve disputes on account of the old apartheid system which heavily favoured whites These will be replaced by statutory councils which will be linked directly to the department

While they will do what the industrial councils did, they will have more authority through the registrar rather than appointees of various industries

Slabbert said the days of the "sweetheart" unions are over because no trade union will be allowed to rely on employers for its formation and administration.

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