

**6 June, 1995**

## **LABOUR MEMORANDUM ON THE LABOUR RELATIONS ACT BILL**

Workers have struggled for many years for a new Labour Relations Act. We have suffered under the apartheid L.R.A. Bosses were able to dismiss us, pay starvation wages, call the police to beat us up when we struggled for our rights, and make super profits from our labour.

With democracy, we expect an end to this slavery and exploitation. We called for a new L.R.A., for a workers L.R.A. Over the past month, we have negotiated with a view of reaching consensus on our key demands.

Instead, we have found from the business community, a series of delaying tactics. They have tried to limit the gains we could make for workers. They have tried to protect their management power. They have resisted the development of proper trade union rights.

We tender this memorandum to advise that our members are angry. We want rights now! We call on business to endorse basic workers and trade union rights.

**Our core demands are:**

- a) ORGANISATIONAL RIGHTS**
  - Building strong trade unions
  - Democratic closed shops and agency shops
  - Paid time off for shop stewards
  - Full disclosure of financial information
- b) CENTRALISED BARGAINING**
  - In all industries
- c) RIGHT TO STRIKE**
  - No dismissals of legal strikers

- No scab labour
- Control on lockouts by employers

We demand that the new L.R.A. be passed in this session of parliament. The rest of this memorandum set out our positions in more detail.

### **The Labour position**

Organised labour tabled a comprehensible and detailed proposals, setting out a range of mechanisms and provisions, to amend the bill in a manner that would make it more equitable, give better effect to some of the goals set out in the Bill, and promote basic worker rights. The key features of the labour proposals are:

- \* **To promote strong, stable trade unionism**, through a range of different arrangements covering access by trade unions to the statutory organisational rights in the Bill. Provision was made for rights acquired at industry, corporate or workplace level depending on where bargaining takes place. Reliance was placed on the collective bargaining process defining which trade unions acquired rights - the law should not strip, nor entrench rights enjoyed by a trade union.
- \* That the Bill should **require employers to bargain** on all matters of mutual interest with representative trade unions, at the highest level at which bargaining takes place.
- \* That **closed shops** agreed to between representative trade unions and employers be permitted, but that the institution of the closed shop be democratised through the holding of secret ballots, provision for political objections, conscientious objection and multi union closed shops.
- \* That **paid time off** should be granted to trade union representatives to attend to their duties, that employers should deduct union fees without attaching a collection fee for this service, and that rights to the disclosure of information should be less qualified than in the Bill.
- \* That each industry be covered by a **national bargaining council** and that employers and labour negotiate at national industrial level.

We proposed that the content of bargaining be left to the parties to resolve.

- \* That **the right to strike** be given proper effect through not permitting employers to dismiss workers on a legal strike on grounds of fear of irreparable economic harm, that strikes be permitted on all matters on mutual interest to employers and workers, that scab labour not be permitted during legal strikes, that the rights to industrial action on socio-economic matters not be unduly restricted, and that reasonable limitation be placed on employer recourse to lockouts.
- \* That **workplace forums** be set up and its composition be the democratically elected shop stewards committees, its agenda to exclude matters covered by collective bargaining, multi-plant workplace forum meetings be provided for, and that workers have meaningful representation at company board level.
- \* That **unfair dismissal provision in the Bill be improved**, to retain rights which trade unions and shop stewards have secured in practice.
- \* That provisions entitling the Labour Courts to make cost orders against union officials and office-bearers, and against trade unions, be removed.
- \* That workers who are **retrrenched be entitled to 4 weeks** severance pay per year of service at the company.

### **Business position**

In the business document, and verbal arguments of their negotiators, businesses want:

- \* The interpretation of the Bill to refer to Section 26 (the right to economic activity) and Section 28 (the right to property) of the Interim constitution.
- \* No reference in the Bill to "promoting sectoral bargaining"
- \* The objectives of the Bill to limited to "the workplace"

- \* The right to "disassociation" in the bill and non-statutory closed shops be banned.
- \* Organisational rights should be given as follows:
  - access and stop order at 15% threshold -
  - other rights, at 40% - 60% threshold
- \* Organisational rights should be given to any union which has the percentage threshold in any category of workers it chooses to organise, permitting 40 or more trade union per workplace.
- \* Agency shop monies should not automatically go to the trade unions
- \* Restriction should be put on the exercise of organisation right by trade unions and shop stewards
- \* Restriction on the disclosure of information by worker representatives, and fines of more than R5000,00 for breach of confidentiality
- \* No compulsory industry/centralised bargaining
- \* Easier exemptions from Bargaining Councils agreements for companies
- \* The right to dismiss workers on a legal strike if the effect of the strike is to place the viability of a business "at risk"
- \* The limited protection for unprocedural strikes in the bill, to be removed
- \* Stayaways and socio-economic action should not be protected in the Bill
- \* Lockouts should be extended to cover "breach of contract" by an employer, allowing employers to cut wages, increase working hours, and unilaterally alter conditions of employment
- \* Ballots to be required before strikes are called
- \* Picketing rights should be narrowed
- \* Sympathy strikes should be banned
- \* Scab labour should be permitted and the Bill should expressly allow for this. Scab labour should be allowed even for the maintenance service operations

- \* The requirement that employers continue to provide "payment in kind" (accommodation and food such as in the hostels) during a strike should be deleted
- \* There should be no severance pay in the Bill
- \* Employers should be entitled to set up workplace forums
- \* The Bill should not make workplace forums compulsory, and should not set out in the law the issues to be covered. Accordingly, an employer should be entitled to refuse to consult, or jointly determine certain matters with workers
- \* The workplace forum should not be shop steward based
- \* There should be restrictions on the time off, facilities and information given to workplace forum delegates
- \* Employment contract should not automatically be transferred when a business is sold, thus permitting employers to alter the wages whenever a business gets a new owner
- \* During a six month probation period, no rights on unfair dismissals should be allowed to workers
- \* Union rights in dealing with retrenchment should be limited

### **The Negotiations**

1. The business delegation undertook to do a careful review of its mandate on the shape of the collective bargaining system, at a NEDLAC meeting 12-13 May. Two weeks later, on 25 May, it retabled its original proposals, and again rejected the labour proposals
2. Business mandate in the negotiations, in the view of labour negotiations, as stated on record, has been
  - \* **Inflexible** - Negotiator consist of business restating its positions
  - \* **Vague** - 3 1/2 months after the release of the bill, business

still has no positions, or details on a range of issues

- \* **Divisive** - Seeking to encourage a splintered, divided trade union movement
  - \* **Absurd** - Tabling proposals that are clearly unworkable, such as a proposal which would permit in excess of 40 trade unions in one workplace
  - \* **Contradictory** - With a concession being made in the course of debate, and then withdrawn at the next meeting.
3. The consequence of the business mandate has been to plunge the negotiations into a deep crisis.
  4. Our programme of action is a warning of how seriously we take the negotiations. If we have not settled the negotiations by 19 June, organised labour will take such further steps as are necessary