

FOCUS ON THE LABOUR RELATIONS BILL AND NEDLAC

A giant leap forward

The year has hardly begun but there are already exciting developments for workers.

On 2 February, the Minister of Labour, Tito Mboweni, unveiled a new draft Labour Relations Bill and on 18 February President Nelson Mandela launched the new National Economic, Development and Labour Council, called NEDLAC.

The draft Labour Relations Act is a culmination of struggles by workers over the years against apartheid's labour dispensation. Many of our demands from the Workers Charter and Platform of Worker Rights are included in the proposed law.

The strike wave by Pick 'n Pay workers and others last year sent a clear message to the new government: "Our labour law is out of date and inappropriate for a democratic country." In August 1994, the Minister of Labour appointed a team of lawyers to draft a new law.

DRAFT

But the draft Bill is only a draft. It has some things we don't like and some things the bosses may not like. It now has to be negotiated and agreed upon by all trade unions, business and government. This will take place in NEDLAC.

COSATU is committed to concluding the negotiations as soon as possible. The Act must not be delayed a second longer than necessary. The day the Act is passed, will be heralded



◀ **COSATU secretary general Sam Shilowa and president John Gomomo at a COSATU press conference in response to the Labour Relations Bill launch at the beginning of February**

by workers as a "second April 27".

The draft law is a giant step forward for workers. It can help make organising and collective bargaining much easier.

The challenge in the next couple of months lies with us. Workers must insist on briefings from their unions, regions and from COSATU leadership. So that, when we put our position, it must be based on the demands of our members on the ground.

We will be negotiating a law which will affect not only our own lives, but those of millions of workers for many years to come. We have a serious responsibility to make sure that it meets workers' aspirations and is able to strengthen our organisations and builds workers' power. ☆

What is the Shopsteward CAMPAIGNS BULLETIN?

This bulletin contains important information that you as shopstewards and workers need to know about. It tells you about:

- The new draft Labour Relations Bill and
 - The recently established National, Economic, Development and Labour Council (NEDLAC).
- Please read it and pass it on to other workers. Discuss the issues it raises in your union structures.**

BUILD WORKERS' POWER

What is NEDLAC?

The National Economic and Development and Labour Council (NEDLAC), launched in February this year, is a step forward for the labour movement. Unilateral action by government is now a thing of the past.

This new body brings together the old National Manpower Commission (NMC) and National Economic Forum (NEF). It will bring labour, business, government and development actors together to ensure "consensus on all matters relating to economic policy" and to "consider all proposed labour legislation". (Quoted from the Founding Document)

Now we will be able to take part in implementing the RDP and have a say on issues which affect our lives. Through NEDLAC we can influence the government budget, taxation, industry restructuring as well as the content of all laws which affect workers.

Structures

NEDLAC is made up of four chambers: Public Finance and Monetary Policy, Trade and Industry, Labour Market and Development. Decisions made in the Chambers will be finalised in an Executive Council. The day to day running of NEDLAC rests with a Management Committee. There will also be a National Summit once a year.

Labour will be represented in all these structures, in equal proportion to business and government. At a joint meeting between COSATU, FEDSAL and NACTU, it was agreed that the different federations should take up seats in proportion to their size. In principle, for every four COSATU seats, NACTU will get one and FEDSAL one.

NEDLAC also differs from the NMC and NEF in that, in addition to government, business and labour, NEDLAC includes "community and development actors". These will include SANCO and organisations representing women, youth and rural interests. ☆

NEDLAC STRUCTURE

EXECUTIVE COUNCIL

18 from each constituency. To receive report-backs from Chambers and to conclude agreements between parties.

MANAGEMENT COMMITTEE

Convenors from Chambers and constituencies. To oversee and co-ordinate work of the Council between meetings of the Executive Council.

PUBLIC FINANCE & MONETARY POLICY CHAMBER

to negotiate agreements

TRADE AND INDUSTRY CHAMBER

to negotiate agreements

LABOUR MARKET CHAMBER

to negotiate agreements

DEVELOPMENT CHAMBER

to negotiate agreements

NATIONAL SUMMIT

Convened annually by Executive Council to ensure transparency and obtain inputs. Maximum of 300 persons/ organisations which have an interest in NEDLAC issues.

SECRETARIAT

21 staff members,
three constituency co-ordinators

Making NEDLAC work for workers

We need to make NEDLAC work for workers. At the end of January, the COSATU EXCO held a workshop to look at what we wanted to get out of NEDLAC.

We identified the following strategic objectives

- To build the power of workers.
- To redistribute wealth from the rich to the poor in South Africa.
- To rebuild and ensure job security and job creation.
- To entrench democracy in our society and enable people to take control over their own lives.

The workshop also said we should not repeat the mistakes we made in the NMC and NEF. It resolved that:

- Members need to be kept informed about what is happening in NEDLAC. This should be through constitutional structures as well as The Shopsteward and the mass media.
- Negotiators must be mandated and must report back regularly to structures. Decision making in NEDLAC must be made after proper mandating and we should not back off from decisions not in our favour. The National Congress has restructured the COSATU EXCO meetings and one day will be devoted to policy and negotiation issues.
- We need to mobilise workers behind the demands we put to NEDLAC. Important issues we need to campaign around are the new LRA and privatisation.

- A capacity-building programme will be run to develop union leaderships' understanding of the issues discussed at NEDLAC. This will include a five-day 'negotiation school' and regular workshops. ★

COSATU's proposed agenda for NEDLAC

The 21 January EXCO workshop identified the following as possible agenda issues for NEDLAC. These are now being discussed further in the unions and also with other trade union federations before they are tabled at NEDLAC.

The issues we put up for negotiation at NEDLAC will address the problems of our members as well as lead to benefits for the working class and poor people as a whole.

Possible agenda issues to be raised in the different Chambers include:

► Labour Market Chamber

- Reform of all labour laws including the Basic Conditions of Employment Act, UIF and health and safety laws;
- Affirmative Action;
- Wage policy.

This Chamber will be negotiating the new draft LRA.

► Trade and Industry Chamber

- Industry restructuring including in mining, agriculture and transport;
- Job creation;
- Social funds and a proposed Social Plan Act;
- Social clauses in trade agreements.

This Chamber will continue the work of the NEF's Liquid Fuels Task Force.

► Public Finance and Monetary Chamber

- Government budget;
- Privatisation;
- Investment policy;
- Taxation.

► Development Chamber

- A new national health system;
- Electricity;
- Housing;
- Rural infrastructure;
- Transport.

Key COSATU delegates to NEDLAC

Overall labour co-ordinator: Ebrahim Patel, SACTWU

Management Committee members: Sam Shilowa, Ebrahim Patel, Tommy Oliphant, Enoch Godongwana and alternate: Kgalema Motlanthe.

Labour co-ordinators for the different Chambers:

Trade and Industry Chamber: Enoch Godongwana

Fiscal and Economic Chamber: Kgalema Motlanthe

Labour Market Chamber: Sam Shilowa

Other COSATU leadership will occupy places in the Executive Council and in the Chambers.

MOBILISE SUPPORT FOR COSATU DEMANDS IN NEDLAC

All about the proposed LRA

WHAT ARE THE AIMS OF THE PROPOSED LRA?

- To give effect to workers' constitutional right to organise, bargain collectively and strike.
- To encourage collective bargaining.
- To promote participation in decision-making at the workplace.
- To promote effective dispute resolution.
- To bring our law into line with the ILO's standards.

Below is a summary of the main features of the draft LRA.

ONE LRA

All workers, other than the police, armed forces and intelligence services will be covered by one LRA. Farm workers, public sector and education will no longer have their own Acts. Domestic workers and teachers will be included for the first time.

ORGANISATIONAL RIGHTS

Representative trade unions will have the following organisational rights:

- The right of access to employer premises to recruit and communicate with members;
- The right to hold meetings on the employer's premises;
- The right to conduct ballots at the employer's premises;
- The right to stop-order facilities;
- The right to time-off for union activities;
- The right to elect union representatives;
- The right to information for collective bargaining purposes.

Business and labour still need to decide at NEDLAC when a union will be representative so that it can qualify for these rights.

COLLECTIVE BARGAINING

There is no statutory duty to bargain. The Bill **empowers unions** to force an employer to bargain by providing all the necessary organisational rights for trade unions and fully protecting



the right to strike.

Recognition agreements and bargaining council (previously industrial councils) agreements will be **legally binding** and complaints about non-compliance are resolved by arbitration. Bargaining councils will have new functions such as:

- enforcing collective agreements;
- establishing training and education schemes;
- submitting proposals concerning policy and legislation to NEDLAC.

Many of the problems experienced with industrial councils have been addressed in the draft Bill. For instance:

- The Minister is obliged to **extend a council agreement to non-parties** at the request of the council. He can only refuse if the council does not allow an independent body to consider applications for exemptions from its agreements.

- All workers, whether they are covered by an industrial council or not, will have access to workable, **effective dispute resolution**.

- A worker who complains that an employer is **breaking the agreement** will not have to go to the criminal court, but can refer the matter to arbitration. This will be quicker and more effective.

▲ **Business leader JW Botha and Cosatu secretary general Sam Shilowa at the LRA Bill launch in Johannesburg**

- **Labour brokers** are treated as employers and councils can agree about which council covers a labour broker.

DISPUTE RESOLUTION

An independent, but state-funded Commission for mediation and arbitration of disputes will be set up and governed by a tripartite body. Its functions will include:

- conciliation of disputes;
- arbitration;
- providing advice to workers, unions and employers;
- providing training;
- publishing codes of good practice.
- compiling and publishing statistics;

The Commission will approach dispute resolution in an active way. It has the power to order parties to attend meetings and to produce documents relevant to the dispute.

LABOUR COURTS

There will be a national Labour Court, which will replace the Industrial Court.



▲ **Labour minister Tito Mboweni introduces the LRA Bill**

Judges will be appointed by the President of South Africa in consultation with NEDLAC.

Appeals from the Labour Court are heard by the **Labour Appeal Court** which is made up of three judges from the Labour Court.

THE RIGHT TO STRIKE

Workers have a fully protected right to strike, after following the following **simple procedures**:

- The dispute is referred to a bargaining council, if there is one, or to the Commission for conciliation.
- Steps will be taken to settle the dispute within a period of 30 days or any further period that may be agreed between the workers and employers.
- If the dispute is still not settled, workers can strike after giving their employer 48 hours' written notice.

Workers who agree to other procedures with their employers do not have to follow these procedures.

Workers do not have to follow these procedures, if:

- the strike is in response to an unprocedural lock-out;
- the employer unilaterally changes or

threatens to change terms and conditions of employment.

Where the strike complies with the law, **strikers cannot be dismissed**. The employer cannot interdict the strike nor can it sue the union or the striking workers for damages.

If a strike does not comply with the law, strikers can be dismissed but the employer will still have to show a fair reason for this and that it followed a fair procedure.

There are similar procedures for a **lock out**. If an employer locks-out after following the correct procedures, workers are not entitled to their wages during the lock-out, but if the employer provides accommodation or food to its employees then it cannot remove these during a lock-out.

Strikes are not permitted over disputes that can be resolved by arbitration or the Labour Court. This means that **strikes over dismissal will not be protected**. This is because the Bill provides an effective remedy for workers who were unfairly dismissed. They will be able to have their case heard, by an arbitrator, within weeks of their dismissal. If the arbitrator finds

that their dismissal was unfair, the worker will be reinstated.

FREEDOM OF ASSOCIATION

- Workers have the **right to form and join a trade union** and to participate in its activities.
- Trade unions have the right to draw up their **constitution**, hold their **elections** and **organise their activities** without interference.

Any worker who complains that an employer has tried to stop him or her from forming or joining a trade union or taking part in its activities can complain to a Commission. A Commissioner will try resolve the dispute by mediation, but if this fails then the matter will go to the Labour Court.

There will be a simple process of registration of unions.

WORKPLACE DECISION-MAKING

A trade union can apply to the Commission for the establishment of a **workplace forum** where there are at least 100 workers. Workplace forums are meant to exist alongside collective bargaining and not to replace it.

They have **consultation and joint decision-making functions** on issues such as restructuring, introducing new technologies and work methods and health and safety issues. They do not deal with matters such as wages and conditions of employment which are for collective bargaining.

Business and labour still need to decide at NEDLAC over which issues there should be consultation and over which issues there should be joint decision-making.

DISMISSAL

A dismissal can only be fair if it is for misconduct, incapacity or retrenchment. Whatever the reason for dismissal, an employer must first follow a fair procedure.

A worker who **complains of unfair dismissal** must refer the case to the Commission for mediation. If the mediation fails to resolve the dispute, the case will go to arbitration. If the arbitrator finds that the dismissal is unfair, the worker must be reinstated and not just given compensation.

An employer must hold extensive consultations with a union before it takes a decision to **retrench workers**. It must also give the union all relevant information to allow the union to come up with alternatives to retrenchment.

A retrenched worker is entitled to **severance pay** of one week per year of service. Where workers complain that they were unfairly retrenched, the case is heard by the Labour Court.

CLOSED SHOP AND AGENCY SHOP

A trade union that represents more than 50% of workers can enter into a binding **agency shop agreement** with an employer at the workplace or with an employers' organisation at industry-level.

Non-members are not obliged to join the union, but must pay an amount equal to the monthly subscription to a collective bargaining fund. This stops workers from getting the advantages of deals bargained by a trade union, without having to pay anything towards it.

Existing statutory **closed shop agreements** will continue in the interim.

ESSENTIAL SERVICES

The definition of **essential services** is the one accepted by the International Labour Organisation. It limits essential services to those where striking would cause loss of life or threatens the health or safety of the population.

The Bill does not set out a list of essential services, but leaves it to a specialist committee, appointed by the Minister of Labour in consultation with NEDLAC, to determine whether services are in fact essential. Because workers in essential services are not allowed to strike, the Bill provides them with compulsory arbitration to resolve their disputes.

Stay-aways or other forms of protest action are allowed provided the correct procedures are followed. These procedures are different to those that must be followed before a strike. The protest action must be authorised by a registered trade union or federation, such as COSATU and 14 days' notice of the protest action must be given to NEDLAC. ★

Does the draft meet COSATU demands?

The Workers Charter, Platform of Workers Rights and our 1994 Congress Resolutions have spelt out what we want in a new draft LRA. The Central Executive Committee (CEC) of COSATU will be taking a careful look at the draft law to see whether it meets our demands. This is an initial assessment – affiliates need to study the Bill carefully to see whether they agree with this assessment.

1. COSATU demand:

An LRA which gives effect to our constitutional rights to organise, bargain collectively and strike, which is in line with international standards, responds to the new economic and political situation and will strengthen the power of workers and their organisations.

Draft Bill:

- ✓ Will increase workers' ability to exercise their rights and bargain collectively.
- ✓ Is in line with the RDP
- ✓ Will deepen democracy
- ✓ Enhance the right to strike

2. COSATU demand:

Rights for all workers in a single LRA.

Draft Bill:

- ✓ Covers all private and public sector workers including farm and domestic workers for the first time. Excludes army and intelligence services.

- ✗ Excludes police.

3. COSATU demand:

All workers should have basic rights and organisational rights should be codified.

Draft Bill:

- ✓ Gives workers of representative unions the automatic right to hold meetings, stop order facilities, time off for union activities, information for col-

lective bargaining purposes etc.

- ✓ Criteria about what constitutes a representative trade union is left to further negotiation in Nedlac.

4. COSATU demand:

There should be the full right to strike

Draft Bill:

- ✓ Improved dispute resolution
- ✓ Strike procedures simplified.
- ✓ Complete protection against dismissal
- ✓ Does not require balloting.
- ✓ No more interdicts and no more taking of striking workers to court.
- ✓ No blanked essential services. Definition in line with ILO and alternate provisions made for such workers.
- ✓ Provision for picketing.

- ✗ Does not ban scabbing.

5. COSATU demand:

The lock-out should be regulated in the LRA.

The **Draft Bill** gives employers a recourse to the lock-out which would follow the same procedures as worker's right to strike. COSATU policy is that the lock-out should be regulated in the LRA.

The COSATU CEC will need to decide if they agree with the method of regulation outlined in the Bill.



6. COSATU demand:

A new framework for industry level bargaining including legislating centralised bargaining.

Draft Bill:

- ✓ Replaces industrial councils with "bargaining councils".
- ✓ Functions of councils extended to include education and training and industry as well as a proper role in dispute resolution.
- ✓ Agreements can be extended to non-parties.
- ✓ Promotes collective bargaining.

✗ Does not force employers to bargain at an industry level.

✗ No longer a criminal offence not to adhere to a Bargaining Council agreement.

7. COSATU demand:

A framework for workplace participation.

Draft Bill:

- ✓ Makes provision for workplace forums, to be initiated by unions.
- ✓ Paid time off for shopstewards to participate in these forums and for training.
- ✓ Employers to provide training and other facilities to ensure that trade unions have the capacity to participate in these forums.
- ✓ Disclosure of information.

Workplace participation and forums are introduced into the law for the first time. There are many questions that unions need to think about before we can decide on this part of the Bill.

8. COSATU demand:

Retrenchment and dismissal law to be tightened up.

Draft Bill:

- ✓ Workers who are unfairly dismissed, must be reinstated. Spells out what are

unfair dismissals.

- ✓ Guaranteed right to severance pay when dismissed for economic reasons.

- ✓ Payment linked to length of service.

✗ Employers to consult on dismissals for economic reasons. COSATU wants employers to negotiate dismissals.

✗ Strikes over dismissal disputes outlawed.

9. COSATU demand:

Dispute resolution must be cheap, accessible and speedy

Draft Bill:

- ✓ New Commission for Mediation and Arbitration to play an active role in promoting collective bargaining and preventing and resolving disputes.
- ✓ Industrial Court system to be replaced by a new Labour Court.
- ✓ New Labour Appeal Court, which is the final court of appeal.
- ✓ Simplified procedures and less need for lawyers.
- ✓ Unions consulted on appointment of judges (through NEDLAC).

The new Commission will need to be carefully looked at by COSATU.

10. COSATU demand:

Disclosure of information

- ✓ Disclosure of information for collective bargaining is an organisational right.
- ✓ Further disclosure of information will happen through workplace forums.
- ✓ Disclosure of information when there are retrenchments. ☆

DISCUSS:

- What do you think of the new draft LRA?
- Do you think that it will help workers?
- Will it increase the power of workers?
- What problems do you think there are?

If you want a copy of the draft law, contact your union office.

COSATU's programme of action



▲ **A THING OF THE PAST?** Workers will need to mobilise support to fight for certain changes to the labour bill

How will the LRA Bill become law?

On 2 February the draft LRA was presented to a meeting of all affected bodies such as the Public Sector Bargaining Council, Education Labour Relations Council, parliamentary Standing Committees and the press.

It has also been printed in the Government Gazette and all interested parties have been asked to comment by the end of March 1995.

The comments will be submitted to the Labour Market Chamber of NEDLAC as well as the bargaining councils for teachers and the public sector. These bodies will have to negotiate the draft Bill and reach consensus.

The draft Bill will then be submitted to Cabinet. Once Cabinet has approved the Bill, it will go to parliament to be debated and adopted. This should happen by the middle of the year.

This will be a busy time for COSATU and affiliates. Our roles and responsibilities are:

► **First**, we must know what the Bill says. COSATU is arranging regional workshops to explain the Bill to worker and union leadership. Affiliates should also hold discussions and workshops. Simplified copies of the Bill will be available from your union or COSATU office.

► **Secondly**, we must reach a common position as COSATU. Union structures need to discuss the new Bill and decide whether or not we agree with what it says and what changes we want.

► **Thirdly**, we must mobilise workers to fight for those parts of the Bill which we support and for changes to those sections we do not support. This will mean holding shopsteward councils, general meetings and worker forums.

If employers are very resistant, we may need to consider taking action.

► **Fourthly**, we must win support for our position. We will need to speak to and lobby other unions and union federations like NACTU, our Alliance partners and Members of Parliament.

► **Fifthly**, we will need to have a strong negotiating team and good mandating procedures. COSATU positions need to be well motivated and argued at the NEDLAC. We also need to ensure that our negotiators are properly mandated and that there are report backs to constitutional structures.

DISCUSS THE LRA BILL IN YOUR WORKPLACE!