

A Critical discussion of the Collective
Bargaining provisions in Labour Relations

Act 66 of 1995

by

Grant Brett Marinus

submitted in partial fulfilment of the
requirements for the degree Masters of Laws

in the

Faculty of Law

at the

University Of Cape Town

Supervisor : Prof. Clive Thompson

March 1996

The University of Cape Town has been given
the right to reproduce this thesis in whole
or in part. Copyright is held by the author.

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

TABLE OF CONTENTS

1. INTRODUCTION

2. THE PAST (ACT 28 OF 1956) AND THE FUTURE (ACT 66 OF 1995)

3. RATIONAL FOR CHANGE - PROBLEMS AND PROSPECTS

3.1 CORPORATISM

- 4 COLLECTIVE BARGAINING - A NEW APPROACH

4.1 PROBLEMS WITH THE PRESENT SYSTEM

4.2 BARGAINING MODELS

- 4.3 THE DUTY TO BARGAIN
PROBLEMS WITH A LEGISLATED DUTY TO BARGAIN

4.4 RESPONSES TO THE NEW APPROACH

- 4.5 POSSIBLE PROBLEMS WITH THE NEW APPROACH

4.6 THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

4.7 THE ACT'S IMPACT ON MARGINALISED INDUSTRY
THE FARMWORKERS SCENARIO

- 5 CENTRALISED BARGAINING
A REVIEW OF RECENT EVENTS

5.1 PROBLEMS OF THE PAST AND REASONS FOR CHANGE

5.2 THE ACT AND CENTRALISED BARGAINING
BARGAINING COUNCILS AND THE EXTENSION OF AGREEMENTS TO
NON-PARTIES

5.3 STATUTORY BARGAINING COUNCILS

5.4 CENTRALISED BARGAINING AND THE R.D.P
THE ADOPTED GERMAN MODEL - CHANCES OF SUCCESS?

5.5 WAGE BARGAINING - SOLVING OR CREATING PROBLEMS

5.6 OTHER OPTIONS

5.7 PROSPECTS FOR THE FUTURE

5.8 SOLUTIONS

6 CONCLUSION

BIBLIOGRAPHY

1. INTRODUCTION

The Labour Relations Act of 1995, hailed as an achievement to rank in importance alongside the Industrial Conciliation Act of 1924, remains the legal punchbag of the nineties.

Despite its hurricane passage through NEDLAC and Parliament, the criticism generated by its predecessor (the Draft Bill) remains for the most part unanswered. It would appear that the drafter's optimism, epitomised by the kind of fashionable rhetoric that has become equally synonymous with this the age of co-operation and reconstruction, will have to suffice.¹

At the heart of the debate lies the complex issue of collective bargaining. In one brief instant the drafters believed they had seen the future, most notably the direction of labour/management relations.

This vision is clearly reflected in virtually the entire composition of the Act. The new Commission for Conciliation, Mediation and Arbitration will hold centre stage, whilst ensuring that the main body of bargaining legislation (organizational rights, collective agreements, workplace forums, statutory and bargaining councils, and the new right to strike) are complied with. Here the drafters hope the interconnecting system of checks and balances will promote a new kind of industrial order.

This dissertation will focus almost exclusively on those areas of the Act dealing with collective bargaining, with particular emphasis on the lack of a bargaining duty and the controversial adoption of the centralised bargaining model.

By way of introduction it is necessary to briefly contrast the old (Labour Relations Act 28 of 1956) with the new (Labour Relations Act 66 of 1995).

¹ A number of the Acts provisions are already in force. See Government Gazette N° 16880, 22 December 1995

2. THE PAST (ACT 28 OF 1956) AND THE FUTURE (ACT 66 OF 1995)

The current dispensation is marked by a two-tiered bargaining structure. Unions and employers have the option of voluntarily coming together in Industrial Councils to negotiate industry-wide agreements on wages and working conditions. Furthermore by means of the unfair labour practice remedy, unions can compel reluctant employers to bargain with them at factory and sometimes industry level.² These declaratory orders may be applied for by any party.³

The Act proposes an entirely new arrangement. Gone is the unfair labour practice concept and with it all notions of a duty to bargain. Instead, the Act's declared intention is to "unashamedly promote collective bargaining" via a set of organizational rights and the new right to strike.

At the core of the new order is a revamped recognition procedure. Unlike the old system driven by the unfair labour practice provisions, the new Act provides that henceforth an employer will only be obliged to accord rights of recognition to representative unions.⁴ Despite the lack of a definition as to what constitutes "sufficiently representative", the context plainly shows that only unions with a significant membership base, albeit short of a majority will pass muster.⁵

At plant level the organisational rights provided by the Act will give statutory force to union entitlements once

² Thompson C. "Labour Laws Third Revolution" Weekly Mail and Guardian. February 3-9. 1995 at 10

³ Lacob.Z. "Memorandum on the Draft Labour Relations Bill" De Rebus. June 1995 at 388.

⁴ Cheadle, Thompson, Van Niekerk and Le Roux "Current Labour Law 1995" at 30

⁵ Op Cit Note 1 at 34

restricted to recognition agreements.⁶

A union deemed "sufficiently representative" may claim three classes of rights, amongst other access to employer's premises, stop-order facilities and the right to reasonable leave during working hours to perform union functions.⁷

In order to compensate for the lack of a bargaining duty, union effectiveness is bolstered by the inclusion of section 16(2) and (3). The disclosure provisions will force employers to divulge all relevant information to union representatives that will allow them to perform their functions properly, whilst engaging in effective collective bargaining and consultation.

Trade unions might even demand additional organizational rights and include these in collective agreements.⁸

Combined with these organizational rights is a right to strike to extract employer recognition, the ultimate aim of the drafters being to replace legal compulsion by compulsion via an exercise of power or threat thereof. Failure to bargain with a union which has organizational rights could lead to strike action once the Act's conciliation measures have been exhausted.⁹

The new role of the courts in terms of the proposed legislation will be to guard those existing rights already provided for. No longer will the courts be able to force collective bargaining, though the Act proposes that all

⁶ Employment Law. September 1995. Vol 12. N 1 at 2

⁷ Op Cit Note 1 at 33

⁸ Benjamin P "The New Labour Relations Bill" South African Labour Bulletin. Vol 19. N 1. March 1995 at 17. and see section 20. Labour Relations Act 1995.

⁹ Jordaan E "The duty to bargain under the draft L.R.A." Labour Law News and Court Reports. Vol 8. 1995, see section 64 Labour Relations Act 1995.

disputes regarding recognition/derecognition of trade unions must go to advisory arbitration before industrial action can be undertaken.¹⁰ This should increase pressure on employers to recognise unions for collective bargaining purposes before industrial action becomes the only viable alternative.

By taking the courts out of the bargaining system the drafters have made the threat of industrial action the ultimate option in cases in which the employer refuses to recognise a union as a collective bargaining agent, or withdraws from a collective bargaining relationship, or where a dispute exists in respect of appropriate bargaining units/subjects. In cases of mala fides bargaining conduct no court will have the power to decide whether such conduct constitutes an unfair labour practice.¹¹

The new position will thereafter be quite similar to the old. Collective agreements which would override individual contracts may be concluded by parties to a statutory or bargaining council, and also by a union and employer at workplace or enterprise level.¹²

Furthermore all collective agreements must make provision for the resolution of disputes, via conciliation and if needs be arbitration.(s24.1)

What follows is a critical assessment of the reasons behind the proposed legislation; why did the drafters decide to follow this particular route?

¹⁰ Op Cit Note .3

¹¹ Olivier M. " A New Labour Relations Act. Essential characteristics and implications for the Profession " . De Rebus June 1995 at 359.

¹² Op Cit Note .1

3. RATIONAL FOR CHANGE - PROBLEMS AND PROSPECTS

3.1 CORPORATISM

Despite the explanatory provisions that accompanied the Bill, the drafter's policy choice should be seen for what it really is, the new " high water mark " of corporatism. Corporatism is the collective sentiment of the drafting team.¹³

From the one-time controversial alliance between labour and business that highlighted the beginning of the " New Age " in South African history (an age that will best be remembered for the vast political changes) the drafters intend to create a new self-enforcing cooperative relationship to tackle the future.¹⁴

Fuelling the corporatist engine is the so-called **New Ethos**, Minister Mboweni's catch-all phrase representing the need for an understanding to be reached between unions and business that in order to be both competitive and successful, they will have to sit down and jointly work things out.¹⁵

Despite the attractiveness of the proposition, problems abound.

" Corporatism flows from a shared vision, it does not create a shared vision. "¹⁶

Where corporatism has worked elsewhere there usually has been a strong consensus on economic objectives. In social democracies (Sweden) there has tended to be consensus on the need to create and sustain jobs, with the community bearing the cost for social services.

¹³ Op cit note .1

¹⁴ See " NEDLAC ...Golden triangle on trial " Financial Mail July 7 1995 at 24

¹⁵ Mboweni T " The role of the trade union movement in the future South Africa " South African Labour Bulletin .Vol 16. No 8. Nov/Dec 1992

¹⁶ Parsons R " Golden Triangle on trial " Financial Mail. July 7. 1995. at 22

It is all too clear that the Act cannot be described as the product of a shared vision. The original draft was described as having anticipated the very process it should have commenced with, in that instead of commencing with an open ended commission of enquiry, representative of both the major stakeholders and headed by a cross section of experts, the minister began, fatally, the other way round.¹⁷

Furthermore neither COSATU nor Business S.A (NEDLAC partners) can claim to be a " globular monolith", representative of a majority interest, and capable of speaking with a single voice on the major issues of the day, although it would appear that if Anglo and the Congress of South African Trade Unions can come to an understanding their conception of the public interest prevails.¹⁸

Emerging from a strife torn industrial relations past it is hard to understand the apparent ease with which the drafters accepted the notion of labour and business overcoming suspicions as to motives and fears of exploitation whilst willingly engaging in a candid exchange of views and information. The " miracle " of the general election no doubt eased the way - if the politicians could get it right the first time round then labour and business can do the same.

It is suggested that although there is no single voice of the people in politics, large representative groupings, sharing substantially similar opinions are still easily identifiable. The same does not hold true for the discrepancies that exist in the industrial and economic domain; in a deeply divided and economically competitive society there is little hope of unanimity of opinion, not only between labour and business but

¹⁷ Leon T " Bill ignores key social and economic players " Business Day 23.6.95 & see Brand and Brasseey " Jumping the gun: problems in the drafting of the new L.R.A " South African Labour Bulletin. Vol 19 No 2

¹⁸ Op cit note .1

also amongst labour and business itself.

Only recently, Sam Shilowa pointed to the " state of false consensus on economic issues " which South Africans are still labouring under.¹⁹

Addressing a multi-national business congress he alluded to the fact that not only were labour and business still working against each other, but more importantly, while government, organised labour and business agreed on the need for sustained economic growth, global competitiveness and redressing the apartheid imbalances, they differed substantially on how this should happen, " the reality is that we have yet to agree on a growth strategy as a country."

Furthermore, the political leadership that guided South Africa into the new era were truly representative of their constituencies. Despite Cosatu's apparent popularity the federation is by no means the united body it once was. The response to the Bill by the more militant members (see Wits regional shopsteward council) underlies the growing differences within the organisation.

To argue that either business or labour are now suddenly prepared to compromise their respective positions would not only be to ignore *the self interest nature of collective bargaining which revolves around maximisation of power, but also some seventy years of industrial history.*²⁰

The juggling of bargaining levels by both labour and business during this period was nothing more than an attempt by both parties to grab at the strongest position possible. Whilst militant black unions struggled for recognition at plant level, employers were content to deal at central level with "

¹⁹ Nash S " Shilowa ruffles SACOB's feathers " The Cape Times. October 1996

²⁰ De Villiers I " Collective Bargaining. Deregulation and Democracy " Proceedings of the labour law Conference 1990.

tame unions " and " labour bureaucrats ". The decision by Cosatu to vigorously pursue centralised bargaining in the eighties made industry wide strikes a reality and drove employers to call for a more decentralised structure. Only the recent NEDLAC compromise has " dulled " Cosatu's call for a compulsory centralised bargaining structure. Even so it would be unwise to suggest COSATU have put away their arms on this issue²¹; NEDLAC should be seen more as a compromise than a consensus. It would appear that the *very nature of collective bargaining excludes neutrality.*

Such entrenched positions are merely a reflection of the self interest nature of collective bargaining and prove to show the new ethos , in this particular area anyway, to be illusory at best.

Just how the drafters envisage the new process taking off remains to be seen. The absolute reliance on voluntarism, however, makes for hard digestion.

On the up-side many **large firms** have already, of their own initiative, gone way beyond the recommendations in the Act. Important exceptions, perhaps. Minister Mboweni believes they demonstrate that the apartheid workplace can be transformed in line with the overall democratisation of society.²²

Given the nature of the Act's bargaining provisions and the limitation of workplace forums to industries with a required worker threshold it would appear that the only workplaces which might conform to the minister's vision are the large ones.

²¹ Ray M & Toerien M " Unions on the outside locking in " The Shopsteward. August/September 1995 at 16.

²² Mboweni T " A foundation for labour relations in the 21st Century " Appropriation Bill: National Assembly. 22 June 1995

4. COLLECTIVE BARGAINING - A NEW APPROACH

4.1 PROBLEMS WITH THE PRESENT SYSTEM

Whilst accepting that an underlying commitment to corporatism has shaped the overall structure of the Bill, the collective bargaining provisions are best examined by reflecting on the state of our current bargaining institutions.

The apartheid labour market policies were supported by an industrial relations system that provided for centralised collective bargaining and organizational rights for white trade unions. Black workers were, until 1979, excluded from the system. The present structures of bargaining are inherited from the dualism spawned by the exclusion of black workers from the industrial council system and the breakdown of that system.

Excluding black workers from the Act had two effects. Firstly, the trade unions organising black workers developed a system of collective bargaining outside the formal system, namely at the level of the workplace in the form of recognition agreements. It was here that the spartan nature of the unions initiated the development of the duty to bargain. Secondly, the racially exclusive trade unions that participated in industrial councils tended to organise around skill and occupational grades.²³

These distortions are reproduced in the structures of bargaining - craft trade unions still sit on industrial councils with representation out of all proportion to their membership; industrial trade unions have tended to be recognised in respect of manual workers only; the diffusion of the recognition strategy of the black trade union movement has led to a proliferation of bargaining units based on occupational criteria; many of the industrial councils no

²³ Op Cit Note 22

longer reflect the nature of the division of sectors in a modern economy; industrial councils have been established that cover more than one industry, some that apply to a part of an industry, others that involve a single employer; and courts adding to this fragmentation of bargaining by recognising bargaining units at levels even smaller than the single workplace.²⁴

The Bill suggested further factors that influenced the drafters in adopting the new collective bargaining strategy.

The fundamental problem with the old law (Act 28 of 1956) governing labour relations was the lack of conceptual clarity as to the structure and functions of collective bargaining.

The industrial court, under a very wide discretion given to it by the definition of the unfair labour practice, developed a jurisprudence all of its own, the results of which can be seen in the haphazard manner in which the court adjudicated "similar type" disputes. The development of a duty to bargain at plant level (in certain instances this was extended to industrial level disputes) created as much shadow as light in this notoriously uncertain domain of labour law. Despite unanimous agreement that such a duty did exist, the courts persistently held that it was not their task to determine its outcome.

What was particularly disturbing about this jurisprudence was the court's determination of bargaining units. Although the broad thrust of collective bargaining centred around the single employer or the plant, the industrial court saw fit to define bargaining units on grounds of race, and often took the somewhat idiosyncratic view that even individual workers had the right to bargain collectively; the one man one bargaining unit approach.

²⁴ Op Cit Note 22

Since the right to bargain in South Africa was not tied to majoritarianism, situations arose whereby smaller unions, many of which were totally incapable of bargaining effectively, were granted bargaining rights commensurate with their larger counterparts. This allowed employers to circumvent meaningful bargaining by protracted discussions and separate conditions being afforded to different recognition agreements. Cosatu and its affiliates do not like this as decentralisation weakens their power base.²⁵

Furthermore, uncertainty has long prevailed over when parties can legitimately disengage from the process and resort to economic muscle. The court's intrusion into the bargaining arena by pronouncing on the nature and conduct of parties to negotiations only accentuated this uncertainty. By declaring on premature resort to industrial action the court could have unknowingly prolonged so-called "sham bargaining" in the form of getting good faith bargaining back on track.

The results of these developments led the drafting team to conclude that the existing statutory framework was unable to properly accommodate or facilitate an orderly relationship between bargaining at the level of industry and at the level of the workplace.

4.2 BARGAINING MODELS

In their deliberations on a revised collective bargaining strategy the task team gave consideration to three competing models. Firstly, a system of statutory compulsion in which the duty to bargain is underpinned by a statutory determination of the levels at which bargaining should take place and the issues over which parties are compelled to bargain.

The second model was described as being not entirely

²⁵ Benjamin P "Reforming Labour ... lessons from the U.S.A" South African Labour Bulletin. Vol 19. n 2. May 1995

dissimilar from the first, by relying on judicial intervention to determine the appropriate levels and subjects of bargaining it resembles the unfair labour practice jurisprudence of the Industrial Court.

The final model, unanimously adopted by the drafters, allows the parties through the exercise of economic power to determine their own arrangements. This exercise of power is furthermore given statutory impetus by the provision of organizational rights and the right to strike.

The task team argued that in a changing economic environment it is best to leave bargaining (including the level at which this takes place and the identity of the parties to collective bargaining) to the parties themselves to sort out, without imposing a statutory duty on them to do so.

As a result the most notable feature of the Act is the absence of a statutory duty to bargain.

The corporatist model gives the workers, on whom the ANC-led government relies significantly for support, the greatest say in their working lives. It is, probably the only means by which a bridge can readily be built between the races in the workplace.²⁶

4.3 THE DUTY OF BARGAIN

PROBLEMS WITH A LEGISLATED DUTY TO BARGAIN

In the debates that preceded the drawing up of the draft Bill the task team noted that until the enactment of the unfair labour practice definition in 1979, collective bargaining structures were voluntarist in the sense that whilst the law encouraged collective bargaining on an industry wide scale, no party could be compelled to bargain other than by means of exercise of economic power. During the 1980's the court,

²⁶ Brasssey M & Brand J " Flaws and Fantasies - a conceptual analysis of the Bill " Employment Law. March 1995. Vol 11. N 4

acting in terms of provisions designed ostensibly to protect individual rights, assumed jurisdiction to intervene in collective disputes, via the creation of a duty to bargain.

In their attempts to by-pass the statutory compulsion model the drafters pointed to the problems inherent in that system. One of the primary concerns of statutory compulsion is the rigidity that it introduces and the assumption that there is a right answer to appropriate levels of bargaining and bargaining topics.

What are these rigidities that the drafters referred to?

In simple terms this means state regulations and collective bargaining agreements exist which regulate the buying and selling of labour power, and its use within the capitalist labour process.²⁷

That regulation may produce rigidities goes without saying, not so the fact that rigidities are always undesirable. The true question, never satisfactorily answered by the drafters, is whether the cost of these rigidities is justified by the attendant benefits to the system. The drafters also failed to consider the legal mechanisms which could be set in place to minimise rigidity. John Appollis believes that whilst regulations do exist, which place some obstacles in the path of the employer, they are in most cases very inadequate.

Whilst it is possible to set clear guidelines regarding unfair dismissal in certain instances, it remains controversial whether the same can be done for the duty to bargain. It was suggested that the duty to bargain could be defined in some detail in statute, which in turn could be developed by a legitimate labour court. The question then becomes one of substance, what exactly would go into the statute?

²⁷ Appollis J " The new Labour Relations Bill and centralised bargaining " South African Labour Bulletin. Vol 19 No 2. May 1995

The varied nature of our previous collective bargaining system, with its range of bargaining units and levels, the co-existence of the all-comers and majoritarian approaches coupled with political divisions between unions would certainly have complicated the task.

Such injudicious guidelines could have set South Africa on a similar course to that of the United Kingdom where the legislated duty to bargain was such a failure that its repeal in 1980 encountered little opposition.²⁸

What the drafters also feared was that, under a system by which the structure of bargaining is regulated economic outcomes could be imposed upon parties which often bear little, if any, relation to the needs of the parties or the power they are capable of exercising. Objections like this are easy to refute in that, under a regulated bargaining structure economic outcomes cannot be imposed upon parties as their obligation is to negotiate and not to arrive at any specific outcome. The old adage, the duty to bargain does not entail a concurrent duty to agree, holds true to dispel such concerns.

The objection tends to hide the more important issue of the type of structure within which parties bargain and the obvious influence it can have not only on the specific substantive outcomes but also on the effect of such outcomes.

Clearly, agreements reached at industry level have the potential to effect a wide range of smaller industries, despite the fact that they are seldom very specific, whilst plant level bargaining is tailored to suit the needs of a specific industry and might not be as effective as centralised bargaining in obtaining radical changes. The drafters have endeavoured to ensure that across the board industry bargaining be aimed at getting business and labour to forge

²⁸ Benjamin F and Cooper C " Responding to the Labour Relations Bill " Industrial Law Journal Vol 16. part 2 1995

consensus on the larger issues facing the country, rather than a vehicle for securing sector-wide agreements on minimum wages and working conditions. The overall message is that whilst promoting centralised bargaining, decentralisation must be allowed if bargaining is more effective at plant level.

The second difficulty is legal. Who owes the duty to bargain?²⁹

How is the law to effectively compel employers, organised and unorganised to bargain collectively at industry and central level? Many believe the courts are incapable of enforcing a duty to bargain at industry level because that would involve forcing rival employers to bargain jointly. This interpretation is, however, questioned by some who believe that, based on past experience, there is little evidence that such an imbalance would occur, in particular given the court's recent reluctance to interfere in prescribing levels of bargaining.³⁰

How are employers to be identified and how are agreements going to be reached?

If it is legally difficult, if not impossible, to compel the establishment of bargaining structures and processes at industry level then giving the courts a general discretion to impose a duty to bargain will have a decentralising effect, and government supports industry bargaining.

Addressing the National Assembly during the June Budget Vote, Minister Mboweni pointed out that,³¹

²⁹ Du Toit and Bosch " Size does Count " Weekly Mail. 2 March 1995. The Authors have argued that reliance on this point by the task team is unconvincing.

³⁰ see BAUJ v Times Media [unreported] in Thompson C " Duty to Bargain Re-examined " Employment Law 1993

³¹ Op cit note 18

" the natural home of the statutory duty to bargain collectively is in a labour market policy that identifies the single employer as the primary site for collective bargaining."

4.4 RESPONSES TO THE NEW APPROACH

The lack of compulsory centralised bargaining is in line with the Neo-liberal capitalist approach to industrial relations.³²

Despite the obvious necessity for increased productivity and competitiveness, by making it one of the pivotal structures for the foundations of the bargaining dispensation, the draft team attracted widespread union criticism. For them the objectives of the Act merely provide space and effect for the dictates of capitalist accumulation via a capitalist law of the jungle approach. The exaggeration of the dualist nature of bargaining could see the 30%/ 70% divide in the workplace become reality. This, according to the unions, will only perpetuate the growing wage differential with only a few elite workers receiving substantial salaries.

It should be borne in mind that the duty to bargain was pronounced upon by the industrial court in the mid-1980's at a time when there was uncertainty over many issues which we today take for granted. One can well recall the days when employers engaged in debate about the necessity of even recognising trade unions. " Much water has passed under the bridge since then. "³³

Although the Industrial court's pronouncements in relation to

³² Appollis J " " South African Labour Bulletin. Vol 19. n 2. May 1995

³³ Op cit note 2.

the duty to bargain may have been confused, this should not be surprising. Its pronouncements in many instances depended upon the specific factual nature of the case at hand.

Furthermore, there tends to be a gap in relation to the binding effect of industrial law judgments. Courts dealing with labour law regard themselves as free to act independently. As a result there has always been uncertainty about the precedential value of industrial court decisions.

Notwithstanding all the problems referred to above, certain broad and consistent approaches in the application by the courts of the duty to bargain did emerge. This tended to encourage bargaining between employers and representative employees, whilst at the same time facilitating dispute resolution and thereby avoiding unnecessary industrial action. Crucially, the new Act has attempted to by-pass these problems by the process of codification.

The task team believed the problem of establishing limits - bargaining levels, units, agents and topics - to be the central cause for the rejection of the statutory compulsion model. There arguments are hard to justify if one considers that the goal of the Act is to achieve a separation between the struggle for wages and working conditions on the one hand and the actual business of production on the other. Only industrial action whereby workers demand bargaining or the changing of the material results of bargaining will be deemed procedural. Issues involving the actual business of production (the way the company operates), restructuring and productivity will, the Act hopes, become matters for co-determination. This effectively means that strikes over what are currently known as rights disputes, (or what the Act calls justiciable disputes) are no longer permissible or protected. The Act provides for numerous justiciable disputes, including disputes concerning freedom of association, matters of subject to joint decision making by workplace forums, dismissals and

disciplinary action, severance pay, and workplace equality.³⁴

In a sense then, the Act has already drawn a framework for bargaining subjects/topics and limited the right to strike accordingly.

Given that the duty to bargain does not entail a corresponding duty to agree, it would seem that a legally enforceable bargaining provision could only be of use to those unions that are powerful enough to force employers to make meaningful changes. Unions that are unable to force collective bargaining will not be able to force employers to offer the type of improvements in wages and working conditions that their workers want. Benjamin points to the United States example, where only one-third of the unions that are recognised actually go on to achieve first agreements. Basically, the duty to bargain cannot guarantee either effective bargaining or a fair agreement, so why have it?

Benjamin's argument seems logical enough, but one needs to question the assumption that weaker unions who are unable to make inroads into managerial decision making will not benefit from a bargaining duty.

Indeed, the opposite seems true. Those powerful unions that are able to force employer cooperation on worker demands will not require such a duty as existing relationships will probably continue to exist, and where not, the protection given to workers striking over distributive matters means that workers will probably be able to force the issue.

However, in order to foster negotiations at small and medium enterprise level a bargaining obligation acquires renewed impetus, particularly since it is at this level that ..."

³⁴ Employment Law. September 1985, Vol 12. N 1.

labour law exists for the most part as a dead letter."

So, the critics say, now that there is no longer a need for industrial action on the right to negotiate workers will merely strike on the material outcome of bargaining!

Is there a difference? In light of both the aims of the draft Bill and the constant reference by the Labour Ministry to the creation of a New Ethos, and given that the workplace forums provisions exclude the lions share of the economy it is suggested that the difference is quiet substantial. If the idea is for increased productivity via greater worker / management co-operation then it seems obvious that the greater the ambit of negotiating forums and topics the better.³⁵

4.5 POSSIBLE PROBLEMS WITH THE NEW APPROACH

Despite the drafter's resistance to the statutory compulsion model it remains government policy to promote collective bargaining at industry level.³⁶

In order to give effect to this policy, the question of statutory compulsion inevitably becomes a central topic of debate. Is it entirely feasible to attempt to promote collective bargaining without a legally enforced bargaining duty; the more so in a country in which labour/management relations are undemocratic and authoritarian?³⁷

³⁵ Note that the Dunlop commission in the United States concluded that "... there is overwhelming evidence that employee participation and labour management cooperation are good for workers, firms and the national economy. The Twenty First Century Workplace requires greater participation and cooperation." These views are similar to those expressed in the explanatory memorandum in the draft bill.

³⁶ Mboweni T " A foundation for Labour Relations in the 21st century " Appropriation Bill: National Assembly. Budget Vote 22 June 1995

³⁷ Mboweni T " A Foundation For Labour Relations In The 21st. Century " Appropriation Bill: National Assembly 22 June 1995.

* the Minister described the position as... " in the factories, the farms , the hotels, the mines and in the offices, apartheid is alive and well..."
Having recognised this lack of transition the drafters willingness to embrace a voluntarist, co-operative model is puzzling.

The question confronting unions now (probably only smaller unions) is not what improvements will result from the division of the fruits of labour, but whether there will be bargaining in the first place.

Employers could willy-nilly pull out of existing bargaining relationships or point blank refuse to bargain with a representative union. Notwithstanding the ANC's and the Bill's stated commitment to protecting existing bargaining arrangements, it is conceivable that employers could compel unions to fight a new struggle every year to secure bargaining relations. Such uncertainty and insecurity within the collective bargaining arena gives employers a powerful instrument with which to enforce worker compliance. This, according to Appollis is the way the Act hopes to ensure that the South African economy adapts to the requirements of world capitalist competition by eliminating so-called rigidities.

Another possible result of the absence of a duty to bargain is that disputes will become issues of **interest** and this will lead to increased industrial unrest.³⁸ More importantly, this will mean that many weaker and smaller unions will not be able to gain recognition and collective bargaining as their members will not be able to win these trials of strength. As has already been mentioned, unions that might have secured bargaining agreements previously could find themselves fighting entirely new recognition disputes.

As the recent SPAR dispute so aptly illustrates, a resort to power on matters of structure seldom provides a union or employer with clear-cut gains.³⁹

Spar workers, acting through their unions demanded a

³⁸ Benjamin P " Reforming Labour lessons from the U.S.A " South African Labour Bulletin. Vol 19 n 2. May 1995

³⁹ Brand J. Brassey M. " Comments on the Draft Negotiating Document in Bill Form (The New Labour Relations Act)

centralised system of bargaining in which a standard set of terms of employment could be fixed. Spar employers, speaking through their franchiser, preferred bargaining to be at shop level so that terms of employment could be fixed locally. Following months of wrangling the workers went on a strike that lasted many violence-marred weeks. Employers countered by dismissing some two thousand workers and the strike collapsed. More importantly, from the action the workers won nothing for themselves, so the goal of upliftment was frustrated; effective collective bargaining within the company remains non-existent so levels of frustration are intense. Despite the extent of loss suffered by both parties during the dispute no effective outcome was reached. Stalemates like this do little to enhance the credibility of the new legislation which suggests that such displays could become commonplace. Clearly, what the drafters hoped to achieve is a situation in which both parties recognise the importance of the relationship that has to exist between them if they are to survive; whether the parties are mature enough to abide by the new rules remains to be seen.

Benjamin believes that this line of criticism fails to take account of the impact of the Act on recognition battles as an area of dispute. The recognition battles of the 70's and 80's were most often disputes over basic rights like access by union officials to company premises, stop order facilities and the recognition of shopstewards. These rights were usually only won following protracted disputes, much like the SPAR example, during which both sides sustained needless loss. Furthermore, management often used this process to extract their pound of flesh -- by insisting on the recognition of managerial prerogatives, preparing excessively detailed dispute procedures and where possible delaying the start of wage bargaining. These basic organisational rights will now be in the new Act and can be claimed by any union achieving a threshold level of membership. The need for the "old style" recognition dispute thus falls away.

Unfortunately many unions still need to be convinced that they will no longer be required to win some form of "recognition battle" in order to initiate wage bargaining.

Despite the fact that trade unions can submit a demand to the employer for improved wages and conditions of employment - they can do this whether or not they have claimed organizational rights and regardless of the size of membership - the Act's provisions mean that the chances of successful negotiation will depend upon the employers assessment of the union's power; here lies the crux of the matter.

Unions who have achieved these "new style recognition rights" will feel they have nothing more than a hollow shell without effective bargaining procedures. Just as recognition battles previously were waged over basic organisational rights, the emerging unions will now have to focus their attention on the bargaining relationship and the material gains that can be achieved.⁴⁰

Instead of contemplating measures aimed at reconciling the hostile and suspicious nature of parties to one another, the drafters merely accepted the fact that voluntary co-operation was the only viable way forward. In a climate of uncertainty the need for institutions which will enforce and uphold legitimate industrial practices becomes paramount. By leaving the matter to the parties themselves, the drafters have run the risk of sabotaging the very foundations of the system they hope to exploit.

4.6 THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

Enter the Commission for Conciliation, Mediation and Arbitration (hereafter referred to as the Commission), one of the most ambitious but critical elements of the Act.

⁴⁰ " Unions on the outside looking in " The Shopsteward. August/September 1995 at 17.

The Commission, so the drafters hope, will play a pivotal role in ensuring that the aims and recommendations of the Act are carried out.

Amongst the wide range of functions ascribed to it, the Commission must attempt to resolve a variety of disputes through conciliation or arbitration.

Conciliation, in terms of the Act (s134) is given a very wide meaning. Dispute resolution can be undertaken in a number of ways including mediation, fact finding, recommendations or any other manner the Commissioner deems appropriate.

Should conciliation fail the Act provides that disputes of certain classes be resolved by arbitration. These awards are final and binding, subject only to review on limited grounds by the Labour Court.

It would appear that the Commissioner will be expected to play a far more interventionist role in the conciliation of disputes than a mediator typically plays at present. Allegations of distrust and bias could be further exacerbated by the fact that the parties will not have a choice in the selection of the Commissioner appointed to hear their case.⁴¹

The drafters hope that by extending the power of the Commission into nearly every area of the Act will encourage parties to become accustomed to dispute resolution as an effective means of reaching consensus. Furthermore, with seasoned professionals available to advice both parties to disputes the belief is that industrial action will be curtailed and more cooperative relationships established.

Coupled with an increase in the range of justiciable disputes,

⁴¹ Van Niekerk A " Dispute Resolution, Practice and Procedure " in Current Labour Law 1995 at 43

the absence of an appeal procedure and restrictions placed on the parties right to legal representation, is the issue of personal. Will the type of labour specialists required to effectively staff the Commission be forthcoming? If the Commission is to be recognised as a powerhouse of industrial expertise, an essential prerequisite to its ultimate success, then the role of the Commissioner is of paramount importance.⁴²

If the Commission does not function effectively and enjoy the trust of both management and labour, it will suffer all the defects of the system it has set out to remedy.

4.7 THE ACT'S IMPACT ON MARGINALISED INDUSTRY THE FARMWORKERS SCENARIO

The impact of the Act's bargaining provisions on marginalised industry is best examined by viewing the plight of the farmworkers.⁴³

It has been suggested that the inclusion of farmworkers under a unified labour law holds little comfort for those workers who will rely on voluntarism in order to achieve collective bargaining. In the new South Africa with its new Labour Relations Act, most farmworkers will remain extremely poor and for the most part voiceless at work.⁴⁴

Critics of the Act have voiced their opposition at the inability of the drafters to make suitable provision for small business. The situation facing farmworkers highlights this problem. Firstly, the Act's workplace forums will only be a

⁴² "Dispute Resolution" in Employment Law. September 1995. Vol 12
N 1

⁴³ The variety of problems facing farmworkers requires a more detailed analysis than is offered here. Nevertheless the impact of the Act's bargaining provisions warrant a brief excursion into this area.

⁴⁴ Op cit note 32

viable option in some 76 farms countrywide; that out of a total of some 62000. To expect small businesspeople to show enthusiasm for joint discussion would be naive: to expect small businesspeople who are geographically isolated to somehow show more enthusiasm for voluntary negotiation and co-determination than their reluctant urban counterparts would be preposterous.

The same holds true for collective bargaining. Even with greater organizational rights available to them through statute, and the right to strike without the fear of dismissal, these groups of workers will not be able to force their employers to bargain with them.

If the intention of the Act is to encourage collective bargaining by facilitating the capacities of the potential collective bargaining partners to bargain, then what is needed is the introduction of legislation that extends theoretical collective bargaining rights under the conditions obtaining in agriculture, to real rights.

In other words, the absence in agriculture of conditions which facilitate collective bargaining requires legislative compensation. If this is not done, rights which can be utilised by workers in other sectors of the economy will continue to be rights in theory rather than in practice for the vast majority of workers in agriculture.

Despite the very real benefits of a legislated duty to bargain in the farming sector, the Act cannot be expected to perform functions that are probably beyond the capacity of any labour system. Many urban, industrial unions will run into recalcitrant employers with little or no chance of attaining collective bargaining agreements. Some might argue that the exclusion of these smaller business's from the bargaining arena is necessary for productivity to continue without constant "hicc uping" over inconsequential issues.

Murphy suggests that the problem farmworkers must overcome first is organisation. Factors like the great dispersion of farmworkers, the extraordinary high rate of casual employees and the lack of a favourable legislative environment, makes any attempt at unionisation extremely difficult. In order to be successful a farmworkers union will need a base of at least some 10000 workers. These workers will have to be located in a central district and at present only 18 out of a possible 90 districts could be considered viable options to fulfil that role. Adding to the equation the need for skilled and committed organisers and the problems are further compounded. There is already a shortage of staff in the industrially-based urban union environment, and there is every reason to expect that the workload confronting the rural organisers will be far greater than that experienced by his or her urban counterpart.⁴⁵

One possible result is that younger, less experienced organisers might be forced into representing workers who for the first time will be attempting to make headway against a largely uncooperative body of employers. Whether such organisers could successfully mobilise from a low base with sufficient dynamism and momentum to establish a stable and loyal constituency in anything more than the short term is questionable.

Without any real industrial experience and predominantly low levels of education the norm in most of these areas, the chances of parties being mature enough to handle themselves in the manner the Act deems a necessity, are slim.

In response to this Benjamin suggests that when debating the duty to bargain it is imperative to separate the role of the trade union movement from that of Labour Law in achieving collective bargaining. The trade union movement has been

⁴⁵ Murphy M " South African farmworkers: Is trade union organisation possible? " South African Labour Bulletin. July 1995 Vol 19. No 3. at 24

unsuccessful in organising many groups of employers most notably those in small enterprises, farmworkers and particularly domestic workers.

It has been suggested that improvements in the lives of these workers is more likely to result from the extension of a modernised Wage Act and the stricter enforcement of the Basic Conditions of Employment Act.

However, whether this will help farmworkers remains to be seen. The SAAU has been advised by the Zimbabwean commercial farmers that President Mugabe's minimum wage legislation was "the best thing that ever happened to them". A very low minimum, which was not revised regularly worked to the positive advantage of farmers in Zimbabwe.⁴⁶

Other options include persuading the government to adopt policies that will encourage farmers and small business managers to improve working conditions and negotiate with unions; acceptable labour practices could exist as a kind of prerequisite for loans and other means of assistance.

Interestingly enough, for the past year, farmworkers and their unions have had the benefit of both the unfair labour practice definition and compulsory arbitration in interest disputes to win basic rights and improve conditions of employment. It is easy to conclude from the results that since full use of the opportunities available have been neglected a different approach might be required.

The successful organization of these workers will require the use of different strategies and types of approaches from those that currently serve the industrial, commercial and mining industries. Murphy suggests that instead of attempting to organise all farmworkers, a Cosatu farmworkers union

⁴⁶ Murphy M " South African farmworkers: Is trade union organisation possible ? " South African Labour Bulletin. Vol 19 No 3 July 1995.

initiative would be better advised to seek to occupy a core position within agriculture. A union with a stabilised membership of 50 - 60 000 workers, focused primarily on 10% of the permanent workforce located on the farms with over 500 employees would be in a powerful position to become the acknowledged "voice of the farmworkers." Rather than trying to mobilise on a large, but diffuse scale, Cosatu will ultimately serve the interests of the farming community far better if successful negotiation and bargaining is seen to be taking place.

Indeed, even if Cosatu could manage large-scale mobilisation the chances of achieving meaningful negotiations would be slim. Scattered pockets of union resistance would be incapable of making any sort of significant achievements.

The absence of a legislated duty to bargain suggests that any extension of rights will have to depend on workers organised power, rather than employer generosity or government intervention.

CONCLUSION

Collective bargaining remains one of the few ways that unions can ensure that workers living standards are maintained and advanced. The non-inclusion of the duty to bargain in the Act has introduced a completely new dynamic for the organised working class. The losers are likely to be isolated employees, workers in small and medium enterprises and those unions trying to make headway against powerful and recalcitrant employers and the labour judiciary. Anti-union businesses with poorly organised work forces will also gain, since the Act will assist them in engineering a union-free environment.⁴⁷

5. CENTRALISED BARGAINING

A REVIEW OF RECENT EVENTS

As a pretext to discussing the new bargaining councils and the role of centralised bargaining it is necessary to review recent events.

The position adopted by Cosatu (the call for compulsory centralised bargaining) must be seen as a response to the climate of uncertainty which hovers over their relationship with the ANC.⁴⁸ Since the early nineties the question facing the trade union movement has been its new role in a democratic South Africa. With the demise of the National party government, the trade union movement lost its visible enemy and with it the need and legitimacy for overt militancy.⁴⁹ The shift in ANC economic policy prompted by the organizations like the World Bank and International Monetary Fund, together with pressure from potential First World investors, spelt certain doom for the heavy Socialist rhetoric of the preceding years. The new model was to be competitive and pro-investment. Into this environment was thrust an anxious labour movement, still intent on maintaining a say in the macro-economic issues of the day. With talk of a sell-out making the possibility of a new Workers Party a distinct reality labour settled for a place in the NEF. Despite the renewed assurance from the ANC of its commitment to labour the positions adopted in the final Act (particularly those dealing with collective bargaining) point towards a need, primarily for growth and competitiveness, before redistribution. Taking into account recent industrial events and the nature of the governments response, often coming from the very pinnacle of the ANC

⁴⁸ Despite the consensus reached at NEDLAC, COSATU still propagates compulsory industry bargaining.

⁴⁹ von Holdt K " The LRA agreement ... Worker victory or miserable compromise " South African Labour bulletin. Vol 19 no 4. Sept 1995

hierarchy ⁵⁰, labours fears of being pushed out into the cold seem justified.

Cosatu made it's position clear, it has to be part of the restructuring of the economy in order to ensure that attempts to increase productivity and competitiveness do not force labour into an uneasy compliance. Labour must remain strong in order for true reconstruction to be achieved. The current strategy adopted by Cosatu - independence, via pursuit of own interest objectives - must be viewed as an attempt to counter the inherent threats of corporatism and their lack of faith in an ANC government.

In order to maintain a strong macro-economic position Cosatu finds itself forced to opt for as strong a central structure as possible; hence the recent country wide mass action on compulsory centralised bargaining and the demands for the closed shop that followed the initial Bill. The more decentralised the bargaining structure the less influence Cosatu wields, as workplace agreements undermine centralised ones and central power as well.⁵¹

Despite the fact that Cosatu is not the federation it used to be, it still constitutes a large proportion of the ANC,s voting constituency.⁵² The presence of a powerful Workers Party would only serve to weaken the ANC majority, a matter that could be highly significant in the attempt to reach a two-third majority.

For the sake of keeping the " alliance " intact the ANC was forced to accommodate Cosatu and the demands it made on

⁵⁰ see The Cape Times " News -- " Go back to Work " Mandela tells nurses " September 8 1995

⁵¹ Hartford D " Centralised Bargaining under threat " South African Labour Bulletin. Vol 17. N 2. 1993

⁵² Brassey M. Brand J " Flaws and Fantasies - a conceptual analysis of the Bill " Employment Law. March 1995. Vol 11. N 4

tripartite structures like NEDLAC.- although it would probably be unrealistic to have expected any form of wholesale denial as has occurred elsewhere in Africa.⁵³

Cosatu's initial demands were for compulsory centralised bargaining forums, the need for requirements on the extension of bargaining agreements thus falls away as all employers would be party to an industrial council of sorts.⁵⁴

With Cosatu engaged in country wide mass action to force its proposals, Labour Minister Mboweni announced government sentiment, the extent to which the ANC would compromise.

Compulsory centralised bargaining was again emphatically rejected. The government had gauged the extent of union power and shown how far it was prepared to go. The new proposals highlighted the governments policy of promoting centralised bargaining whilst at the same time conceding that

"...if collective bargaining is more efficient at decentralised levels, the decentralisation process must be allowed by agreement."⁵⁵

Government's primary aim in promoting centralised bargaining is to get business and labour to forge consensus on the bigger issues facing the economy, it is not aimed at securing sector-wide agreements on minimum wages and working conditions.⁵⁶

The new position adopted by the government of national unity is best illustrated by their response to the wave of strike action in the nursing profession. Despite government sympathy

⁵³ See amongst other. Cronin J " Workers party plays into Nat hands " The Weekly Mail. Vol 9. N 2. 1993 , Hoffojee F " Workers party jumping the gun " The Weekly Mail. July 23 1993

⁵⁴ " Cosatu's stand on the draft L.R.A." The Shopsteward. April/May 1995

⁵⁵ " Tito's clever compromise " The Financial Mail. June 30. 1995.

⁵⁶ Op cit note 24

with the position of nurses, if wage increases were given the effect would be destroyed by increased interest rates and inflation.

" We would get ourselves into a negative economic cycle. "⁵⁷

Once again government had demonstrated its commitment to national economic issues rather than individual labour concerns.

5.1 PROBLEMS OF THE PAST AND REASONS FOR CHANGE

Presumably the problem with the current industrial council system is that it suffers from the weakness of its structures being either too rigid or extreme. They operate through the a pure " all-comers " system or through a pure majoritarian system; neither structure is flexible nor wholly democratic, since neither adequately represents the interests of people in the industry.

Add to this the problem in the voting structure of the current system (it gives minority unions too much power) and the manner in which the industrial court has undermined centralised bargaining (the court has in the past set its face against majoritarian decision-making) and what remains is a formula which according to the drafters will not accommodate the proposed changes.⁵⁸

Sectoral bargaining, the drafting team decided, has a very important role to play in our society. According to the Labour Ministry, as industries are faced with reduction in tariffs and re-entry into the global economy they are going to have to change. That change is going to have to be managed. In his

⁵⁷ Cameron B " Straight-jacketed divisions no longer acceptable " . Business Report. September 27 1995 at 18 ... an interview with Alec Erwin.

⁵⁸ Albertyn C " Industry Bargaining " Employment Law. Vol 7. N 8. July 91

view industry level bargaining arrangements are particularly well suited to assist in the transition and the adjustment that will inevitably occur. For this reason industrial councils should be given the function of developing proposals on industrial policy for the particular industries. Industry level bargaining performs a crucial role in the orderly transition from a protected and inefficient economy to a competitive one. Furthermore, it provides an efficient mechanism for the provision of the social wage, particularly where there is pressure on the state to provide social pensions, medical aid etc.

5.2 THE ACT AND CENTRALISED BARGAINING BARGAINING COUNCILS AND THE EXTENSION OF AGREEMENTS TO NON- PARTIES

The Act has made provision for the continuation of industry bargaining in the form of bargaining councils.

The primary function of bargaining councils is to conclude and enforce collective agreements. In the first instance, a council's collective agreement will bind only the parties to it. The controversial issue relating to extension of agreements to non-parties is more stringently regulated under the new Act. They will automatically be extended where the trade union has more than 50% membership in the industry and the employer association employs at least 50% of the workforce. (s32.1)

Before the agreement can be extended the Act provides for the establishment of an independent body to grant exemptions to non-parties. The agreement must contain a list of fair criteria that promote the primary objectives of the Act, and must not discriminate against non-parties. (s32.3e-g)

The minister can also extend the agreement if the parties to the collective agreement are sufficiently representative

within the registered scope of the bargaining council, and he/she believes that the failure to extend the agreement may undermine collective bargaining at sectoral level.(s32.5a,b)

Despite the Act's attempts to bolster the position of small enterprise, the fear that increased minimum wage levels might retard growth in this sector remains. Research has shown however, that the vast majority of exemption applications received by industrial councils in the past were granted.⁵⁹ The problem appears to be neither the complexity of exemption procedures nor, in other instances the obdurate nature of the councils, but rather the unwillingness of employers to go through the formality of actually applying.

If this is the case, then the conventional argument that SMME employers are the most seriously prejudiced by industrial council agreements needs review. Du Toit feels that workers deprived of wage increases, better working conditions and benefits on mere application by the employer might be the party to suffer the most. The fact that the Act makes provision for sectoral bargaining without any alternative mechanism for enticing reluctant employers to the bargaining table, and that the proposed workplace forums will exclude the lion's share of the economy ⁶⁰, gives this argument a measure of credibility.

An alternative proposal has been put forward by Baskin ⁶¹ who, whilst still working on the assumption that flexibility

⁵⁹ du Toit D " Small Enterprises, Industrial Relations and the RDP " Industrial Law Journal. Vol 18. part 3 1995

⁶⁰ The proposed workplace forums will be available only: in workplaces where more than 100 workers are employed. This excludes more than 74% of the workforce in sectors that contribute 58% of the GDP. where a majority union requests its establishment. Seventy-five percent of the economically active population do not belong to unions. The percentage of workers who do belong to majority unions in specific workplaces will be much bigger. Taken together, these requirements mean that probably more than 90% of workers are excluded.

⁶¹ Baskin J " Centralised Bargaining and COSATU { National Labour and Economic Development Institute } 1994

does not necessarily equal decentralisation, suggests that industrial councils could set basic conditions and broad frameworks only, and then devolve bargaining downwards or upwards whenever appropriate. In consequence each such agreement would normally include a range of schedules to accommodate specific conditions facing particular sections of that industry. On this basis the small, medium and micro enterprises within each industry could be dealt with by means of a special schedule dedicated specifically to it's needs. In this scenario provisions for exemptions are viewed as a last rather than first resort.

One of the potential advantages of this system is that workers in SMME's could force plant level bargaining via the threat of the alternative, industry bargained wage levels.

The problem is the establishment of these schedules. Who will decide on their content and their application? Will small business have a say or will Cosatu and it's allies decide the matter on their behalf? The basic concern, lack of small business representivity is still not adequately addressed. Once again it appears to be a case of 'let the parties adapt to a predetermined structure.'

5.3 STATUTORY BARGAINING COUNCILS

Following months of dispute and country-wide mass action over the issue of compulsory centralised bargaining the Labour Ministry was forced to step in and provide the necessary breakthrough. The final outcome of the NEDLAC negotiations reflect these changes by making provision for statutory bargaining councils to be allocated to specific industries. If there is no statutory council a trade union or employer association with the required membership threshold (or two or more unions or employer associations acting jointly) in an industry may apply to the CCMA (Commission for Conciliation, Mediation and Arbitration) to help set up a statutory council.

The threshold for launching the application is trade unions which have at least 30% of workers or employer associations employing at least 30% of workers in an industry. (Cosatu's initial demands included a 30% threshold level for representation)⁶²

The conspicuous absence of collective bargaining from the councils three main functions remains a contested issue. However, statutory councils can serve as half-way houses to bargaining councils and therefore provision is made for their constitutions to be adapted to include any of the functions of a bargaining council, including the conclusion of collective agreements.⁶³

Should parties be unable to agree on the establishment of a statutory council then the minister can do it anyway.(s41) It has been suggested that a council which has such an inauspicious beginning is unlikely to achieve anything meaningful in labour-management relations.

The idea behind the establishment of these councils is that employers will be forced to join, lest their voices go unheard. The hope is that this process of indirect compulsion will facilitate substantive voluntarism.

Business S.A's biggest problem with compulsory centralised bargaining was the fear that wage battles would dominate bargaining commitments. The fact that statutory council provisions have made wage negotiations optional and by agreement between parties appears to have put business's fears in this area to rest.⁶⁴ However, the situation is not entirely satisfactory. The NEDLAC agreements suggest that if

⁶² Op cit note 23

⁶³ Op Cit Note 1 at 38

⁶⁴ Malala J " Labour pact: Win some, lose some " Argus 19 July 1995

there is a dispute over the **agenda** or **outcome** of negotiations in the statutory councils, the parties will be able to take industrial action, including industrywide industrial action.

The initial proposals (⁶⁵) avoided making mention of this recourse to industrial action, indeed, even the Minister in his parliamentary speech pointed to a very different route that parties to a statutory council should follow if wage negotiations failed. This included going to a wage board for recommendation and then finally Ministerial determination. In this way the department hoped that whilst avoiding compulsory centralised bargaining, parties would be enticed to bargain rather than to have decisions imposed on them by the state.

By allowing industrial action in order to compel compliance at statutory council level the negotiators at NEDLAC have followed the path subscribed to in the Act. The idea must be that since only representative unions (30% of workers) will be able to force a statutory council there will be no need for overt industrial action in order to obtain concessions. Unions that are unable to force bargaining would in any event be unlikely to force employers to offer the type of improvements in wages and working conditions that it's members require.⁶⁶ Those unions that are able to enforce statutory council structures are probably going to be sufficiently powerful to achieve their goals without the need to resort to industrial action to prove it.

Once again the drafters hope that majoritarianism, combined with a new perspective (New Ethos) on industrial relations will make for a more equal labour/business relationship whereby the necessity for strike action will be curtailed.

⁶⁵ see amongst other, " Tito's clever compromise " Financial Mail. June 30. 1995, Davie K " Labour fails to win Mboweni's support " Sunday Times. Business Day. June 25 1995

⁶⁶ Benjamin P " Reforming Labour...lessons from the USA " South African Labour Bulletin. Vol 19. n 2. May 1995

It would seem that like the Act's collective bargaining provisions the proposed statutory council system could lead to heightened industrial unrest.

5.4 CENTRALISED BARGAINING AND THE R.D.P THE ADOPTED GERMAN MODEL - CHANCES OF SUCCESS

Whilst centralised bargaining structures are good for the political arm of Cosatu their potential economic impact on the country remains the subject of much heated debate.

The German experience is particularly relevant given that the Act is based on an adjusted German model which not only encourages centralised bargaining but also includes the power of the state to extend collective agreements to non-participating, non consenting parties; whilst protecting workers striking on matters of collective bargaining from dismissal.⁶⁷

The adoption of the German model is in itself controversial. Putting aside the substantive critiques, one major difference is that Germany has a largely homogeneous society in terms of educational levels and cultural values...." such as respect for authority, agreement and co-operation - all qualities South Africa lacks, with it's rolling mass action, high crime rate, school boycotts, hostage dramas and road blocks. ⁶⁸

Basically, South Africa comes out of the starting blocks at a huge disadvantage, given a proposed system that depends for it's success on a disciplined pursuit of co-operation.

How successful is the German system anyway?

⁶⁷ Rautenbach F " Send labour back to the drawing board " Weekly Mail 9 -14 June 1995

⁶⁸ Op cit note 37

Briefly, between 1970 and now German unemployment has risen from 200000 to 6 million {1-2 million of that being from East Germany}. German labour productivity and unit labour costs (the ratio between productivity and wages) lag behind those of America and the Far East.⁶⁹

Whilst Germany has fewer strikes than the United States it lacks the growth in both job creation and productivity. Rautenbach suggests the answer, "in a nutshell, any system that makes it more expensive to employ people, must expect to have fewer people employed." The purpose of the new labour dispensation was to supplement the RDP not subvert it. In a country in which the central problem is unemployment the addiction to centralised bargaining structures will lead to the unavoidable trade off between the rate at which wages and other employment costs increase and the rate at which unemployment rises.

The German system of centralised bargaining coupled with the huge legal strike threat leads to one of two outcomes: more strikes or greater concessions being made by employers in order to buy labour peace. The latter has occurred in Germany and is nowhere better illustrated than in the recent metalworkers strike.

German metal workers union, IG Metall, went on strike in Bavaria. When they threatened to take the strike countrywide employers started making concessions. Eventually a nationwide strike was warded off by a series of compromises, including pay hikes and a shorter work week, resulting in an effective wage increase of ten percent being phased in over a year. That effectively put pay to the increases in productivity that German manufacturers had achieved over the past year.⁷⁰

⁶⁹ Rautenbach F " Send Labour back to the drawing board " The Weekly Mail. June 9 1995

⁷⁰ Op Cit Note 74

Results like this unfortunately matter because, by failing to reduce unit labour costs while more competitive countries like the United States, Hong Kong, Taiwan and Singapore manage to do so, Germany has weakened its position as a global competitor. The price paid is reflected in the growing unemployment figures. (Most importantly in terms of this debate is the fact that South Africa is much weaker than Germany in terms of education and skill levels, co-operation and productivity.)

5.5 WAGE BARGAINING - SOLVING OR CREATING PROBLEMS

In a country in which some 50% of the workforce is unemployed, the very existence of the RDP is dependant on optimal economic growth from whatever quarter. Cosatu's initial demands for centralised bargaining structures were criticised as being "unaffordable".⁷¹

The problem is a simple one. South Africa cannot afford rigid wage levels at a time when the lowering of tariff barriers and cheaper imports have forced local business into global competition; a situation made even more acute due to South Africa's lack of expertise in this area.

The repercussions of such a scenario could actually force business to shed more workers in order to maintain profit margins. There is the risk of labour becoming a problem in terms of efficiency and thereby pricing itself out of the market. Le Roux points to the possibility of a return to the capital intensive policies of the past, with company's investing in more machinery and cutting back on jobs.⁷² Last year's postal workers strike a disturbing reminder that business might be forced to adopt such policies in order to remain competitive.

⁷¹ "Cosatu & centralised bargaining" The Star. 5 June 1995

⁷² Le Roux R. The Star 11 June 1995

University of Cape Town professor of economics Brian Kantor points to the old South African experience to illustrate the very real threat of continued wage bargaining at central level.⁷³

Before 1975 there was a close correlation between the growth in the GDP and employment. As the economy grew, jobs were created. The relationship broke down in the mid seventies for several reasons...a major factor being the growth in union power. From that point, growth in GDP was channelled into higher wages instead of more job creation.

Kantor calculates that if the relationship had not broken down there would be 700 000 more jobs in the present economy. The problem, he feels, is that unions have acquired a monopoly of the supply of labour, creating an artificially high entry wage. This has denied new and unskilled entrants the opportunity to acquire the skills they need to compete in and contribute to the formal sector. If wages were allowed to fall to realistic levels the immediate benefits would be to those people located in the informal sector with the repercussions eventually reaching the existing labour force.

The fear that increased industrial bargaining will pressure employers into making wage concessions which in turn will lead to higher unemployment and lack of growth has been criticised.

Ebrahim Patel, argues that by deregulating the labour market and "creating more jobs" a new social problem arises. Lower wages will result in a static market with employed workers being paid-off to make way for the formerly unemployed. In other instances business would merely suspend hiring greater workforces and benefit by paying the existing workforce on an even lower wage scale. With cheap labour "waiting on the side lines" the existing labour force would have no choice but to

⁷³ Op cit note 40

settle with their meagre salaries.⁷⁴ In South Africa such an approach is only too familiar. It was taken to extremes in the apartheid era with its numerous devices for depressing the cost of labour such as the bantustan system, the border areas policy and the repression of trade union rights. Hopefully it has been buried together with apartheid.⁷⁵

Professor John Sender believes the problem lies with the **unit price of labour** and not wage levels. Simplified, unit labour costs refer to the ratio of remuneration per worker to output per worker. In South Africa wage growth has over periods continually exceeded productivity growth causing unit labour costs to keep on rising.⁷⁶ This development is not only harmful for employment growth, but may also have an adverse impact on rates of return on invested capital. The decline in the inducement to invest will inevitably undermine the long term growth potential of the national economy and employment growth.

According to Sender, labour is not being utilised effectively enough so that it pays for itself. Labour is not being taught the necessary skills to help increase South African productivity. { As will be discussed shortly ... one of the reasons for the lack of, or extension of training is said to be increased wage levels which limits the creation of new jobs or training facilities }

For Sender, the solution is to increase labour's output or productivity to accommodate increased wage levels.

Industry bargaining, which in turn leads to increased wage levels is not singularly responsible for the lack of

⁷⁴ Patel E. The Star 11 June 1995

⁷⁵ du Toit D " Small Enterprise, Industrial Relations and the RDP " Industrial law Journal. Vol 16. part 3 1995

⁷⁶ " Labour costs and productivity " Annual Economic Report 1995 - South African Reserve Bank

development. Indeed, in his opinion and by comparison to other countries, far too many South African workers are underpaid. He points to the German situation as providing ample support for the co-existence of industry bargained higher wages and increased productivity.

Does the Act provide any assistance in this case?

What the Act does is to create a division between the struggle over wages and working conditions on the one hand and the actual business of producing on the other. It calls the first "distributive matters" (workers are allowed to resort to industrial action such matters) and hopes that the business of production, restructuring and productivity will become "co-determinate" matters. This separation of the bargaining arena into "distributive" (the price of labour power) and "productive" (the putting to work of labour power) matters, is said to be the mystification which underlies the capitalist system.⁷⁷

The problem inherent in this approach is that no relation is drawn between the price of labour power and the value which labour creates. Workers are effectively alienated from their product and once they have been hired at an agreed price what they produce belongs to the bosses. The result is that workers are usually not rewarded for increased production and in many instances wages do not reflect the nature or output of work.

Workers are then forced to try and interrupt this division by linking their demands for higher wages either to their ability to withdraw from production or to passively resist increases in production by working below optimum capacity.

From the perspective of matching wages to worker productivity the structural separation which the Act creates between bargaining forums (whether centralised or plant level) which deal with distributive matters and workplace forums which deal

⁷⁷ Etkind R " Rights and Power: failings of the new Labour Relations Act " South African Labour Bulletin Vol 19: no 2. 1995

with cooperative matters is suspect.

However, the drafters clearly had other concerns in mind when they decided to follow this path. The primary concern, given the Act's adherence to competitiveness and productivity is that business be allowed to run itself without unnecessary stoppages in the form of industrial disputes.

Workers are allowed to strike in support of a demand that the employer bargain, and the material results of that bargaining. However, disputes over dismissals, rights, and agreements will all have to be settled by third party intervention. Thus, the rationale for structural separation is to leave matters of "managerial prerogative" firmly in the hands of employers. Cosatu had made as one of its initial reactions to the Bill the call for the deletion of restrictions on strike action in the event of disputes of right.

Only in situations where parties agreed to the use of arbitration to resolve a particular dispute should there be restrictions on the resort to industrial action.⁷⁸

The old disputes over the extent of employer rights will no doubt continue to remain a union priority.

In Sender's opinion, a further problem facing development in South Africa is the huge pay differential that exists between workers and staff/management. The Deputy Minister of Finance, Alec Erwin has stressed the need for a complete public service overhaul to counter this problem. He notes that, "one of the real problems with the current structure is the gap between the top and bottom ... where there are too many grades and complications."⁷⁹ It is necessary to redefine the levels of

⁷⁸ "Cosatu's stand on the draft L.R.A." The Shopsteward. April/May 1995. The scope of this article prohibits any detailed analysis of the Act's strike provisions—suffice it to say that union demands aimed at allowing industrial action over matters of right have been criticised. South African Labour Bulletin Vol 19 N 4 Sept 1995

⁷⁹ Cameron B "Straight jacketed divisions no longer acceptable ... an interview with Alec Erwin" Business Report, September 27 1995 at 18.

the basic system as at present it does very little to promote the New Ethos, but rather keeps labour and management locked in strong adversarial positions, based on hierarchical superiority.

By closing the huge pay discrepancies that exist the aim is to bring management and ground level workers closer to a new working ethos in which both parties have mutual respect for one another.

Despite the fact that South African imports still vastly exceed its exports, Sender believes another factor hindering growth is the policy of the Reserve Bank. The high interest rate is a primary cause for South Africa's low growth rate.

5.6 OTHER OPTIONS ?

The Japanese system best represents employee/management cooperation and understanding. However, the Japanese system is entirely unique. Unlike its Western counterparts the Japanese firms represent a kind of structured family relationship. Collective bargaining is performed almost entirely at plant level as employer/ee alike recognise the commonality between them.⁸⁰

The domination of enterprise unions represents a fundamental understanding that matters are better dealt with in-house than by large industry-wide agreements.

Furthermore, the enterprise unions have the option of falling back on a statutory duty to bargain should employers be reluctant to negotiate.

Despite the absence of vast wage gaps in individual companies the fact that issues are dealt with at plant level means that

⁸⁰ Araki T " The Japanese model of employee representation " Comparative Labour Law Journal Vol 15. 1993 -4

pay is commensurate with the type of work performed, and more importantly the level at which the particular company operates. Productivity and wage increase are far more easily assessed and adjusted than if a industrial agreement was to set a minimum condition. Japanese companies that are unable to compete directly with their larger competitors are better able to increase productivity and wage levels than their counterparts in Europe who are forced to adopt industry wide agreements that are tailored to the needs of big business.

Despite vehement union criticism to the contrary, the institutionalisation of industrial relations has been recognised as a possible solution to enhance productivity. Skhosana, concedes that whilst management and labour will always have conflicting ideas, ... if such conflict is institutionalised it can work positively ... much like a boxer in a ring.⁸¹

In (South Africa) any system in which industry agreements cover wage levels the unit price of labour is going to be artificially high. This is because productivity in small business can never keep up with the minimum wage levels set for an industry by big union, big business compromises. If small business's are unable to obtain exemptions from such agreements (the Nedlac agreements do little to help in this regard) then the only option left is to employ fewer people or close down altogether; neither of which the South African economy is able to afford.

Sender uses the German example to justify his argument. The problem is that the German economy is not as structurally diverse as South Africa's. This issue is particularly relevant given the fact that certain sectors here are vastly superior to others.

⁸¹ Skhosana G " We're all in this together " Enterprise. October 1995 at 57

So whilst across the board wage concessions there are absorbed by more uniform productivity the same will not hold true here. To draw a distinction between industry bargained wage levels and the unit price of labour in the South African context is therefore unrealistic.

5.7 PROSPECTS FOR THE FUTURE

With an ever growing body of support in favour of increased competitiveness, it is regrettable that the more militant aspects of Cosatu still appear trapped in an outdated socialist philosophy. The Witwatersrand regional shopsteward council slammed the NEDLAC agreements as being a miserable compromise.⁸² For them centralised bargaining exists as a means of closing the wage gap, alleviating poverty and reaching socialism. Some South African unions still continue to push a brand of romantic socialism way out of kilter with developments internationally. These elements within Cosatu tend to show little understanding of the need for flexible bargaining. By remaining captive to centralist instincts they concentrate on pushing the short term benefit of a relatively privileged minority,⁸³ turning a blind eye to any probable future consequences.

As has already been pointed out however, COSATU is pursuing a self interest policy which is primarily aimed at keeping the federation a macro economic force. The irony of the situation is that by vigorously pursuing centralised bargaining COSATU could in fact be weakening it's political base. Jobs lost during a recession are not easily recreated when the economy recovers, and higher unemployment means fewer workers to join unions.

⁸² von Holdt K " The LRA agreement...Worker victory or miserable compromise " South African Labour Bulletin. Vol 19 N 4 September 1995

⁸³ " Business and Labour ... Principles at stake " Financial Mail. June 23. 1995

The constraints that union membership are now placing on the economy by forcing centralised bargaining structures has the possibility of retarding growth. They will limit the upside of the business cycle and its potential to generate higher real returns, not just to shareholders but to all stakeholders. By reducing the availability of jobs to unskilled workers, the existing workforce could become an skilled elite, giving them a further competitive edge in the market. Prospective unskilled workers will be unable to enter the workforce because most employers will not be able to pay unrealistic basic wages. If the remuneration of the worker does not reflect his/her economic contribution, inflation will erode the purchasing power of any increase achieved in wage negotiations...and will induce a recession.

With unemployment standing at an effective 33%, excluding the formal sector, the present growth rate of some 3% is hardly sufficient to absorb the growth in the population.

Furthermore, because South African exports are uncompetitive, and will probably remain so for as long as we follow a bargaining system that will at best have the kind of effects that the German system had on it's competitiveness, our balance of payments will always remain under threat.^{B4}

Whenever the South African economy heats up the amount of imports will exceed the amount of exports. As seems now imminent, sooner or later that leads to increased interest rates, which does nothing for the export performance of the country, but dampens domestic demand. In short, before long, our fragile 3% boom will turn into a 0% bust or worse and up goes our unemployment.

5.8 SOLUTIONS

The industrial relations structure should reflect the diversity/heterogeneity of the South African labour market.

The decision to adopt the moderated German model was probably not a wise one. The wide range of opinions as to the direction industrial relations should take clearly illustrates the lack of a "shared vision." At the expense of over simplification the vast majority of discontent in the country stems from unemployment. The Government has recognised this and committed itself to competitiveness and productivity.

In order to achieve optimal growth all sectors of the economy must be allowed to develop, the most important being the small and medium business sector. The small business sector employs the vast majority of workers and has the potential to create an even larger employment base.⁸⁵ By encouraging centralised bargaining and extending agreements (particularly wage agreements) to non parties the danger exists that small business will be unable to absorb unemployed workers due to unrealistic minimum wage demands. Even if workers were to be employed the profit margins in such business's would be reduced to such an extent that growth would be impossible. The immediate aim is to create a climate in which business is not only profitable, but profitable enough to continue expanding and employing the countries workforce.

⁸⁵ Nteane S " Small business development and centralised bargaining
" Financial Mail June 6 1995

6. CONCLUSION

The Act's collective bargaining provisions are impressive as a *proposed* labour structure. The question haunting practitioners and academics alike is whether our current industrial climate is mature enough to adopt the new set of rules. The absolute reliance on voluntarism, although well intended, is probably a little ambitious. Given the lack of a unity between organised labour and business as to the manner in which to transform the economy, the very foundations of the new labour law looks to be at threat. Without the New Ethos there can be no new dispensation.

The absence of a legally enforceable duty to bargain is in line with international developments and the Act's voluntarist agenda. Critics of the Act point to the danger of heightened industrial action and the demise of smaller unions as possible consequences of the new approach. Others feel that the Act's advances in increasing organisational rights will provide an adequate solution for those unions trying to make headway against recalcitrant employers. It should be remembered that the duty to bargain does not guarantee either effective bargaining or agreements. The Act should not be expected to perform the sort of miracles that are beyond any labour system.

The success of the Act's gamble depends for the most part on the successful implementation of the Commission as roving, interventionist mediator and arbiter, and more importantly the willingness of parties to embrace the new order. If the Commission does not enjoy the trust of both management and labour it will suffer all the defects of the present system and none of its laudable objectives will be achieved. If, on the other hand it is embraced then the critics single greatest fear is answered.

Sadly, the evidence presented in this article points to a

industrial climate which is hardly conducive to the type of environment the Act deems a necessity for the successful operation of its provisions.

The problems associated with the lack of a bargaining duty are similar to those that are expected to plague the new bargaining councils. Despite obvious government resistance to " an open season " on across the board wage disputes the issue remains whether unions will be willing or mature enough to bypass short term gains for long term prosperity. The unfortunate reality of the matter is that without the ability, during the short term, to at least get employers to negotiate on issues of mutual interest could see more frustrated and volatile union behaviour. Just as the reality of the new political dispensation is beginning to set in, (reference is made here to the fact that short term benefits have not really been felt by the large proportion of this countries disadvantaged peoples) so to could unions be left very frustrated with the apparent lack of any progress. It should be stressed that employer and business co-operation on these matters is just as, if not more, important than that of their union counterparts. A uniform criticism of the Act is that the union movement is not mature enough to work within its (the Act's) parameters. What is more important then, is that Business acts first to show its willingness to enter into a new relationship with labour. For the transition to work this first phase must take place. It is suggested that big business is best placed to ensure that this happens.

The problem again appears to be smaller business/union relationships that operate for the most part under a labour law all unto their own. Should the Act be the subject of criticism for failing to achieve what is probably beyond the capabilities of any labour system?

The argument that small business could be adversely affected by industry bargaining is a valid one. Despite the Act's

attempts to regulate the extension of agreements to non-parties, via independent exemption boards, past experience suggests the need for increased training or rights awareness measures to be implemented.

It should be remembered that statistics point to the vast number of exemption applications being granted. If small business was made more aware of the rights they possess then perhaps their opposition to industry bargaining would be less vociferous.

The past year has seen labour and business in universal disagreement on practically all the major issues in the Act. This stance is particularly disturbing for a number of reasons.

Firstly, the bargaining issues over which the antagonists have put up such a fight probably did not warrant that kind of industrial action. From a Cosatu point of view the omission of the duty to bargain is not that serious. The major unions will not require the duty as existing relationships will continue to exist. In the event of employers refusing to negotiate, such unions will have the necessary "muscle" to force their way. Furthermore workplace forums will be obligatory in large establishments and for all purposes they exist as a type of mandatory bargaining establishment.

As far as big business is concerned Cosatu's call for centralised bargaining is nothing new. The Labour Ministry and the draft Bill constantly rejected compulsory centralised bargaining, so why all the fuss? The new bargaining councils are nothing more than an extension of the old industrial councils.

The real problem then is not so much the content of the Act but the failure of the major parties to recognise the need for a renewed co-operation on their part if the Act is going to

work.

The needless conflict that accompanied the drafting and re-drafting of the bill is an unfortunate reflection on the state of South African industrial relations.

Unions still operate as if they are labouring under the apartheid system of old, whilst business is doing very little to show a willingness to co-operate under a new political order.

If the Act is to have any chance of success then an essential prerequisite is the stabilisation of industrial relations. If not, the vision that is the Labour Relations Act 66 of 1995 will almost certainly remain a dream.

BIBLIOGRAPHY

Articles

1. Albertyn C " Industry Bargaining " Employment Law. Vol 7. n 6. July 1991
2. Appollis J " The New Labour Relations Act and Centralised Bargaining " South African Labour Bulletin. Vol 19. n 2. May 1995
3. Araki T " The Japanese model of employee representation " Comparative Labour Law Journal. Vol 15 1993-4
4. Baskin J " Centralised Bargaining and COSATU " National Labour and Economic Development Institute.
5. Benjamin P " The New Labour Relations Bill " South African labour Bulletin. vol 19. n 1. March 1995
6. Benjamin P " Reforming Labour lessons from the U.S.A " South African Labour Bulletin. Vol 19. n 2. May 1995
7. Benjamin and Cooper " Responding to the Labour Relations Bill " Industrial Law Journal. Vol 16. part 2 1995
8. Bosch and du Toit " Size does count " Weekly Mail. March 2 1995
9. Brand & Brassey " Jumping the gun: problems in the drafting of the the new L.R.A " South African Labour Bulletin. Vol 19. n 2. May 1995
10. Brand & Brassey " Flaws and Fantasies - a conceptual analysis of the Bill " Employment Law. Vol 11. n 4. March 1995
11. Cameron B " Straight-jacketed divisions no longer acceptable ... an interview with Alec Erwin. " Business Report. The Cape Times. September 27 1995
12. Cronin J " Workers party plays into Nat hands " The Weekly Mail. Vol 9. n 2. 1993
13. Davie K " labour fails to win Mboweni's support " Business Day. Sunday Times. June 25 1995

BIBLIOGRAPHY

14. Du Toit D " Small Enterprises, Industrial Relations and the RDP " Industrial Law Journal. Vol 16. part 3 1995
15. Etkind R " Rights and Powers: Failings of the new Labour Relations Act " South African Labour Bulletin. Vol 19. n 2. May 1995
16. Hartford D " Centralised Bargaining under threat. " South African Labour Bulletin. Vol 17. n 2. 1993
17. Hoffojee F " Workers party jumping the gun " The Weekly Mail. July 23 1993
18. Jankowitz E " Bill may find it hard to legislate co-operation " Business Day. The Cape Times. 3 February 1995
19. Jordaan B " The duty to bargain under the Draft L.R.A " Labour Law News and Court Reports. Vol 8. 1995
20. Lacob Z " Memorandum on the Draft Labour Relations Bill " De Rebus. June 1995
21. Leon T " Bill ignores key social and economic players " Business Day. The Cape Times. June 23 1995
22. Lodge T " A plague on them all " Financial Mail. June 23 1995
23. Malala J " labour pact: Win some, lose some ... " The Argus. July 19 1995
24. Mboweni T " The role of the trade union movement in the future South Africa " South African Labour Bulletin. Vol 16. n 8. November/December 1992
25. Mboweni T " A foundation for labour relations in the 21st century " Appropriation Bill. National Assembly. June 22 1995
26. Murphy M " South African farmworkers: Is trade union organization possible? " South African Labour Bulletin. Vol 19. n 3. July 1995

BIBLIOGRAPHY

27. Nash S " Shilowa ruffles SACOB's feathers " Business Day. The Cape Times
28. Ntsane S " Small Business development and Centralised Bargaining " Financial Mail. June 6 1995
29. Olivier M " A New Labour Relations Act. Essential characteristics and implications for the Profession " De Rebus June 1995
30. Parsons R " Golden Triangle on trial " Financial Mail. July 7. 1995
31. Rautenbach F " Send Labour back to the drawing board " Weekly Mail. June 9 1995
32. Ray & Toerien " Unions on the outside looking in " The Shopsteward. August/September 1995
33. Skhosana G " We're all in this together " Enterprise. October 1995
34. Theron J " What Small Business signifies for Labour Relations (Labour Law Unit - U.C.T 1994)
35. Thompson C " Labour Laws Third Revolution " Weekly Mail and Guardian. February 3-9. 1995
36. Van Niekerk " Dispute Resolution " in Current Labour Law 1995.
37. Von Holdt K " The L.R.A agreement ... Worker victory or miserable compromise " South African Labour Bulletin. Vol 19. n 4. September 1995