LABOUR DEPT.

1994 - 1995
SA law ‘a threat to homeland jobs’

NATIONAL Manpower Commission (NMC) attempts to replace homeland laws with South Africa’s Labour Relations Act will eliminate jobs there, say employers.

The move could mean a sharp jump in homeland wages, which are up to a third lower than in SA.

Confederation of Employers of SA (CoFesa) director, Hein van der Walt, says the NMC is trying to rush through legislation replacing homeland with SA labour laws.

As a first step, the NMC hopes to extend the Labour Relations Act to Lebowa before the election to set a precedent for other former homelands, says Mr van der Walt. It also wants to extend SA labour laws to Ciskei.

Mr van der Walt says, “This is despite the fact that the Labour Relations Act contains provisions contrary to the new constitution, which guarantees the right of freedom of association.”

**By CIARAN RYAN**

“Companies in the homelands would have to join industrial councils, pay their levies, contribute to the medical and pension funds of the councils and be subject to the central bargaining system.”

Any advantage these companies received by moving to the homelands would be lost if the industrial council system was extended to them.”

Mr van der Walt says CoFesa will resist any attempt by industrial councils to establish a legal presence in the homelands.

NMC chairman Frans Barker says a postal vote is being taken among members to establish the amount of support for proposal to replace Lebowa’s labour law with the Labour Relations Act.

He says “There is a legal vacuum in Lebowa which needs to be filled urgently. We first need to find out which institutions exist there.”

Dr Barker says the NMC has also recommended that Bophuthatswana fall under SA labour laws and its industrial court. This does not mean, however, that SA industrial councils could simply extend their jurisdiction to the homelands. They would have to form industrial councils.

This matter will be contested by CoFesa. Mr van der Walt says “We believe any attempt to extend the industrial council system to the homelands before the new constitution becomes operative is illegal because it violates employers’ rights to freedom of association.”

He says industrial councils are trying to override the new constitution by hastily establishing a legal presence in the homelands.

The move will be challenged in the Constitutional Court.

Industrial councils, which receive their jurisdiction under the Labour Relations Act, regulate conditions of employment, minimum wages and other employee benefits and provide for the resolution of disputes. They are private organisations made up of employer and trade union representatives. Membership is voluntary, but their agreements are also binding on non-members regardless of their ability to meet the cost of compliance.

The number of industrial councils fell from 104 in 1981 to 91 in 1990. The number of employees covered by industrial council agreements fell from 1.27-million in 1981 to 800 000 in 1990.

Industrial councils say minimum wages prevent companies from competing with one another on the basis of pay.

The system is undemocratic and immoral,” says Mr van der Walt. “The industrial council system has a total disregard for the trade freedom of employers and the right to work.”
Industrial Court warned

THE Industrial Court should not become involved in legal arguments pertaining to lock-outs and strikes as they were not included in the unfair labour practice definition, says Umano mercantile law head Prof PAK le Roux.

Writing in the latest issue of Contemporary Labour Law, Le Roux welcomed a Labour Appeal Court decision which overturned an Industrial Court judgment in which the presiding officer expressed a clear wish to protect workers from what was considered “unfair employer pressure.”

The Labour Appeal Court judgment said: “The language of the Act is clear and unambiguous. A strike or lock-out cannot constitute an unfair labour practice.”

“It was the intention of the legislature that the Industrial Court should not be empowered to declare the weapons of employers and employees, lock-out and strike respectively, an unfair labour practice,” the judgment said.

Le Roux warned of uncertainty if the Industrial Court intervened where it was clearly legally prevented from doing so, and reminded officials of recent experience when the court was empowered to judge the fairness of strikes and lock-outs.

“An activist approach to judging the fairness of collective action will lead the court into controversial areas and, potentially at least, undermine its credibility,” he said.

However, Le Roux admitted that the Act was vague in its definitions of both strikes and lock-outs, which could allow court intervention in some cases.
The struggle may not be over.
No agreement reached on proposed merger

ERICA JANKOWITZ

DELEGATES attending a National Manpower Commission meeting yesterday had failed to reach agreement on the proposed merger of the commission and the National Economic Forum, commission head Frans Barker said.

Employers had requested more time to study the exact wording of the proposal before a final decision could be made. The next meeting was scheduled for August.

Labour commentators, however, said the parties were near deciding to merge the two bodies into a socioeconomic labour council, along the lines of similar bodies in Europe.

This would fit in with Cosatu's proposal that one body deal with socioeconomic policy as well as labour issues.

Barker said delegates at yesterday's meeting had decided to set up a subcommittee to discuss public holidays so that the commission could formulate a policy on the issue as soon as possible.

This would be an involved process as industrial council agreements, wage determinations, the Basic Conditions of Employment Act and the Public Holidays Act would have to be carefully studied.

All parties had nominated candidates to sit on the subcommittee, for consideration during caucuses.
ALAN FINE AND ERICA JANIKOWITZ

The World Economy SA Back into Labour Will Lead

Bain 3.16/4

Marketing

"The marginal productivity of labour is not the determinant of the wage, but the wage is the determinant of the productivity of labour." - John Maynard Keynes

The rise in a wave which in economic theory is described by short-run and long-run equilibrium is the result of an increase in the demand for labour. This increase in demand will cause wages to rise, leading to an increase in productivity. The process is recursive, as rising wages lead to increased productivity, which in turn leads to further wage increases. This cycle continues until the market reaches a new equilibrium point.

In this context, the role of labour unions becomes crucial. They are able to negotiate better wages and working conditions for their members, which can lead to increased productivity and economic growth. However, it is important to note that the relationship between wages and productivity is complex and depends on various factors, including the state of the economy and the level of competition.

In conclusion, the movement towards higher wages and better working conditions is not only beneficial for workers but also for the economy as a whole. It is a key factor in achieving long-term growth and prosperity.
Public holidays high on agenda

Big changes to labour laws in the pipeline

LABOUR Minister Tito Mboweni has proposed a five-year plan that will radically change SA labour relations.

Substantial changes were needed to most aspects of labour relations to ensure that the Labour Department played a role in the ANC's reconstruction and development programme, Mboweni told a Pretoria news conference yesterday.

He proposed a five-year plan of action, including thorough changes to labour legislation. A high priority was ensuring that an amended Labour Relations Act was presented to Parliament before the year-end.

Mboweni said new labour legislation would be more accessible and would ensure that all workers, including those in the former independent states, were granted basic collective bargaining rights.

Although most of the proposed amendments had been agreed within the National Manpower Commission, there was still "a number of issues to be discussed," he said.

He did not foresee a proliferation of labour legislation, such as laws controlling affirmative action and an incomes policy, as this would not fit in with his planned move away from the legal approach to labour relations.

Mboweni spoke of harmonisation, labour legislation to take the proposed amendments into account, but said it probably would not be extended to cover public sector workers at this stage.

"There will be substantial changes in the form and content of labour affairs over the next five years and the Labour Ministry will play a proactive role in this transformation," Mboweni said.

Rationalising the public holidays calendar would receive urgent attention and a task group had been established with this in mind. However, Mboweni warned that this was a complicated process as so many issues had to be taken into account before cancelling existing holidays or introducing new ones.

"But May Day will remain on May 1," Mboweni assured journalists.

He said the post of Manpower director-general, vacant since the resignation of Joel Fourie, would be advertised. Labour lawyer Halton Cheadle would join the department as adviser, with Leslie Maasdorp filling the position of economic adviser.

Mboweni welcomed SA's readmission to the International Labour Organisation, saying SA could benefit from the ILO's expertise in developing labour market policy and strengthening tripartite institutions of government, labour and business.

He said SA could use the technical assistance offered by the ILO in its realignment of labour relations policy and practice, and would fully participate in conference debates for the first time since its readmission 30 years ago.

"We have much to learn about labour market institutions and a good start is ILO conventions and recommendations," he said.

He said an SA delegation, including representatives from government, trade unions and the business community, would attend an ILO conference next week.
**LABOUR**

**DANGEROUS TRIANGLE**

**Before his departure for Geneva, where SA this week rejoins the International Labour Organisation (ILO) after 30 years, Labour Minister Tito Mboweni presented a brief overview of the direction in which he hopes to steer labour affairs.**

As a macro-economist he intends tackling such issues as skills and productivity, their link to growth, whether we need an incomes policy and how to deal with unemployment and job creation. He wants to move away from the legislastic approach and constant litigation associated with labour affairs in the past.

Hence his emphatic intention “to move more into the area of social partnerships” by strengthening tripartite institutions involving business, labour and the State. Developing a social partnership is important, he explains, not only because the National Economic Forum is already in place, but because it is necessary to the process of thorough economic reconstruction.

The issue of social partnership has become very political in the past year or two, he says, “as it became apparent that the unions would have an impact on the new government. However, some labour observers are sceptical about the idea being transplanted to this country. In the European context, for example, argues Gavin Brown of the journal *Contemporary Labour Law*, countries which have such partnerships are generally capitalist or social democratic politically, with cohesive institutions and the skills and economic expertise to make the system work.

In SA by contrast, the union movement is relatively small, though powerful (partly as a result of the political battle waged against “the system” during the Eighties), and it operates alongside massive unemployment — the main drawback.

With the trade union role now reduced to a more economic one, it is questionable whether the relatively privileged unions can be

**CURRENT AFFAIRS**

Mboweni, who expects that the ILO may help us strengthen some of our tripartite institutions, says social partnerships are important “to ensure that the challenges are dealt with from the point of view of a collaborative effort.”

He rejects suggestions that the union movement, in particular, has no role to play in shaping economic policy “We argue trade unions and business are as important in the restructuring process as any government action. And neither is the government irrelevant to this process.”

Labour affairs will in future be “national question-sensitive,” through a process of affirmative action, which would be important to situate this Ministry within the context of overall reconstruction and development. He adds that a lot of discussion has to take place about the actual form and content that affirmative action will take.

The Labour Department will also “have to be restructured not only to respond to the Reconstruction & Development Programme, but to take a lead as well in the process of implementing it, and the labour market approach which we want to develop.”

The Ministry will play an active role, “in the sense that this is not going to be a place where people bring petitions, as it to somebody who is not aware about what is happening in society. We are part and parcel of the social forces of transformation, and will try

**CURRENT AFFAIRS**

**to ensure that the issues we put on the agenda of the RDP are carried forward, in cooperation with the social partners, of course.”**

Before the year-end Mboweni hopes to table in parliament the amendments to the Labour Relations Act agreed on at the National Manpower Act (now the National Labour Commission). Harmonisation of labour law throughout the country, to include the former TBVC and self-governing territories, is another priority.

As asked whether a minimum wage will be introduced, Mboweni says that from the ANC’s viewpoint, this debate has not progressed beyond “knee-jerk” reaction. The US, he claims, has a minimum wage of US$1.25/hour, and the guiding principle here should be a “living wage” negotiated between unions and employers. He predicts that a major debate on this issue will soon surface.
Smoke-filled rooms

While government by consensus is the order of the day in other parts of SA, Inkatha and the ANC have since the election engaged in a series of skirmishes in KwaZulu/Natal which suggest a rough legislative passage for the province.

First came the issue of legal action against Inkatha by the ANC, alleging electoral fraud when the country went to the polls on April 27. That was quickly followed by the provincial executive committee (exco) wrangle and now attention is focused on whether to locate the provincial capital in Ulundi or Maritzburg.

Except for stung the capital, all the arguments have, after some verbal sparring, been resolved. The ANC last week dropped its electoral grape against Inkatha.

The exco issue has been settled amicably — after a stand-off which, according to Institute for Multiparty Democracy chairman Oscar Dhlomo, could have paralysed the legislature and led to the appointment of an administrator.

Attention has since switched to the provincial capital issue. Divisions are drawn sharply and passionately along party political lines and it prompts the question of whether the adversaries are setting a pattern of confrontation.

Will every move made by Premier Frank Mdlalose’s ruling faction be opposed by the ANC?

Dhlomo doubts it. He agrees that both parties are in the process of asserting themselves and testing opposition. However, he says, it is in their interest to work together.

“The result is that the province, like other parts of SA, will operate effectively on consensus. In some cases, agreement will be easy and in others it won’t.”

The wrangle over exco selection was just such a scenario, he says. Inkatha fired the first salvo, asserting its sole right as the ruling party to appoint an exco of provincial unity.

The ANC objected on the grounds that there was no negotiation over posts (as there had been for Mandela’s Cabinet) and because of dissatisfaction over posts allocated to it after consultation with the ANC suggests the round belongs to the ANC.

Resurgence

It is harder to determine who emerged victorious on the allocation of portfolios. Dhlomo says it is impossible to say without knowing the internal dynamics of the negotiations.

“But what was interesting was the emergence of a joint lobby from both parties to seek an amendment to the interim constitution allowing for the appointment of Deputy Provincial Ministers. If agreed to, this could give the ANC the representation in the police and education Ministries which it so desperately wants. It also shows that when the chips are down, the parties will work together.”

Dhlomo believes the issue of where the capital should be located is symbolic. “On Inkatha’s side, the feeling is that, as the ruling party, it has the right to locate the capital where it likes. And Ulundi was the site where the Zulus were defeated by the British in 1879; so the location of the capital there would symbolise the resurgence of the Zulu nation.”

“In contrast, the ANC sees Ulundi as a Bantustan edifice. Added to that are fears that ANC members will not be safe there. The death of party canvassers on the outskirts of the town on the eve of the election is still fresh in party minds.”

The obvious practical choice is Maritzburg.

Dhlomo is optimistic because he notes that “most (of the politicians involved) agree that the emphasis should be on implementation of the Reconstruction & Development Programme (RDP) and so they have common objectives — though the parties may differ on emphasis and issues such as how to implement it without incurring unmanageable debt or a crippling tax burden.

“There could also be differences over the role of provinces versus central government in its implementation. Buthelezi made it clear in his maiden National Assembly speech that he does not want the provinces to be subservient to central government on the RDP issue.”
Mboweni tackles labour laws

ESTABLISHING a single integrated labour dispensation for SA and its former homelands was a priority and would be developed within the framework of the reconstruction and development programme (RDP), Labour Minister Tito Mboweni said yesterday.

Speaking during a break in meetings with administrators of the former TBVC states, Mboweni said there were 11 separate labour dispensations which needed to be reviewed urgently.

His department's aim was to create and implement a new labour dispensation that is inclusive, transparent and in which disruption of services is minimised.

Discussions were also being held with organised labour and business.

One plan being floated was establishing a 10-member interim labour forum by June 24 to oversee the process. This would be supplemented by working groups investigating unemployment insurance, workers' compensation, administration and other labour functions. The forum would liaise with the minister and other parties, including State Expenditure and the National Manpower Commission.

Mboweni explained that his initial plan to extend existing labour legislation to cover previously independent states had been dropped because of the complexity of existing labour legislation, which was

Linked to such issues as workers' compensation and unemployment insurance.

Also, imposing legislation on these territories might lead to resentment.

The integration of labour departments in all areas had to be considered when establishing regional offices accountable to the central Labour Department.

Mboweni said he would probably table legislative changes during the August sitting of Parliament. He believed the face of labour legislation would change dramatically over the next five years and remove any doubts about the nature and extent of labour administration in SA.
NEWS Makwaeba family lose both daughters

Labour depts to be integrated

By Josias Charle

Plans to integrate and restructure South Africa's labour departments are at an advanced stage.

Announcing this at a Press briefing in Pretoria yesterday, Minister of Labour Mr Tito Mboweni said consultations were being held on a continuous basis with concerned parties.

These included unions and employer organisations.

The minister yesterday met officials from the former TBVC states who were responsible for the administration of labour.

"Basically we want to find out how we can restructure the departments into a single one and how we can integrate labour market policies and merge them with the reconstruction and development programme," Mboweni said.

He added that the mechanisms to harmonise labour law in the country had to be in place as soon as possible "so that all citizens, including those from the former independent states, can be under one law".

The process of consultation was expected to be completed by August 24. This would enable him to table legislation in Parliament during the August-December sitting.

Mboweni also said he wanted to be in a position to have basic guidelines to plan for the next five years. This would have to be carefully done so that when new labour dispensation is introduced, "it should be in a sophisticated and organised manner."

He said similar bilateral negotiations would continue to be held so that when the new law comes into effect it should enjoy the support of all people in South Africa.
New software system planned

The Department would like to
\[\text{continue to improve the system.}\]

The software would be
\[\text{updated to include new features.}\]

This would be done in phase with
\[\text{other improvements.}\]

In summary, the Department
\[\text{will make improvements to the system.}\]

The improvements would include:
\[\begin{itemize}
  \item \text{adding new features.}
  \item \text{improving existing features.}
  \item \text{fixing bugs.}
  \item \text{making the system more user-friendly.}
\end{itemize}\]
Born and bred in the Northern Transvaal — an area known for wanton exploitation of workers — Labour Minister Tito Mboweni is understandably determined to right past wrongs. But, as Political Editor Mathatha Tsedu discovered, it won't be smooth sailing:

new global economic reality

Mboweni says huge companies overseas are relocating to new areas, creating global villages where workers suddenly find they are working for the same company employing more people in various countries.

"Companies are following the markets and you find that Japan is moving into the US, while textile industrialists are moving to the East. The issue of company's restructuring for greater and stronger investments means that workers must also think big. Skills acquisition is going to be an all-important issue for, in the next few years, the highly skilled will survive, the skilled will benefit, while the unskilled will be a major burden on society," says Mboweni.

He says the interaction between his department and trade unions has been strengthened by visits and delegations to and by trade unions.

A major conference is being planned to look into the relationship between business, trade unions and government. A strengthening of this alliance is important if labour is to help the economy grow. This alliance should concentrate more on economic issues rather than legal ones, he says. This is in line with a five-year plan based on the Reconstruction and Development Programme.

Labour Minister Mr Tito Mboweni.

No new jobs

But farmworkers are not his only concern. Unemployment is another, and with good reason.

The Development Bank of Southern Africa showed that the job creation programme of the National Economic Forum created no new jobs between October last year and January this year. Between February and March, only 3415 jobs were created.

On the other hand, many people are losing their jobs, as figures released in a reply to a parliamentary question by the Employment and Training Minister showed. The number of people losing their jobs was 1293,745, while the corresponding figure for the end of the June quarter was 955,505.

The fact that his entire support staff, save for his secretary and media spokesperson, are white and "old order" people, creates not make the presentation and implementation of the grand plans easy.

Above all, Mboweni, an economist at heart, finds the absence of centralised statistics on labour quite appalling. For example, there are no statistics on migrant labour, trends and analyses of labour issues are also absent as a result of this lack of resources.

The department intends, as a result, to establish an Institute for the Study of Work, which will help this process, he says.

Mboweni may be a new man in labour, he may even be one of the youngest ministers, but he is at peace with the portfolio, and if success hinges on good intentions, he will make a good job of it.
Call for labour White Paper

LABOUR Minister Tito Mboweni called yesterday for a White Paper as a basis for developing an active labour market policy, following the first in a series of discussions with government’s social partners.

Mboweni said he would appoint a tripartite (labour, business and government) core team to oversee the implementation of a new policy aimed at regulating labour and employment relations. Names would be released later.

Cosatu representatives met labour officials at the weekend and looked at issues affecting labour and the formulation of a new labour market policy.

The most important development was the agreement that this policy would be national government’s preserve, and not fragmented at provincial government level, Cosatu general secretary Sam Shulowa said after the discussions.

The delegates reached common ground on several priorities and time frames on issues such as the need for a broad tripartite agreement on economic and labour market issues. A process should be implemented as soon as possible to ensure progress before the year-end.

Legislation under discussion included:

☐ An equal opportunities Bill regulating public and private employment practices;
☐ Harmonisation of labour legislation to incorporate the former homelands;
☐ The drafting of a new Labour Relations Act to bring labour law in line with the

Labour

Interim constitution, provide a collective bargaining framework and extend the operation of laws to all sectors.
☐ An urgent investigation into policies and laws which inhibit the right to strike;
☐ Drafting labour law amendments to give effect to international standards, such as training provisions and extending wage determination jurisdiction.

Mboweni said the Labour Department would assist trade unions in areas such as financial assistance for education and training facilities and the possible establishment of a research institution. Cosatu would submit detailed proposals.

On changes to the Labour Department, the parties agreed to establish a single labour appeal court by year-end. The department would also investigate expanding the social security net and improving the efficiency of service delivery. This would include establishing an effective mediation and conciliation service.
Strikes not serious – Minister

BY JOVION RANTAO
LABOUR CORRESPONDENT

Labour Minister Tito Mboweni and Business South Africa (BSA), an umbrella body of big business, have dismissed the hysteria caused by the current spate of wage strikes and disputes.

"It's nothing out of the ordinary. There has been a lot of over-exaggeration on the strikes. The only current major strike is at Peek 'n Pay."

Mboweni said.

Speaking after a consultative meeting with BSA on Friday, where he outlined his strategic five-year plan, Mboweni said the disputes experienced in the metal and mining industry had to go through the collective bargaining process before workers went on strike.

The Minister indicated that the National Manpower Commission (NMC) and the National Economic Forum would merge to form the Social and Economic Council of SA, the establishment of which would be subject to Cabinet approval.

Both the Minister and BSA chairman Dave Brink said the wave of strikes and disputes were consistent with wage negotiations currently under way. They said investor confidence had not been harmed by the industrial unrest.

Brink said business accepted that labour should have the right to negotiate, and to go on strike if it was necessary. But there was a need to lower temperatures and avoid violence.

The Minister's five-year plan includes:

- The need to facilitate an accord between labour and capital to give effect to the Reconstruction and Development Programme (RDP), and to reach broad agreement on key tasks identified in the ministry's proposed plan.

- The new Department of Labour needs to be transformed and regional departments restructured to give effect to transparency, representivity and emphasis on tripartism.

- Issues that need urgent attention include the Unemployment Insurance Fund, mediation and conciliation services, and the creation of a single labour appeal court.

- Integration of the various labour statutes under one labour law throughout SA. The NMC has already begun drafting a Bill in this regard.

- The drafting of a new Labour Relations Act in line with the relevant requirements of the constitution, the RDP and the fact-finding and conciliation commission.
Minister Mboweni has big plans for his department
A new labour era dawns

THE Star 18 January 1996

The Labour Ministry is determined to provide the best legislative framework possible to regulate and minimise industrial disputes. Plans are in the pipeline to have a revised Labour Relations Act on the statute book by this time next year, writes PATRICK LAURENCE.

There will always be tension between capital and labour because they pursue fundamentally contradictory interests, Labour Minister Tito Mbhoweni remarks philosophically.

Employers strive to increase their profits while employees seek to raise their wages. He quotes an aphorism coined by one of the legendary figures of South African trade unionism, Emma Mashinini. "Strikes will follow me for the rest of my life."

Mbhoweni hastened to add that it is important to ensure that the adversarial relationship between owners, or managers acting on their behalf, and workers is not aggravated by inadequate legislation. His ministry is determined to provide the best legislative framework possible to regulate and minimise industrial disputes.

Plans are in the pipeline to have a revised Labour Relations Act on the statute book by next year's round of wage negotiations.

Seated in his 12th-floor office in Cape Town's old Union Buildings, Mbhoweni, who has made 120 Pien St in Goodwood his home, says he is "a diagnost of the present round of strikes, which has created images of incompetent anarchy."

The period between March and August is wage negotiation time. Old agreements come up for reassessment and renewal.

While the Labour Relations Act provides for annual wage negotiations, the current succession of strikes must be seen in context.

The number of "labour hours" lost is not given. Mbhoweni eschews the usual phrase "manhours" — was high in 1980 and "very high" in 1981. In 1982 and 1983, however, the graph dipped as workers concentrated on mass marches and demonstrations. The trend continued in 1984 until Nelson Mandela's inauguration as president on May 10.

"In June and July, people began to concentrate on wage negotiations. Some potential disputes were defused by wage agreements, notably in the clothing industry."

squabbly — he appointed a mediator under the relevant section of the Labour Relations Act — helped end it.

On the dispute in the motor industry he expresses confidence that the maturity of both sides — the National Union of Metalworkers of SA and the Automobile Manufacturing Employers' Organisation — will result in a settlement.

Mbhoweni returns to his initial point: the contradiction between capital and labour. The Government cannot hope to resolve the contradiction. To expect it to do so is to misunderstand the situation.

There is, however, another factor behind the rash of strikes.

Having helped end political apartheid, workers want to end racism in the workplace.

The conversation turns to another fundamental point of departure in the thinking of the Labour Ministry: the need to revise and update the Labour Relations Act. The many difficulties are experienced with the present Labour Relations Act.

Mbhoweni says he has reflected some procedures for the settlement of disputes are too complex, a factor which might contribute to the loss of productivity through industrial disputes.

Mechanisms for the registration of unions are similarly too complex (meaning, perhaps, that workers might operate outside the legislation framework).

Restrictions placed on political affiliation by unions are too complex and might even be unnecessary.

"The law does not say anything about workplace democracy," which is of central importance to workers because attainment of democracy in the political field has made them impatient with obsolete practices in factories and shops.

There is another major deficiency: the Labour Relations Act does not cover all workers. Excluded from its ambit are many workers in the public sector, including teachers, nurses and public servants.

The question of whether these workers should be brought under the aegis of a revised industrial relations law has to be addressed urgently.

On the danger of crippling strikes in the public sector, Mboweni says: "I don't want to bring in the police. I want to prevent the police from coming into the labour relations process."

The exhibition is impressive in its variety. With pride Dowson shows off the sand painted and engraved into rocks, explained linocuts and brightly coloured contemporary paintings. The care he has taken to release Bushman art from the minor role it which serves to maintain ties with other groups of people outside of family and marriage relationships.

A quote from a Bushman text explains the idea well: "The worst thing is not giving gifts. If people do not like each other but one gives a gift and the other must accept, this brings a peace between them. We give to one another always. We give what we have. This is the way we live together."
Mbombe has added to his initial point the contradiction between capital and labour. The Government cannot hope to dissolve the contradiction to expect it to do so in a manner which is enlightened and in tune with world trends.

There is, however, another factor behind the rash of strikes.

Having helped end political apartheid, workers want to end racism in the workplace.

The conversation turns to another fundamental point of departure in the thinking of the Labour Ministry—the need to revise and update the Labour Relations Act.

"Many difficulties are experienced with the present Labour Relations Act," Mbombe says. He enumerates some of the issues:

- Procedures for the settlement of disputes are too complex, a factor which might contribute to the loss of productivity through industrial disputes.
- Mechanisms for the registration of unions are similarly too complex (meaning, perhaps, that workers might operate outside the legislation framework).
- Restrictions placed on political affiliation by unions are too complex and might even be unnecessary.
- The law "does not say anything about workplace democratisation," which is of central importance to workers because attainment of democracy in the political field has made them impotent with obsolete practices in factories and shops.

There is another major deficiency: the Labour Relations Act does not cover all workers. Excluded from its ambit are many workers in the public sector, including teachers, nurses and public servants.

The question of whether these workers should be brought under the aegis of a revised industrial relations law has to be addressed urgently.

"On the danger of crippling strikes in the public sector—where two of the most militant of the newer unions, the South African Teachers' Democratic Union and the National Education, Health and Allied Workers' Union, are preparing for battle on the wage front—Mboweni maintains a tacit silence.

However, these agreements have been noticed or have been forgotten because of the prominence given first to the dispute between the South African Commercial, Catering and Allied Workers Union and Pick 'n Pay, and, more recently, in the motor industry.

Mboweni takes a positive view of these disputes. He says his intervention in the SACCAWU-Pick 'n Pay wage

LABOUR MINISTER: Tito Mbombe takes a positive view.
Tito appoints labour team

LAUROUR Minister Tito Mboweni yesterday appointed a legal team headed by his adviser lawyer Balton Cheadle to draft a new Labour Relations Bill.

The team was appointed after Mboweni consulted the National Manpower Commission and the Cabinet.

Its submissions will be submitted to the Cabinet and, if approved, new labour legislation could be tabled in Parliament by next year's round of wage negotiations.

The team is Cheadle, lawyer Ray Zondo, who served on the Goldstone commission committees, Amanda Armstrong, a partner in law firm Cheadle, Thompson & Hayson, Rand Afrikaans University associate professor of labour law Willem de Roux, and Anglo American legal advisor Andre van Nickerk.

At least three international legal experts would be consulted regularly. However, Industrial Court president Adolph Landman was not included in the team.

Ministry spokesman Sharen Singh said "the process is meant to expedite the formulation of a new Labour Relations Act. The Minister would like to see a new Act in place when the next round of wage negotiations takes place next year."

The team's terms of reference included giving effect to government policy as reflected in the reconstruction and development programme, recognising trade unions' fundamental organisational rights, promoting and providing collective bargaining in the workplace and, at industry level, addressing the articulation of different bargaining levels.

Labour team

The constitutional right to strike, subject to reasonable and justifiable limitations, had to be entrenched, it said, adding that lock-outs also had to be regulated.

Meanwhile, the existing 11 Manpower or Labour Departments, including those of the former homelands, would be rationalised into a single labour dispensation.

Jogge Kastner was appointed acting director-general to ensure a smooth process of rationalisation. He would remain in the post until it was filled.
Legal team to draft labour Bill

Labour Minister Tito Mboweni appointed a legal team to draft a new Labour Relations Bill after consultations with the National Manpower Commission (NMC) and the Cabinet yesterday.

The team is to be headed by Professor Halton Cheadle and will also include attorneys Ray Zondo, Amanda Armstrong, Professor Willem le Roux, Andre van Neerk and a State legal adviser.

The team will work in consultation with at least three international legal experts on a regular basis.

Expectations from the draft are to:
- Give effect to Government policy as reflected in the RDP.
- Give effect to public statements and decisions of the president and the Minister, which, among others, commit the Government to the findings of the fact-finding Conciliation Commission of the International Labour Organisation.

The drafting team will submit the draft to Mboweni, who will in turn submit copies to the Minister of Public Administration and the Minister of Education. The Ministers, in conjunction with the drafting team, will finalise the draft Bill.

It will then be submitted to the NMC — including its agricultural subcommittee — the Public Service Bargaining Council and the Education Labour Relations Council for their consideration and comment.

Parallel to this process, the Minister will publish the draft Bill in the Government Gazette and invite members of the public to submit their comments.

The Minister will then submit the Bill to the Cabinet for its approval and, finally, the Minister will table the Bill in Parliament — Staff Reporter.
Labour Act legal team constrained by deadline

ERICA JANKOWITZ

THE Labour Ministry-appointed legal team charged with rewriting the Labour Relations Act would have major time constraints on meeting its deadline, leaving much of the detail to be drafted by existing bodies, Wits University’s Centre for Applied Legal Studies researcher Rob Lagrange said yesterday.

He said the National Manpower Commission’s successor — the National Economic, Development and Labour Council — would need to develop codes on specific issues such as picketing and bargaining levels. These would be included in the redrafted Act once agreement on content was reached.

Speculating on possible changes to the Act, Lagrange said these were likely to reflect concerns highlighted by the International Labour Organisation’s fact-finding and conciliation commission. Some areas of change were:

☐ Simplifying existing dispute procedures to avoid many of the technical objections which currently hold up this process;
☐ Placing more emphasis on effective conciliation mechanisms as a first attempt to resolve disputes by encouraging parties to seek mediation before going to court or resorting to strike action;
☐ Greater emphasis being placed on establishing collective bargaining structures, if Cosatu is able to exert sufficient influence;
☐ Attempts being made to delineate relationships between the different levels of bargaining to eliminate conflicts; and
☐ The possibility of allowing unions greater freedom of access to company premises and the simplification of stop-order procedures.
No, Minister

Major issues of principle have been avoided to nobody’s advantage.

Mboweni, in contrast with some of his Cabinet colleagues, seemed reluctant at the recent Cosatu congress to grasp the nettle. Indeed, some of his unrealistic suggestions went further than any unionist could reasonably have wanted — and he may have to deal later with unnecessarily raised expectations.

Mboweni let slip recently that he has had to remind some of his Cabinet colleagues about “where we come from.” For example, he continued, “some Ministers were very keen that at Mooi River (during the recent truckers’ blockade) some strong action was taken.” In the event Mboweni’s coaxing intervention eventually defused the truckers’ blockade and also helped to settle the Pick ‘n Pay strike — but he does recognise that the Minister cannot be putting out fires all the time.

As an economist, Mboweni once said, he did not see himself being Minister of Labour — but “I couldn’t say no to Mandela when he appointed me.” This unwillingness to answer in the negative now seems to extend to the unions themselves.

Mboweni said that he wants to focus on “how labour can play an important role in the re-integration of the SA economy internationally and become centrally involved in issues of competitiveness and globalisation.” Broad statements such as this suggest that he is in touch with the political realities facing the country. But he left it to colleagues Trevor Manuel (Minister of Trade & Industry), Alec Erwin (Deputy Finance Minister), Jay Naidoo (Minister responsible for the RDP) and President Nelson Mandela himself to dole out the nasty medicine to delegates at Cosatu’s fifth national congress last week. With conviction, these Ministers and Mandela spoke of the need for tightening belts, fiscal discipline, improving the supply side of the economy, greater productivity and proactive steps with regard to tariff reduction and industrial restruc-
argued, saying that no tripartite institutions (between labour, business and government), which he strongly favours, can succeed without conciliation. This must also ensure “disciplined action, so that we don’t have to spend nights in Mooi River.”

To his credit, Mboweni emphasised the point that “we are operating in a changed political situation” — parliament is dominated by MPs from the former liberation movement and “failure to understand this means business as usual, which it is not”. This was Mboweni’s diplomatic way of telling the unions they are no longer engaged in a liberation struggle and must moderate their approach accordingly, it must be welcomed — if it got across to delegates at all.

Previous parliaments had had a link with business and had ensured there were no progressive laws, Mboweni went on. This has now changed, he said, urging Cosatu to open an office in Cape Town from which to lobby parliament in the way that business does. Rather mysteriously, he seemed to suggest that he was under siege from hostile questions in parliament, which get relayed by the media and thereby mould public opinion, it was important that Cosatu provide counter-publicity of its own to assist him in his task of bringing in progressive laws. Within parliament, he added, there are “opponents of democratic transformation engaged on a major project to destroy the alliance between the ANC and Cosatu. We must sharpen our skills else the road ahead will be difficult.”

Such language suggests that Mboweni sees himself as a spokesperson for organised labour, as opposed to being a Minister responsible for a portfolio which must concern itself with a variety of interest groups. This is an unusual concern. In last week’s parliamentary debate on the Labour Veto, said Mboweni, he had found himself “in the strange position of having to defend the trade union movement, collective bargaining and the motor strike.”

Despite the Nat onslaught in parliament against the ANC’s alliance with Cosatu, Mboweni said, “there’s nothing to apologise for and nothing to hide”. The Cosatu congress cheered — and was pleased to hear the Minister’s opinion that the unions had for too long been excluded from playing a part in social transformation.

As if to drive home his message of solidarity, Mboweni then outlined a programme of action designed to bring changes in the labour front. A five-year plan aimed at strengthening the alliance is being finalised and he intends putting in place a system of labour reforms through a new Labour Relations Act (LRA).

Mboweni says he basically wants the new Act to ensure the sound regulation of the workplace, entrench the right of representation, unionise employees if it results in more decentralised collective bargaining, including plant-level agreements on remuneration — as was advocated by employers in the recent motor industry strike Employers, while not rejecting national and industry level negotiations for setting market policy, targets or minimum standards, have rightly argued for plant level profit sharing agreements.

Mboweni should have been more forthright about this. Instead he only made a light-hearted mention of the fact that he gets complaints “every day” from small businesses over the extension of industrial council agreements to non-parties. He stopped short of saying that he thought the small businesses had a point — and that their success is vital if the economy is to grow. Perhaps he implied as much (drawing knowledge from the delegates) when he asked whether the owners of spaza shops comply with the law regarding working hours and basic conditions.

Mboweni also envisages a simplified and more expedient Industrial Court, including a small claims division. There will be consultation all round, and the law is promissory to be ready by next April, before the next round of wage bargaining.

The intended changes to the Basic Conditions of Employment Act went down very well with the Cosatu delegates, though it is not clear when Mboweni sees them coming into play. He wants to increase the minimum statutory leave period from 14 days to 21 days, put an end to dismissal on account of pregnancy, entitle workers to examine all employer records, and extend to part-time and temporary workers the benefits of annual and sick leave. All this, he wryly notes, should provide for major debate in parliament. Increasing minimum leave won’t have too big an impact on productivity, according to some observers and (as with ending the dismissal of pregnant women) the proposal has some merit. But some of his other ideas seem naive — and what about productivity agreements?

The Minister’s idea of a phased reduction of the working week to 40 hours from the present 46 hours and an eight-hour working day sounds like kite-flying. For a start, it would mean increasing companies’ wage bill by 16%-18%, says consultant Gavin Brown. And it cuts across everything Mandela told the Congress about the need for “tightening belts” and working harder in order to improve productivity and industry’s international competitiveness. This unpopular message was courageously reiterated by Manuel and Erwin, a former Cosatu stalwart, who told the congress that while it was good to be home, his message would not be popular.

Mboweni would also like to amend Section 100 of the Insolvency Act, so that workers (and not only banks and other creditors) are also taken into consideration when companies go bust. This seems fair enough. And the Minister intends developing a national labour market policy and is about to appoint a commission soon to make recommendations.

But there are unpopular measures that are urgently required but which Mboweni did not mention (even though his team redrafting the LRA is expected to address it) a code of conduct for strikers. Most employers, says Gavin Brown, will be quite willing to accept greater protection for strikers (against dismissal, that is), provided that at a minimum, he said, by strict rules on strike conduct and violent behaviour.

Clear regulations on what is acceptable and what is not are needed. In line with the constitution’s protection of the individual’s rights, such regulations should prevent intimidation of those who wish to cross picket lines. Workplace occupation and intimidation of “scabs” or the public could be countenanced and be punishable by law. The inevitable corollary of the right to strike is the right to work, notes Brown. There is also the right of the citizen to go about his business, unhindered by truck blackouts.

And there are certain sectors — such as the security forces — where the right to strike should not only be restricted but be withdrawn completely.

These are issues to which Mboweni does not appear to have applied his mind. Yet they go to the heart of what is required in labour law and practice: if democracy in the society as a whole is to be upheld, Mboweni’s recommendations on matters such as wages and maternity leave may well have merit, but they are essentially procedural and subject to negotiation. Sadly, in his understandable desire to be nice to the workers, he seems to have ducked major issues of principle confronting his portfolio. On the positive side, though, there has been little mention of minimum wages and the closed shop.
Possible end to Industrial Court 'demotivates staff'

PROPOSED changes to labour law which included phasing out the Industrial Court in favour of a multifiltered system for dealing with industrial disputes, did little for staff motivation, Industrial Court president Adolph Landman said yesterday.

'There is widespread speculation, with some foundation, that the Industrial Court will be replaced by two new institutions — compulsory conciliation for all disputes and a labour court on a par with the Supreme Court and staffed by Supreme Court judges,' Landman said.

Landman, who was appointed to his post 18 months ago and who has been instrumental in cutting the waiting period for cases to be heard from an average of 10 months to five, described staff morale as very low.

'We are on the horns of a dilemma — we are probably going to be phased out, but what do we do in the meantime?' Landman asked.

The existing case load would keep the court going for about 10 months at the current rate of hearing about 500 cases a month.

The outflow of cases had exceeded the inflow of new cases since February, and the court was making significant inroads into its backlog.

In September, the four regional divisions of the court handled 523 cases, leaving 5,033 on hand.

The court handled about 500 cases a month and was working under intense pressure, Landman said.

Its aim was to reduce the waiting period in the PWV from five months to about three months. This target had been reached in Cape Town and the planned three new appointments to the Durban court would help reduce the load there.

Only about 0.5% to 1% of cases handled fell under the Agricultural, Public Service or Education Labour Acts as this side had yet to take off.

The Pretoria court had been expanded by an additional 11 courts in the Paulshof building, bringing to 21 the number of courts in the area.

Plans were still afoot to establish courts in Johannesburg and Landman was looking for suitable premises.

The Industrial Court recently advertised for 12 new posts and had received 65 applications which were being sorted through.

Currently about 25% of presiding officers were black or female and there were plans to increase the representativeness of officers.

But the freeze on public service appointments meant replacements for the eight recent resignations from administrative staff could not be found, placing an additional load on personnel. He attributed the resignations to insecurity as a result of the possible phasing out of the Court.

He said some delays were caused by the apparent inability of unions to find and pay for legal representation.

He singled out Numsa in the Eastern Cape.
**Industrials court calendar 'hopelessly overloaded'.**

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**Danger spot: No 1 Tokoza is no longer.**

*Hard won peace not to be given up lightly.*
Court orders long delays

Science organization to be revamped

CPR 4, 2000

The government has ordered the revision of the organization to expand the

Religion Service

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CPR 4, 2000

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Religion Service
Manpower Forum is

Finally wound down

Public Service salary plan on the cards
New top staff for labour dept

Trade unionist Mr Sipho Pityana has been appointed director-general of the Department of Labour, Labour Minister Mr Tito Mboweni announced in Pretoria yesterday.

Two deputy directors-general have also been appointed.

They are trade unionists Mr Les Kettleidas and Mr Joachim Kastner.

Kastner has been acting director-general of the department since June last year.

Combined experience

Mboweni expressed confidence that the combined experience and expertise of the new top management would “enhance the face and image of the new Department of Labour”.

Their appointments will be effective from March 1 this year.

Image change

Three trade unionists appointed to top positions:

Pityana (35): presently the registrar of the University of Fort Hare.

Having spent nearly 10 years in exile, he studied at the universities of Essex and London and holds a Master’s degree in Politics and Sociology.

He has done extensive research on labour-related matters and was a key negotiator in the formation of the Council of South African Trade Unions.

Pityana currently acts as consultant and advisor to several bodies, including the Ministry of Education.

National secretary

Mr Kettleidas (46): has been a trade unionist for more than twenty years and served as national secretary of the National Union of Metal Workers.

Civil servant

Kastner (50): holds a Business Administration Honours degree and has been a civil servant throughout his working life.

Mboweni appointed as him acting director-general in June last year.

“We will end up with a new management team to enhance the ability of the department to realise its objectives with respect to the reconstruction and development programme.” — Sapa.
Mboweni names trio

PRETORIA. — Labour Minister Mr Tito Mboweni yesterday announced a new non-racial management team to oversee labour department matters.

Mr Sipho Pityana, currently the registrar at the University of Port Harcourt and a former trade unionist, was appointed director-general of the department.

Mr Les Kotelides, a long-serving trade unionist in the motor industry, and Mr Joggi Kastner, the department's present acting director-general, were named deputy directors-general.

Their appointments will be effective from March 1.

"Basically, the Department of Labour is under new management," Mr Mboweni told a news conference here.

"I am confident that the combined experience and expertise of the three will significantly enhance the face and image of the new Department of Labour." — Reuter
US pension funds

attention back on SA

Council heads call for

Labor Minister to withdraw pension proposal

Fort Hare Registrar gets top job
Mandela unveils new council to cut labour unrest

JOHANNESBURG — President Nelson Mandela today unveils a new partnership government, labour and business which is expected to reduce the labour unrest which has characterised South Africa’s industrial relations.

At the Gallagher Estate in Midrand Mr Mandela will launch the National Economic, Development and Labour Council (Nedlac), a merger between the National Economic Forum and the National Manpower Commission where labour, business and government are represented.

About 300 delegates are expected.

Former trade unionist and political activist Jay Naddo is the executive director of the new institution, which is statutorily charged to consider all changes to labour legislation and all significant changes to socio-economic policy before it reaches parliament. It will therefore play a significant role in the formulation and implementation of new government policy.

Says Mr Naddo: “This body is a negotiating forum between four constituencies: government, labour and business and the community. It will make agreements on matters concerning social and economic issues. It considers all labour legislation before it is introduced into parliament. It will also consider any significant change to social and economic policy before implementation.”

This is a potential partnership between government and civil society at national level and will change the way disputes are dealt with.

Nedlac will be made up of the executive council and four chambers representing labour, trade and industry, development and public finance and monitoring.

NEW CHIEF: Jay Naddo heads the new institution.

Mr Mandela will deliver the keynote address, which will be chaired by Deputy President Thabo Mbeki. Other speakers include Minister of Labour Tito Mboweni and President of the Congress of South African Trade Unions (Cosatu) John Gomoh.

Mr Naddo says Nedlac is being created because the government realises the need for co-operation of all the four constituencies that are represented on the body.

“Every constituency is equal and independent and that includes government.

“If there is a failure to reach an agreement each party can proceed with whatever steps it intends to take. But inevitable there will be pressure to reach agreements. There will be no barriers to reach agreements. This is a unique institution which will strengthen our democratic process,” says Mr Naddo.

This body is "pot solely responsible for transforming the country," he adds.
Dispute delays council’s launch

By Ray Hartley, Parliamentary Correspondent

South Africa’s business leaders have agreed to reshape the council that will oversee the National Economic Development and Labour Council to see presidential Mission to South Africa’s business leaders.

The launch of the National Economic Development and Labour Council was held in Pretoria. The council was set up to coordinate economic policies and initiatives that affect businesses and financial markets.
Industrial Court faces collapse

FAILURE to address the problems facing the Industrial Court could lead to its collapse, Federation of SA Labour Unions (Fedsal) general secretary Dainhuwah van der Merwe warned yesterday.

Van der Merwe was reacting to the resignation of the court's president, Adolf Landman.

Staff shortages, low staff morale and lack of resources suffered by the court would increase the backlog in the handling of cases, he said. This could be further exacerbated as more applicants approached the court once legislation was passed extending its coverage to more workers.

Prof Willem le Roux, one of the members of the team commissioned to draft the negotiating document on the Labour Relations Act, said he could not see how the proposed new system would work if the current system had failed.

The necessary funding and other resources would give it a greater chance of success.

Prof Martin Brassey of Witwatersrand University said Landman's resignation and other problems indicated that "if a limited system could not operate properly on a limited budget, it will be challenging to see how the new system operates with the additional workers having access to court."

He said the court would continue functioning even when the proposed new legislation came into effect, processing disputes under the old Act.

The Labour Ministry said it was unfortunate that Landman had decided to resign. At this stage no decision had been taken on whether to accept the resignation.
New Law on Cards to Promote Informal Sector

S 6.

Colin Douglas

(534)

Promote informal sector

of African Life.

IFC buys 8.8%
Small means big in rural areas

By Kevin Dave

The commission hopes to focus on rural development and the provision of rural financial services to help alleviate the problems faced by rural areas. The commission sees this as a way to improve the quality of life for rural residents. It believes that rural areas can be the engine of economic growth if given the necessary support and resources.

The commission proposes a new approach to rural development, which involves the:  
- integration of rural and urban areas to create a more balanced economic landscape.
- enhancement of rural infrastructure to improve connectivity and accessibility.
- promotion of agricultural and related businesses to create job opportunities.
- development of tourism and other related industries to diversify the economy.

The commission also emphasizes the importance of education and skill development to ensure that rural youth have access to quality education and training. This will help them develop the skills needed to participate in the modern economy.

The commission believes that rural development is not just about infrastructure and economic growth. It is also about improving the quality of life for rural residents, which includes access to healthcare, education, and other essential services.

The commission is confident that with the right support and resources, rural areas can become vibrant and prosperous communities, contributing to the overall economic growth of the country.
Hawking controls only by September

MUNICIPAL REPORTER (153A)

The law on street hawking will only be tightened in September, according to city planner Mr. David Daniels CT 14/6 95.

He told the City Council's economic development committee this week that provincial authorities' consultations with various stakeholders would continue until late this month.

The Businesses Amendment Act allows control of hawking via by-laws, after the Business Act deregulated it several years ago.

The provincial department of economic affairs is, however, considering legislation that will be valid throughout the province.
SINGLE MANAGEMENT COMPANY FORMED

End to trade feud in Mitchells Plain

AFTER years of infighting, formal and informal traders operating in Mitchells Plain town centre have united to form a management company. CHRIS BATEMAN reports.

In a ground-breaking move aimed at setting the trend for trade relations in the Peninsula, the formal/informal trader feud in the Mitchells Plain town centre has ended with the creation of a single management company.

A delighted Mr Tomie Botha, acting head of trade and industry for the Western Cape, said this was the result of intense negotiations after years of "headaches" for the City Council in attempting to "create some kind of order."

The management company will consist of two members each from the Stall Holders' Association, the Mitchells Plain Traders' and Hawkers' Association, the Mitchells Plain Police Forum and the Merchants' Association.

The first breakthrough came when the informal sector traders got together and formed a single organisation.

The council then agreed to negotiate all future leases and deals with the new company.

The company will also be responsible for security, refuse removal, open walkways and general control and administration in the busting square.

It has the full backing of regional police commissioner Lieutenant-General Andries Beukes.

Police fear some gang retribution following the new deal and have stepped up patrols to ensure the hard-fought deal is not destroyed by the "mafioso".

Hawkers

Mr Botha said it "looks as if we've finally reached the end of the road on this one", adding that all informal traders and hawkers were setting up an umbrella body for the Peninsula.

Other important negotiators were deputy city administrator Mr Alan Dolby and Mr Mark Jasson, head of regulatory services in Mr Botha's department.
Hawkers want better facilities

BY BONGIWE MLANGENI
CITY REPORTER

Hawkers at the Baragwanath taxi rank outside Soweto are appealing for the council to speed up the upgrading of trading facilities in the area.

Baragwanath hawkers association spokesman Connie Makhubu said the council was dragging its feet on the matter.

The Greater Johannesburg Transitional Metropolitan Council said it was discussing the issue.

Makhubu said traders needed toilets and water. She said there were more than 300 traders using one block of toilets.

"We always have to duck bullets and run for life, leaving our stalls unattended. It is important that our safety should be seen as a priority," she said.

A council report said the upgrading would take place in phases but did not say when it would begin.
Achib wants inclusion in Nedlac

By Isaac Moledi

The African Council of Hawkers and Informal Business vowed to ensure that the organisation is represented at the National Economic Development and Labour Council and other local and regional authorities.

The resolution emerged after the organisation's two-day annual general meeting at New Horizon Conference Centre, Wilgespruit, at the weekend.

The conference, which retained Lawrence Mavundla as Achib president for another year, also resolved to establish 15 micro entrepreneur development banks before May 10 next year, the organisation's 10th anniversary. About five banks are expected to be established in each region.

Achib statement says the organisation should ensure that it has representation at Nedlac "even if this means going there alone."

No method

Although no method of how this would be achieved was established, Achib added that it would also ensure that the organisation is well represented at the local and regional government chambers.

Other resolutions include:

- The launching of a mass micro enterprise training campaign to all its members,
- That Achib ensure that local authorities are forced to built toilets and provide mass waste removal facilities, and
- That Achib negotiate with the Department of Housing at local and regional levels on behalf of its members, so that they also qualify for the subsidy scheme.
Pumping Life Out of Lesotho

By Thabo Mokhahlo

To think for the Basotho, not be any drop to
South Africa but there immensely benefit
Project will

The Lesotho Highland Water

59/8/7

(Southern)
Bid to cut industrial court backlog

Edward West

CAPE TOWN — The Industrial Court and Independent Mediation Services of SA (IMSSA) have planned a week's programme to reduce the backlog of 300 industrial court cases in Cape Town by pioneering the new approach in the Labour Relations Bill.

Between November 6 and 10 a Settlement Week would be held in Cape Town in an attempt to persuade parties to settle disputes voluntarily through the use of outside mediators and arbitrators, thereby pioneering the new approach to dispute resolution in the Labour Relations Act.

According to the Industrial Court and IMSSA, most of the lengthy cases involved claims of unfair dismissal of individual workers.

Others involved mass dismissals, interdicts on issues such as pickets, demarcation disputes and interpretation of contracts.

IMSSA mediators and arbitrators would be available at no cost to the parties to settle disputes during the week.

The programme hoped to go a long way towards "clearing the decks" before the introduction of the new labour system early next year.

Labour Minister Tito Mboweni's special adviser David Lewis said the previous dispute resolution system, consisting of conciliation at industrial councils and conciliation boards, had been ineffective, wasting resources.

"We are told only 30% of all disputes referred to industrial councils are settled there. In the case of conciliation boards the position is even more unfortunate. Only 20% of all disputes are settled there." About 6500 cases awaited hearing at various seats of the industrial court, he said.
Worker disputes backlog to be settled

JACQUELYN SWARTZ
Staff Reporter

ABOUT R2 million is to be spent clearing a backlog of more than 6 500 unresolved worker-employer disputes countrywide, including 680 cases in the Western Cape.

The bulk of them — more than 4 000 — are in Johannesburg.

Details of the National Settlement Week programme were announced yesterday by the Independent Mediation Service of South Africa (IMSSA).

The Industrial Court outlined details of a programme to be held in Cape Town between November 6 and 10.

The Cape Town programme, which follows a National Settlement Week in Durban and precedes one in Johannesburg, is aimed at reducing a backlog of 680 cases.

Run simultaneously with settlement attempts in Port Elizabeth and East London, it is expected to clear about 200 outstanding Western Cape cases at a rate of 40 a day.

The National Settlement Week initiative was sanctioned by Labour Minister Tito Mboweni, who said in a statement delivered on his behalf by Special Adviser David Lewis that the plight of workers awaiting hearings was one of his motivations.

"Another reason is the need to start our new dispute settlement resolution system with a clean slate.

"We cannot afford to burden the new system with the problems of neglect caused by a previous government," the statement said.

"Mr. Mboweni also condemned the former dispute resolution system of conciliation at industrial councils and conciliation boards as "ineffective" and "wasteful of scarce resources".

"The industrial court was never fully sponsored by the previous government.

"The court was regarded as an institution which made inroads on the privilege of employers to deal arbitrarily with their workers.

"The disregard for the Industrial Court and the failure to allocate appropriate resources to the court has meant that the court has never been in a position to deal adequately with the workload which has come its way," the statement said.

"We are told that only 30 percent of all disputes referred to industrial councils are settled there.

"In the case of conciliation boards the position is even more unfortunate.

"Only 20 percent of all disputes are settled there."

Disputes not settled at industrial councils or conciliation boards were either resolved by arbitration or by the industrial court.

"The persons who bear the brunt of this unhappy situation are the dismissed workers who wait patiently for their cases to be heard.

"This situation is obviously one which the ministry cannot condone.

"If the law fails to provide an adequate alternative to disgruntled workers the law will fall into disrepute and labour peace will be seriously threatened by parties taking the law into their own hands.

"This will jeopardise peace, good order and a stable society will be put at risk."

The Industrial Court and IMSSA will, on a voluntary basis, offer workers and employees the chance to mediate existing disputes by placing at their disposal the services of skilled and respected mediators and arbitrators.
City gets Settlement Week to reduce Industrial Court backlog

BARRY STREEK
POLITICAL STAFF

THE “Settlement Week” programme to reduce the backlog of Industrial Court cases through mediation in line with the new Labour Relations Act is to be implemented in the city on Monday.

Since the launch of the project in the city about a month ago, there has already been a decline of over 50% in the backlog of 598 cases.

Settlement Week was initiated in different centres by the Industrial Court and the Independent Mediation Service of South Africa (Imissa) to reduce the backlog before the Labour Relations Act comes into effect.

Mediation of disputes is a key element of the new industrial relations policy as the Industrial Court is to disappear.

Imassa’s Western Cape director Ms Susan Hayter said yesterday since the launch, 316 cases in the Western Cape had been withdrawn or settled after Imassa had contacted the parties.

“Of the remaining matters on the court roll, about 70 will be referred to mediators,” she said.

Mediators. The people behind the campaign to cut the Industrial Court backlog in the city are Imassa regional director Ms Susan Hayter (right) and co-ordinator Ms Sarah Archer.

Conciliation and arbitration during Settlement Week

“Indications are that Settlement Week will clear 70% of the backlog on the Industrial Court roll in Cape Town,” she said.

Ms Hayter said the programme was started to persuade parties to settle their disputes voluntarily through outside mediators and arbitrators.

Most disputes at the Industrial Court in the city involved unfair dismissals of workers.

Settlement Week will be held at the Leslie Social Sciences Building at the University of Cape Town.

PICTURE ALAN TAYLOR
Settlement Week aims to resolve backlogs

DEBORAH Fredericks, 24, has pinned her hopes of again earning a regular wage on Settlement Week, an Independent Mediation Service of South Africa (IMSSA) initiative to reduce Industrial Court backlogs.

Not only did Mrs Fredericks lose her job at a Fish Hoek bakery in March this year, but also became estranged from her husband. Luckily, she was able to find refuge at her parents’ Strandfontein Village home, where she has been living since.

But while her parents have been able to offer food and shelter to her and her two daughters, Mrs Fredericks has had to babysit her sister’s child to earn some money. “I’m hoping I will get my job back,” she said of her case being heard during Settlement Week.

“I’m desperate. You know, when you work you budget according to what you earn. When I was suddenly dismissed and ran out of money, my whole life was upended. I have lost a lot,” she said.

Mr Fredericks’ case is one of 282 cases which have not yet come before the Industrial Court in the Western Cape. Most of these involve unfair dismissals of individual workers.

One which involves a wage dispute and a group of workers is the Delheim Wine case. Grant Twigg, general secretary of the Farm, Food and Rural Workers’ Support Association, said the dispute had been referred to a conciliation board but had not been settled. Workers were demanding an increase of R14 a week on the lowest wage of R110. It is the first time that the company has entered into wage negotiations.

Mr Twigg said Settlement Week, which started yesterday and runs until the end of the week, offered a quick-fix opportunity for the issue to be resolved. Taking the matter to the Industrial Court could involve a waiting period of up to six months.

IMSSA regional director, Susan Hayter, said she anticipated the Settlement Week would result in enormous savings in terms of cost and time. “Arbitration and mediation are more user-friendly and attorneys play a lesser role,” she said.

Although this is the first time the Settlement Week concept has been implemented, it has been successful in other centres. Even before it began in Cape Town, more than half the cases on the Industrial Court roll were settled or withdrawn, as a result of contact between the IMSSA and the parties concerned.

During Settlement Week this week in Cape Town, IMSSA mediators and arbitrators will try to resolve cases brought to them voluntarily by the parties.

The Labour Relations Act is based on arbitration and mediation. Indications are that these processes could prove more effective in resolving industrial disputes than current conciliation board meetings.

A Settlement Week has already happened in Durban where about 80 percent of the cases were resolved.

Ms Hayter said several of these had already gone through the conciliation board procedure. “It is significant that mediation and arbitration seems to work,” she said.
Initiative to slash court backlogs

Renee Grawitzky

NATIONAL Settlement Week — a joint initiative between the Industrial Court and the Independent Mediation Services of SA (Imisa) to reduce the current backlog in the Industrial Court gets under way in Gauteng next week.

The mediation and conciliation centre and the resolutions board will also be roped into service.

Imisa national projects director Dave Douglas said this would also promote cooperation between dispute resolution agencies.

The centre’s director, Mashmood Fedal, said he was pleased his organisation had been included in the initiative, albeit at the last minute.

Douglas said the concept of and funding for the initiative came from the labour ministry.

Parties caught up in the Industrial Court backlog would gain access to free and speedy services in the next two weeks. A wide range of services would be provided — including mediation, conciliation and arbitration — but parties themselves could also devise their own processes for dispute resolution.

The initiative could also be seen as a test run for the proposed commission for conciliation, mediation and arbitration envisaged by the new Labour Relations Act.

Douglas said the backlog in the Pretoria Industrial Court was between 1,500 and 2,000 cases, with a waiting time of 14 to 16 months for 4,700 current cases. He said 100 cases had signed up to take advantage of mediation week, but the administrative infrastructure was in place to take on more.

A fortnight has been set aside for mediation, but the period could be extended. Parties wanting to take part should call the settlement week line at (011) 726-6630.
Quick way to settle disputes

Settlement week shows the way forward for industrial dispute resolution through SA using confidential mediation until agreement is reached

By David Douglas

When Labour Minister Tito Mboweni launched National Settlement Week in Durban in September this year in a drive to save court costs and speedily resolve disputes, he was confident it would work. "The backlog is huge and growing," he said. "If you are a worker who alleges he has been unfairly dismissed, the certification of this form of dispute is much faster than going to court. About 90% of the Industrial Court cases will be settled out of court." A vast number of workers and employers have had their cases settled out of court. In addition, the process is cost-effective and can be handled quickly.

A process in which you have nothing to lose

It is quite possible you may be moved to another team and therefore cannot be contacted when your case comes up. Your case then is dismissed and you may have to start the process over again. If you are represented by a trade union, your case will be handled by them. However, if you are represented by a trade union, you will be notified by a trade union if your case comes up.

The process is simple:
1. The dispute is resolved by a mediator.
2. The mediator will review the facts and decide on a fair settlement.
3. Both parties will accept the settlement agreement.
4. If either party wishes to challenge the settlement, they must do so within 15 days of receiving the settlement agreement.

The mediator will then be appointed by the Industrial Court to hear the case. The mediator will meet with both parties and try to resolve the dispute. If the mediator is unable to resolve the dispute, the case will be referred to the Industrial Court. The mediator will then meet with the parties and try to reach an agreement. If the mediator is unable to reach an agreement, the case will be referred to the Industrial Court.

The mediator will then meet with the parties and try to reach an agreement. If the mediator is unable to reach an agreement, the case will be referred to the Industrial Court. The mediator will then meet with the parties and try to reach an agreement. If the mediator is unable to reach an agreement, the case will be referred to the Industrial Court. The mediator will then meet with the parties and try to reach an agreement. If the mediator is unable to reach an agreement, the case will be referred to the Industrial Court. The mediator will then meet with the parties and try to reach an agreement. If the mediator is unable to reach an agreement, the case will be referred to the Industrial Court. The mediator will then meet with the parties and try to reach an agreement. If the mediator is unable to reach an agreement, the case will be referred to the Industrial Court.
Mediation as a process in which you have nothing to lose. The process is confidential and without prejudice until a settlement acceptable to both parties is reached.

A non-binding or advisory arbitration could give the parties some idea of what judgment will be given if their case goes forward to the Industrial Court.

Cases submitted to Settlement Week will not lose their place in the Industrial Court roll, so it is a case of parties having nothing to lose but settlement to gain.

Parties to the cases in the building face a very real choice to remain there for up to 16 months at potentially great cost or to take part in Settlement Week.

This will provide an opportunity to participate in alternative dispute resolution processes and also to contribute to the enhancement of the administration of justice in South Africa.

The Settlement Week office can be contacted at telephone numbers (011) 721-4900 or 721-4923.

David Duong is national project director of the MASA's Industrial Dispute Resolution Service.

Two sides of the coin—sticking workers (above) and round table talks (below)—alternative dispute resolution processes contribute to the enhancement of the administration of justice in South Africa.
Industrial Court backlog halved

BARRY STREEK (165)

The backlog in Industrial Court cases in the Cape Town area has been almost halved by last week's Settlement Week process.

About 60 longstanding cases, most involving alleged unfair dismissal, were settled through mediation and arbitration. A number of cases were withdrawn or settled beforehand.

Settlement Week, involving about 25 skilled mediators and arbitrators, had been so successful that it had been decided to extend the process until mid-December, the Western Cape director of the Independent Mediation Service of SA, Ms Susan Hayter, said yesterday.

Settlement Week, funded by the Department of Labour, has been held in Durban and is to be instituted in the Johannesburg/ Pretoria area and Port Elizabeth.

It was intended to remove the backlog of Industrial Court cases before the implementation of the new Labour Relations Bill, which will abolish the court and introduce a new system for disputes to be settled through mediation and arbitration.

Test

The approach used in Settlement Week was similar to that proposed in the bill and was in effect a test-run of the new system.

Ms Hayter said about 80% of the cases handled in Settlement Week had been settled. Many of them had been referred to arbitration and settled between the parties before any ruling was made.

Some cases had dragged on in the Industrial Court for three to four months with little prospect of resolution, but had been settled in half an hour through the Settlement Week process.
Case settlement week prompts good response

February 11, 1995

HIGH settlement rates were achieved countrywide during National Settlement Week, but problems were experienced in Gauteng and Eastern Cape in getting respondents to participate, leaving the Industrial Court with a heavy workload.

The settlement week, a joint initiative between the Industrial Court and the Independent Mediation Services of SA (IMSSA) to reduce backlogs in the Court, handled more than 447 cases countrywide leaving more than 7,000 cases on the Court's roll.

Earlier this year, the Industrial Court was wracked by controversy and its functioning hampered following a series of staff resignations. In the wake of these resignations, which left the court understaffed, Industrial Court president Adolph Landman resigned. He withdrew his resignation after the labour department assured him it would address the court's problems.

Landman said yesterday that "having regard to resources available, the court is coping quite competently." All cases which could be enrolled, he said, had been and would be heard up to the end of next January in Cape Town, May in Pretoria and Durban and next...
Federation formed to fight Industrial Council legislation

Business Reporter

A FEDERATION of clothing employers' associations has been formed to fight membership of the Industrial Council.

"The Industrial Council system is a legacy of apartheid," Alan Biesheuval, press officer of the newly-formed federation said in an interview on Friday.

He said any factory that employed five or more people was forced to belong to the Industrial Council and to comply with the same rules and regulations that applied to all members, regardless of their size.

This put the smaller factory at a severe disadvantage when it came to paying a minimum wage and having its employees belong to pension and provident funds, he said.

"Legislation that is binding on the bigger groups is binding on anyone who employs more than five people. They force you to conform to all their rules and regulations," Mr Biesheuval said.

He said labour was 80 percent of the smaller factory's cost, whereas it represented only about 30 percent of the total operating cost of the bigger factories.

"We say those that need the Industrial Council should have it under freedom of association but it should not be forced on anyone," he said.
Labour Department

1996-1997 - 1999
Cape Town — Justice John Myburgh, the president of the Labour Court, launched a scathing attack against the justice and public works department yesterday. Their inefficiency was delaying labour courts being set up, the judge said.

A dispute between the Judicial Review Commission and the National Economic Development and Labour Council had remained unresolved for seven weeks, causing further delays, Myburgh said, appearing before the National Assembly’s labour committee.

He had sent many letters to Cabinet ministers and the directors-general of several departments requesting that the problems be sorted out. The letters had been ignored, and subsequent meetings also failed to yield results.

A justice department official responsible for ordering books for the courts had not done so. This meant the order had been put on hold for months, Myburgh said.

There had been considerable delays in securing computer equipment and software. Persetel, the company contracted by the government to provide the necessary computer systems, had “proved itself incapable of delivering anything on time”, he said.

Problems had also been experienced in securing premises. The court had found an ideal premises in Braamfontein and taken occupation on June 27. The public works department had been responsible for securing a lease and seeing appropriate renovations were carried out, but had not done anything. Myburgh said.
Students in riot to protest against fee rise

Kenya university students stoned riot police and barricaded roads at the outskirts of Nairobi at the weekend in a protest against a proposed increase in fees.

The riots followed battles in central Nairobi on Thursday between police and students. Witnesses said several students were injured in weekend incidents at the Kabete campus. Shopkeepers barricaded their premises to deter looters. Police fired teargas before the rioters retreated to residence halls.

Students said a new draft legislation for universities will impose fees too high for poor students to afford. The protests coincided with increasing pressure from opposition politicians for constitutional changes ahead of Kenya's election later this year.

Police in central Nairobi have employed extra security guards to deter looters in the wake of the protest meetings.

Kenya, Nairobi
IMF warns it may suspend $280m loan
Short tenure threat to independence - Labour judges

Justice John Myburgh, judge president of the Labour Court and constitutional court judge, Mr Justice Vincent De Swardt, who is the judge president of the cape, Mr.

NEW ERA: Present at the opening of the new Labour Court in Cape Town yesterday were, from left, Mr Justice De Swardt, judge president of the Cape, Mr.
Labour department to revamp services

THE labour department's inspection and employment services and labour centres needed to be restructured at a local level to ensure effective access to and utilisation of its services, minimum standards director Lisa Sefel said yesterday.

Sefel said at the department's first annual inspectors conference in Johannesburg that this was made necessary by new challenges including new functions brought about by recently introduced legislation, financial constraints, the poor management and inaccessibility of labour centres and the need to translate the department's vision on a local level.

The department had already agreed to transform the inspectorate and labour centres through short-term and long-term programmes and had introduced legislative amendments to create an enabling environment.

However, there was also a need to establish working relationships between government bodies and other stakeholders in labour, Sefel said.

Sefel said a task team linked to the department's transformation committee had developed a long-term project focused on improving service delivery at the local level.

The project would decide which services should be provided, as well as their design and implementation. Phased in over three years, the project was expected to achieve efficient organisation and management and ensure that labour centres were appropriately resourced and located.
Industrial Court grinds to a halt with huge backlog
Not falling behind in its work, and most users are satisfied

The Commission for Conciliation, Mediation and Arbitration has objected to Consumer Alert's report on May 23 that the body is falling behind in its work.

CCMA information services department head Sue King said dates for arbitration of cases are being set by the body's offices around the country on a daily basis, and that allegations of delays in the processing of industrial relations cases reflect only a minority of the total case load of the commission.

She said the CCMA had a backlog of 800 cases in Gauteng, and that this was a small percentage when compared to the more than 13,000 the commission has already dealt with. Around 68% of the total of 88,000 cases the commission has dealt with were handled in the conciliation phase and did not even get to arbitration, King said.

She added that an independent survey of the CCMA's work found that 70-80% of people involved had found the commission's service "good to excellent".

"This is dramatically different to what was under the old system," said King.

A caller from Durban, who preferred to remain anonymous because he is involved on a daily basis in working with disputes through the CCMA, said that in KwaZulu Natal there were backlogs of as much as six months or more and that small companies especially were being badly prejudiced.

He said the Labour Relations Act stipulated that even if an employer had valid grounds for dismissing a worker, if the dismissal was not done in accordance with set procedure, the employer would have to pay compensation. That compensation was calculated from the date of the dismissal.

"The company may well be in the right, but because of the delays in the CCMA system, it is forced to pay six months or more in salary to an employee who was rightfully dismissed. This kind of drain on a company's cash flow could well force some smaller concerns to go bankrupt."

The man said the CCMA did not seem to be keeping to time limits set out as an addendum to the act, which says cases should require no more than 74 days to go from the dispute stage, through conciliation and arbitration to a final resolution. Many cases were taking much longer.

His comments were echoed by Johannesberg labour lawyers, who confirmed our initial story about delays within the CCMA. One said he knew of a client who was still waiting for an arbitration date after six months.

This week, an official of the Metal and Electrical Workers Union of South Africa, Moses Manake, was quoted in news reports as saying he was dealing with cases which had been referred to the CCMA during the middle of 1997 and for which arbitration hearing dates had still not been set by last month.

Manake also said CCMA case managers sometimes give the applicant different dates and times for a hearing to those given to the respondent.

Deadline

Manake claimed further delays arise when CCMA commissioners fail to stick to the 14-day deadline set by the act for the finalisation of the arbitration process and award. In two cases, the wait for the arbitration decision was eight weeks.

King also objected to Consumer Alert's suggestion that commissioners were not qualified enough for the work they are doing. She said most of the commissioners had tertiary education, with many having law degrees.

She also denied that taxpayers' money was being squandered by the CCMA's hiring of advocates to deal with cases.

She said that, under an agreement with the Bar Council and the Independent Mediation Services of South Africa, the advocates were being paid R1,000 a case.
Labour court judges differ on how much companies must pay

Uncertainty over compensation for procedurally unfair dismissals will prevail until the Labour Appeal Court rules on the issue, says Robert Lagrange.

UNDER the previous Labour Relations Act (LRA) there was always some uncertainty about the award the industrial court would make for a dismissal which was only procedurally unfair.

The new Act attempted to eliminate that uncertainty by adopting the rule used by many private arbitrators, namely to award procedurally wronged employees their salary for the period between the dismissal and the end of the arbitration proceeding.

This meant that the employee suffered no loss as a result of the mutually unfair procedure of the employer.

Regrettably, the Labour Court is not yet unanimous on its approach to this question under the new LRA.

If a dismissal of an employee is only procedurally unfair, subsection 194(1) of the LRA requires the Labour Court or the Commission for Conciliation, Mediation and Arbitration to make an award of compensation which "must be equal to the remuneration that the employee would have been paid" between the date of dismissal and the end of proceedings.

Under subsection 194(2), the compensation payable if a dismissal is substantively unfair, "must be just and equitable in all the circumstances, but not less than the amount specified in subsection (1)." The only exception to the rule in subsection (1), is when the former employee pursues the claim tardily in doing so.

However, what this rule means, is a matter on which Labour Court judges are divided.

In Chothia v Hall Longmore (639/97), Judge Basson took the view that "compensation" is equivalent to damages suffered or the actual loss to an employee, which implies an employee must prove the loss of income since the date of dismissal and take steps to reduce that loss. Consequently, the minimum award is restricted to the actual loss suffered by the employee between the date of dismissal and the end of proceedings.

By contrast, in National Union of Metalworkers of SA & Others v Precious Metal Chains (Pty) Ltd & Others (6J109/97), Acting Judge Masonmule held that an adjudicator must award an employee the value of remuneration the employee would have earned while waiting for a fair hearing by the adjudicator, irrespective of the employee's actual loss during that time.

In reaching this conclusion the judge relied on, among other things the clear, imperative language of subsection 194(1), the intention of the legislature to eliminate the confusion around compensation awards which prevailed under the old Act by introducing certainty and uniformity, and the salutary effect of such awards in compelling employers to be more careful in following the guidelines on procedural fairness in the Act.

Judge Zondo's decision, as an acting judge, in CWU v Johnson and Johnson (P/97) distinguished compensation for purely procedural and substantive unfairness.

Although agreeing with Basson on the meaning of compensation, the judge held that the calculation of compensation under subsection (1) applies irrespective of the actual loss suffered.

In the latest contribution to the debate, Wagley, AJ in Mansoa v Metro Nissan & Ano (Case no 1034/97) decided that an adjudicator has a discretion on the amount to be awarded above the minimum specified by subsection (1), up to the maximum of 12 months' remuneration, but not in respect of the minimum itself.

Further, the acting judge held that the purpose of subsection (1) is not to profit the employee but to avoid prejudice to the employee while awaiting a fair hearing by the adjudicator.

Consequently, any income earned in the interim from other sources must be offset against the amount due under that section.

Effectively, Acting Judge Wagley reached a similar result as Basson, but without implying a duty on former employees to mitigate their losses.

However, on the correct method of determining the amount payable, uncertainty will prevail until the Labour Appeal Court pronounces on the matter.

Until then, dismissed employees would be advised to look for other work.

Lagrange is a member of the South African Association of Labour Lawyers.
Minister asks for hike in housing subsidy

Vuyo Mvoko

CAPE TOWN — Housing Minister Sanky Mhembu-Mahanyele has asked the cabinet to consider increasing government's housing subsidy to the poor from R16 000 to R16 000.

The move is understood to have raised eyebrows in the cabinet as it has huge implications for the focus at a time when money is tight for every government department. It also follows assurances by the minister that she would not increase the subsidies.

About R2,68bn has been allocated this year for housing subsidies. If Mhembu-Mahanyele does not get the extra funds she requires but increases each subsidy by R1 000, the number of subsidies will decrease by 11 000.

The minister said yesterday inflation and rising building material costs were just some of the reasons that had made her decide to approach the cabinet. The matter had now been taken to the state treasury and a response was expected within two weeks.

Sources close to the minister felt that she might get something as it would be "politically insensitive" for the cabinet to reject her request so soon before the elections. They predicted that if the money did not come straight away, the cabinet might ratify her request but award the money later.

Government has built more than 600 000 houses since 1994, just more than half of its promised target of 1-million houses by 1999.

Mhembu-Mahanyele had considered asking for more funds before, but did not want to raise the issue until she had exhausted all other possibilities.

It was unlikely that she would consider increasing each subsidy by more than R1 000 as that could reduce funds even further, sources said.

Mhembu-Mahanyele also announced that government would increase subsidy levels for the disabled by between 8% and 15%, depending on the severity of a person's disability.

The minister also said government had come up with new definitions of norms and standards for building low-cost houses.

"This comes in the wake of unscrupulous behaviour by contractors and developers taking advantage of non-restrictive and loose definitions to produce substandard work. A document stipulating 'strict specifications' that clearly define the basic parameter within which housing development should take place has now been drafted."

BTR Sarmcol agrees to pay axed workers

Renée Grawitzky

A 13-year old court battle between BTR Sarmcol and the National Union of Metalworkers of SA (Numsa) has finally come to an end with the company agreeing to pay R11,7m in compensation to the 970 workers dismissed during a strike in 1986.

The settlement—which will ensure that each worker receives R13 000—brings to an end the longest and one of the most bitter disputes in SA’s labour history. The dismissals caused major hardship for the community of Mpophomeni near Howick where two-thirds of the residents were employed by the company. Tension was heightened when the company hired workers from the United Workers' Union of SA, an Inkatha-aligned union, sparking off violent clashes between Inkatha Freedom Party supporters and Congress of SA Trade Unions and United Democratic Front supporters.

Workers at BTR Sarmcol— which was bought out in March this year by Dunlop Africa— went on strike on April 30 1985 over the alleged failure of the company to agree to certain clauses in a recognition agreement which was being negotiated with the Metal and Allied Workers' Union. Workers were dismissed three days later.

Since first being heard in the Industrial Court in 1987, the matter has faced five hearings by various courts. In March the appellate division of the High Court overturned a decision handed down by the Labour Appeal Court in December 1995 and held the dismissals to be unfair.

... The court referred the case back to the Industrial Court to determine compensation for the dismissed workers, with the recommendation that the parties should attempt to settle out of court. Sources close to the process said the new owner—Dunlop Africa—was serious about resolving the matter, whereas BTR Sarmcol had made little attempt at reaching a settlement, except for an offer of R1.5m.

Dunlop Africa CEO Mike Hankinson said the company had inherited "this unfortunate issue" and was pleased the matter was now finalised.
Judge Votes CMA System Superior
CCMA forced to do some navel gazing

Reneé Grawitzky

THE Commission for Conciliation, Mediation and Arbitration (CCMA) — set up in terms of the Labour Relations Act to resolve disputes — is embroiled in attempts to resolve internal grievances raised by its staff association.

The association, which represents about 80% of nonmanagerial employees, submitted a petition last month to the commission's governing body requesting its intervention.

The petition, signed by more than 350 employees, listed a number of grievances mainly relating to alleged bad management practices including unfair promotions, appointments made by the national registrar and issues around management grading.

At the same time, a number of CCMA employees have declared individual disputes relating to procedures around internal promotions. Some of these cases were not resolved during conciliation and have been referred to arbitration or the Labour Court.

The acting chairman of the commission's governing body, Bokkie Botha, said discussions with the association that it was agreed that the matter should be dealt with by the commission's director.

CCMA director Thandi Orleyn said a series of bilateral meetings was under way and good progress was being made in addressing the issues raised by the association.

Orleyn said, however, that a number of the issues related to discussions around the negotiation of a "relationship (recognition) agreement".

The commission was also involved in wage negotiations with the association which were at a delicate stage, she said.

The commission faces some constraints as the majority of its funding comes out of the labour department's allocation which amounts to about R106m for the current financial year. A commissioner said these developments occurred at a time when commissioners were being placed under tremendous pressure as the caseload continued to increase. Last month, 7,000 cases were referred to the commission.
Heavy case load bogs down CCMA

Cape Town — The Commission for Conciliation, Mediation and Arbitration (CCMA) had become bogged down in the unexpected flood of cases referred to it, the national council of provinces' select committee on labour and public enterprises heard yesterday.

Dennis van der Walt, the labour department's director of collective bargaining, told the committee that more than 110,000 cases had been referred to the CCMA. It was now "considerably behind" in its work.

He said the Labour Relations Amendment Bill was aimed at speeding up the flow of cases through the CCMA, but it was clear that the Labour Relations Act would have to be reviewed again by the year 2000 to iron out further problems.

Van der Walt said Greg Smith, the Australian labour commissioner who had helped create the CCMA, had admitted during a recent visit that the Australian model had not been perfect for South African conditions.

"The number of referrals has outstripped the projections," Van der Walt said.

The bill seeks to simplify many CCMA procedures, provide for the closure of the industrial court and the transfer of cases to the CCMA, and provides greater flexibility in dispute resolution procedures.

The bill also will allow the director of the CCMA to delegate certain functions, such as the signing of subpoenas, and allow commissioners to run disputes involving the same parties on the same day.

Van der Walt said the bill also would prevent so-called labour consultants or "unions" formed just to deal with certain disputes from "trying to elbow their way into disputes."

It would stipulate that disputes should be arbitrated within 90 days of conciliation failing. This would prevent people waiting for anything up to a year before arbitration.
THE SUSPENSION OFasting Wittenberg has been vindicated, says union

DEPARTMENT OF LABOUR STAFF DRAW UP PETITION

NEWS
Despite the caseload the CMA is faced with, it has coped with the situation.
ANY readers have approached Hotline with labour related matters which should be resolved by the Commission for Conciliation, Mediation and Arbitration (CCMA).

The CCMA, tasked with the overwhelming duty of resolving labour disputes, started operating two years ago. The commission is a statutory dispute resolution institution and a creation of the Labour Relations Act of 1995.

The CCMA’s main function is to conciliate and arbitrate disputes that arise at workplaces. It is an autonomous body, governed by a body of representatives from organised labour, government and business.

The CCMA’s communication coordinator, Sithembele Tshwete, says only disputes about labour issues are referred to it.

He says since its inception in November 1996, 124 000 cases have been referred to the CCMA for conciliation and arbitration. At least 66 percent of the cases related to unfair dismissal, 12 percent were cases of unfair labour practices, five percent related to mutual interest and another five percent involved collective bargaining disputes.

Only two percent of people who contact the CCMA have queries about severance packages.

"This case load continues to pose enormous challenges to this new organisation and has forced it to be creative and enthusiastic in handling its duties," says Tshwete.

"The CCMA has continued to train its staff and commissioners to meet these challenges and this has yielded positive results.

"We have a labour dispute settlement rate of about 71 percent."

Many disputes that arise at workplaces are initially referred to the CCMA for conciliation. If conciliation fails, the CCMA or the labour court then has to arbitrate in the matter.

The normal procedure is to complete the referral forms for conciliation - the LRA 71, or LRA 713 forms.

"However, our staff who screen disputes at the entry point have noted that people who approach the CCMA do not supply adequate information on the referral forms. They also do not exhaust the internal dispute resolution procedures before coming to the CCMA," says Tshwete.

The following is the correct procedure which should be followed when a labour dispute is referred to the CCMA.

☐ The parties should study and understand the law and dispute resolving procedures.

☐ Follow internal dispute resolution procedures before referring a dispute to the CCMA.

☐ Collective agreement or internal grievance procedures may provide for these procedures.

☐ Keep records of all disciplinary and case proceedings.

☐ Fill out referral forms clearly, accurately and completely.

☐ Determine if the circumstances of your hearing need special requirements such as an interpreter, a senior commissioner or a particular commissioner.

☐ If your company is in a sector that has a bargaining council, then you should refer your dispute to that bargaining council for conciliation.

The CCMA also urges people to make use of Workplace Forums. These forums are there to encourage and foster cooperation rather than conflict at workplaces.

They are meant to encourage joint decision-making between employers and employees on issues such as workplace restructuring and enhancing productivity.

One of the main aims of these forums is to create an atmosphere of consultation between employers and their workers.

The CCMA plays a crucial role in helping employers and employees to establish workplace forums.

Recently the CCMA began training people for bargaining council accreditation.

"These bargaining councils will replace the old industrial councils and the training is meant to put people in line with the new Labour Relations Act and updated dispute resolution mechanisms," says Tshwete.

Currently 21 bargaining councils have been accredited for conciliation functions and 16 have been accredited for arbitration.

The CCMA has also been instrumental in forming the Public Service Co-ordination Bargaining Council.

Tshwete says the CCMA is aware of the need to be more active in formulating dispute prevention programmes rather than concentrating on dispute resolution.

"An initiative to consult and conduct research in this regard is already underway and we believe this will help to address the huge caseload we have.

"This will also help us to resolve disputes more effectively," he says.

The CCMA has put in place important dispute prevention strategies, says Tshwete. These include encouraging good relationships between employers and their workers and encouraging them to exhaust internal dispute resolution procedures.
Department of labour 'broke its own laws'

Outcry over official’s suspension

THE labour department has been accused of flouting its own laws when it suspended its Cape provincial director last month.

Brian Williams was suspended on full pay pending the outcome of an internal inquiry into allegations of misconduct. He is alleged to have displayed disobedience by disobeying an instruction from the director-general of labour, Sipho Pityana, that he should not intervene in human resource management issues.

Williams had settled a dispute between a staff member and the department and had stopped the department acting in conflict with labour law, according to sources. But this has been denied by the department.

An internal disciplinary inquiry into the misconduct allegations is due to begin in Cape Town tomorrow, but it may be postponed until next month if the presiding officer grants an application by Williams' attorney.

Williams has challenged his suspension, arguing that it is unlawful. His appeal will be heard by the Public Service Conciliation Board on November 27. The Professional Employees' Trade Union has alleged that there was no reason to suspend Williams.

Union president Dee Cranswick said the department had an obligation to act with “absolute transparency. They haven't done that.”

Cranswick claimed Williams had not been given an opportunity to debate the allegations surrounding his suspension.

The Public Servants Association, the Public Administration Workers Union and the local branch of the National Education, Health and Allied Workers Union (Nehawu) have also shown support for Williams.

Nehawu interim shop steward Douglas Brown said the union was not involved in the dispute, but “from the basis of union principles, he has been unjustly dealt with.”

Public Servants Association provincial manager Koos Kruger said they supported Williams and the Public and Allied Workers Union condemned Williams' suspension and demanded his reinstatement. It alleged that there appeared to be a vendetta against Williams.

Williams' suspension — which bars him from speaking to the press — came after a year of clashes between Williams and certain department officials. The details are likely to be used by Williams to defend his reputation of having a “clean hands” approach in running the department.

For the past year, Williams has been urging the department to investigate alleged irregularities against the Cape deputy director of labour relations, Meko Magida. These allegations include misuse of government vehicles, failure to comply with direct instructions and subordination.

Williams had also refused to authorise the release of funds for a controversial training scheme on the West Coast, which subsequently collapsed. At the time, Williams had argued that the training project did not have the required accreditation. Williams' duties were suspended in March. Two months later, the department authorised payment of R830 670 to the Western Cape Training Centre for the training scheme.

Williams was reinstated a few days after the release of funds, but he was released from his human resource management duties.

Petusa believes Williams' suspension was unjustified as he had received no prior warning or letters of complaint.

Uven Bunsee, head of the Department of Labour's legal services, said tomorrow's inquiry would be conducted by an independent presiding officer, who was a retired magistrate.

Bunsee denied that Williams had not been given the right to reply or that labour law practices had been disregarded.

"The disciplinary inquiry gives him the right to reply. The inquiry gives him the opportunity to defend himself. We should all wait for the due process — which is above reproach — to take its course," he said.

Vuyi Rasekopa, chief director of human resources management at the Labour Department, said the allegations of irregularities against Magida were the subject of an independent investigation.
Judgment may reduce reviews of arbitration awards

Robert Lagrange examines how the Labour Relations Act is being interpreted by the courts

The Labour Relations Act does not permit an appeal against the merits of awards by the Commission for Conciliation, Mediation and Arbitration, but the awards may be reviewed by the Labour Court.

Policy reasons for limiting rights of appeal were to ensure early finality and to discourage a litigious process favouring parties with deep pockets. In the absence of a right of appeal, parties unhappy with arbitration awards have resorted to reviews with alacrity — at the rate of two a day, according to a commission source.

Some decisions of the Labour Court encouraged this tendency in adopting a wide standard of review which was sometimes indistinguishable from an appeal on the merits of a decision.

The Labour Appeal Court decision in Carephane v Marcus NO and others, which narrowed the scope of review, could reduce the flood of reviews, if it is adhered to. The judgment rejects the wider standard of review of arbitration awards applied under section 155(1)(g) of the act and confirms that the correct test is spelled out in section 145.

This section confines successful grounds for review to improperly obtained awards, gross irregularities, acts of gross misconduct and awards outside an arbitrator's powers.

The court emphasised in the strongest terms that a decision could not be reviewed merely because the arbitrator's award was incorrect or unjust.

Nonetheless, it conceded that the requirement of justifiable administrative action, under section 33 of the constitution, means that an arbitrator must reach a decision which, on an objective and rational basis, is justifiable on the available evidence before the arbitrator.

In practice, preserving the court's intended demarcation between appeal and review on the basis of deductive coherence will demand great restraint on the part of judges. They must resist tempting with the criteria adopted by arbitrators in reaching their decisions, and avoid collapsing this test of logical integrity with more invasive standards of review.

An important procedural consequence of the judgment is that review applications must be brought within six weeks of an award, which should discourage the practice of filing review applications inordinately late.

Another Labour Appeal Court decision which attempts to clarify some of the uncertainties arising from conflicting decisions of the Labour Court is Johnson & Johnson v CWIU (PA15/97).

Confusion has surrounded the question of compensation which may be awarded in cases of procedurally unfair dismissal. The Labour Appeal Court has partly solved the question, but in doing so has created a new area of uncertainty.

The case concerned the initial selection of retrenchees on unfairly discriminatory grounds, which the employer sought to rectify shortly after the retrenchments took place.

The offer of rectification was not accepted by the retrenchees.

The court held that, although the retrenchment had been procedurally unfair, this was not a case in which compensation for procedural unfairness was due.

These facts formed the basis on which the court spelled out two principles governing compensation awards for procedural unfairness in dismissal.

First, the adjudicator has discretion whether or not to award compensation for procedural unfairness.

Second, if the adjudicator does make an award of compensation, then section 194(1) of the act prescribes the amount. That amount is the value of the employee's remuneration from the date of dismissal to the last date of the hearing.

The certainty about the compensation formula to be used must be welcomed, but not the new uncertainty surrounding the exercise of a discretion to award compensation or not.

The underlying problem with the provisions of section 194(1) is that nobody envisaged it would take the commission so long to arbitrate on unfair dismissal.

It was assumed that awards of compensation for procedural unfairness would not stretch beyond two months' remuneration.

The recently tabled amendments to the Labour Relations Act demonstrate that the social partners have been unable to resolve this glaring difficulty in the act.

The contested solution arrived at by the court is a natural consequence of provisions based on false factual premises.

Ironically, employees who think the rigidity of the compensation formula favoured them, may now find the formula of little help, as adjudicators exercise their discretion not to award compensation for procedural unfairness when they feel uncomfortable with the amount of compensation they will be compelled to award if they do so.

The judgment at least settles the true character of the compensation awarded: It is compensation for the loss of the right to a fair procedure, which is not the same as damages awarded for patrimonial loss.

Consequently, an employee should not have to demonstrate the actual financial loss he incurred following his dismissal to qualify for the compensation.

Nor, presumably, is he under a legal duty to minimise such losses by seeking alternative employment.

Certainly, the awarding of compensation in such cases will depend on the circumstances of each case.

Robert Lagrange is a member of the SA Association of Labour Lawyers. He writes in his personal capacity.
Labour Court judge considers resigning

Reneé Grawitzky

and Alan Fine

JUSTICE Minister Dullah Omar is expected to meet Labour Court Judge President John Myburgh this week in an attempt to iron out differences which have prompted Myburgh to consider resigning from the bench.

Myburgh confirmed at the weekend he was "considering resigning", but refused to be drawn on the reasons behind this until after his meeting with Omar.

Omar's spokesman, Paul Setsetse, said the minister was unaware that Myburgh might resign and a final date was yet to be set for the meeting this week.

Sources said, however, that Myburgh considered resigning after Omar's office indicated he might not get the position of judge president of the Johannesburg High Court, once it was established.

They said Myburgh had been assured of this position during the Judicial Service Commission hearings for the position of Transvaal judge president, which was given to Judge Bernard Ngoepe.

They indicated that Myburgh had been informed by Constitutional Court president Arthur Chaskalson and Chief Justice Ismail Mohammed that he would get the post of Johannesburg judge president that would require an act of Parliament, which Myburgh was told would be passed before the end of this year.

Although Omar's spokesman said no guarantee had been given to Myburgh, other sources said he had been promised the post of acting judge president as soon as the new division was established. The position would be confirmed when the commission next sat in April next year.

Chaskalson could not be reached for comment yesterday. However, two weeks ago Myburgh was informed by Omar's office that his position was not automatic and depended on whether Judge Mohammed Navsa made himself available for it. Navsa declined to discuss the issue.

It is understood that Navsa is uncertain whether he wishes to take up the position as he is not certain whether he has sufficient experience for the position of judge president after close to three years on the bench.

However, he is known to be highly regarded by a number of his colleagues who feel he is more than capable of taking up the position.

Setsetse said no guarantees were made and no open assurances could be given before the commission hearings for the position. A final appointment depended on the outcome of the hearings.

However, Omar had indicated that Myburgh would be one of the strongest contenders for the Johannesburg position in view of his experience.

Speculation was rife that Myburgh intended taking up a position at Anglo gold if he did resign.

His resignation could leave a void in the Labour Court, which Myburgh established in 1996 in line with the new Labour Relations Act.

There has been speculation that Labour Court Judge Ray Zondo could be a strong contender for Myburgh's position.

However, in terms of the act, a judge of the labour appeal court has to be a judge of the high court.

Zondo's appointment could hence be facilitated by him being appointed an acting judge of the high court. In the interim, the deputy judge president, Johan Prins, could act as judge president of the Labour Court.
Mabuza resigns from CCMA

LUKANYO MNTANDA

Johannesburg — A senior official of the Council for Conciliation, Mediation and Arbitration (CCMA), formerly suspended finance manager Stan Mabuza, has left the council after clinching a “confidential” agreement with Thandi Orley, the director, last week.

According to documents leaked to Business Report, Mabuza, who was suspended for four months earlier this year, was due to face a disciplinary hearing for, among other things, refusing to carry out his duties and behaving in a manner “extremely detrimental” to the efficiency of the organisation.

The CCMA, formed in terms of the Labour Relations Act to resolve labour disputes, has been in the news for labour problems of its own in the past few weeks.

The crisis culminated in the staff association handing Orley a list of allegations against the office of the national registrar.

‘DIFERENCES SETTLED’
Thandi Orley of the CCMA

At least five senior members are believed to be quitting this month, either for better positions or because of dissatisfaction with the organisation.

According to an unsigned draft notice of a disciplinary investigation by the director’s office, Mabuza stood accused of not carrying out his duties since May, after a change in the CCMA structure saw his portfolio being integrated under administration, with a new appointment, Haroun Modila, as his head.

Modila has subsequently quit his position as head of the department of finance and administration.

Orley and Monde Zemema, the national registrar, confirmed on Friday that they had reached a “confidential” agreement with Mabuza but declined to say whether he had left or not.

“I am not instituting anything against him. We have settled our differences,” Orley said. She declined to elaborate and said the details were confidential.

Zemema added: “We reached an agreement acceptable to both parties, but the contents of that agreement are confidential.”

Mabuza confirmed that he was no longer employed by the CCMA but declined to provide details of his financial package or other agreements reached.

He said he had not seen the draft notice of an investigation from Orley’s office against him.
Mdlalana upbraids CCMA over scandals (165)

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — The department of labour had problems with the "public airing" of problems in the Commission for Conciliation, Mediation and Arbitration (CCMA), Mmbatho Mdlalana, the minister of labour, said last week.

Up to a week ago, the CCMA had been rocked by the resignations of high-profile commission-ers amid accusations and counter-accusations of racial discrimination and autocracy.

Mdlalana told the third annual CCMA commissioners' annual conference in Esselen Park: "An institution which is surrounded by controversy does not inspire the confidence of the public and the people we are to serve.

"I do not need to remind you what happens during strikes. "It is possible the intense emotion and conflict that tend to occur in these periods can be directed towards growth."

"I challenge the staff and the management of the CCMA to respond to the present challenge in a creative and pro-active way."

Mdlalana said by the end of next year the CCMA should be able to handle disputes arising not only out of the Labour Relations Act (LRA) but also out of the Basic Conditions of Employment Act (BCEA) and the Employment Equity Act.

The minister said he hoped that by that time the CCMA should also be able to devote more energies and resources to disputes resolution than to unfair dismissal cases, as had been the trend up to now.

Mdlalana said CCMA statistics showed 78 percent of its work to be related to unfair dismissal cases, especially in the retail, security and public sectors.

"The BCEA and the Employment Equity Act will create additional work, but also will increase the significance of the CCMA as a key institution in the world of work," Mdlalana said.

"Our challenge as partners in the labour market is to develop a holistic approach in respect of the implementation of these new labour laws."

"A contract of employment as is argued by the BCEA reduces the possibilities that need to be dealt with under the LRA. Similarly, good employment practices mean that disputes of unfair discrimination in terms of the Employment Equity Act are less likely to arise."

He said the third challenge faced by the commission related to strike resolution.

"The fourth challenge I would like to refer to relates to bargaining councils and workplace forums," Mdlalana said.

"Last week we heard about the demise of the Gauteng Building Council."

"Some of our detractors argue that this is an indication of an invincible trend away from sectoral bargaining..."

"However, if indeed any trend can be discerned only two years after the new LRA came into effect, the trend is in the opposite direction," he said.
CCMA reports a 35% increase in cases

Reneé Grawitzky

UP TO 35% more disputes were referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) this year than last year, with 321 referrals being received on average a day.

At the same time the Independent Mediation Services of SA (Imssa), a private dispute resolution agency, saw a 30% increase in the referral of arbitration this year. This may be partly due to a backlog at the CCMA.

The commission reported that 13 843 cases were arbitrated this year while a further 8 030 were scheduled for hearings next year. To date, 328 arbitration awards have been taken on review to the Labour Court with only 47 being successful.

This year, 80 795 disputes were referred to the commission, compared with 60 000 last year.

Since its inception in November 1996 — when the new Labour Relations Act came into operation — more than 143 000 disputes have been referred to the commission. The body expected to face about 40 000 cases a year.

Imssa support services director Mark Turpin said Imssa panel lists were assisting the commission in an informal way to reduce its backlog of cases. Imssa’s approach was to support the CCMA, rather than to compete with it.

Turpin said there were indications from the CCMA that where parties could pay their way, they should be encouraged to go to Imssa. He expected Imssa’s work to increase by 10% to 15% in the year ahead.

The CCMA said the Gauteng region continued to face the largest caseload, followed by KwaZulu-Natal and the Western Cape. Individual dismissals accounted for the majority of disputes. The retail sector accounted for 20% of cases referred.
CCMA to discuss renewal of contracts

René Grawitzky

THE Commission for Conciliation, Mediation and Arbitration (CCMA) has entered into talks with its employees' association over the renewal of employment contracts for commissioners, amid low staff morale and concerns over the possible outcome of the talks.

The commission will meet with the association tomorrow in an attempt to deal with staff concerns.

The association is believed to be keen to avoid conflict on the matter and is pressing for an amicable resolution.

In terms of the Labour Relations Act, CCMA commissioners were employed on fixed three-year contracts and the terms of those employed at the commission's inception in November 1996 will expire from June onwards. Commissioners will not automatically be re-employed, but have to re-apply for their positions.

Sources said this had caused tensions within the organisation and that staff morale had started going down in December after commissioners were notified of the impending expiry of their contracts.

The CCMA said the renewal of contracts had also raised crucial questions about the criteria to be used for re-employing commissioners.

(165) BD 28/11/99
NGO found to be ‘unfair’

THE COMMISSION for Conciliation, Mediation and Arbitration has criticised several public figures for ignoring subpoenas to give evidence in a recent hearing.

LONG-STANDING ANC member and anti-apartheid activist Yasmina Pandy has won an R81 000 award from the Commission for Conciliation, Mediation and Arbitration (CCMA) for the manner in which she was dismissed from a non-government organisation.

CCMA commissioner Ghalieh Galant found that Pandy’s dismissal from the Khululeka Institute for Democracy (KID) was substantively fair but that there was “gross procedural unfairness”.

Galant was scathing about a number of KID board members, in particular chairperson Smangaliso Mkhathshwa and Bernard Ncube — both of whom are ANC MPs, and Mkhathshwa the Deputy Minister of Education — who ignored subpoenas to give evidence.

“Neither of them bothered to apologise for their absence. This regard as contemptuous of the operation of the Commission,” said Galant.

“The fact that Father Mkhathshwa and Sister Ncube are public figures exacerbates this situation,” said Galant.

“Similarly Dr S Ncube (a director of the Development Bank of Southern Africa) and Ms Priscilla Jana decided to ignore their subpoenas without explanation.”

The award Galant made in favour of Pandy is equal to the remuneration that she would have been paid from the date of her dismissal to the last day of the arbitration hearing — November 24, 1997, to December 12 last year.

However, Pandy said when she telephoned KID director Campbell Lyon last Friday to ask if they would honour the award, he told her the organisation was taking the matter to the Labour Court.

Pandy joined KID in 1996 and was employed as a parliamentary liaison officer. She was required to support committees, write speeches for MPs and do community education.

She reported directly to executive director Xoliswa Sibeko, now public relations manager for President Nelson Mandela, but the relationship soured and Pandy and a fellow employee, Ingrid Poni, submitted a motion of no confidence in Sibeko’s abilities.

KID produces a publication called Network and in November 1997 there was great urgency to produce a record of the organisation’s work for the year.

Pandy asked Poni, who was in charge of the edition, to hand in four of the eight reports Poni agreed but on the due date Pandy handed in no reports, Sibeko testified, and refused to do the report.

Pandy and Poni then submitted a vote of no confidence in Sibeko.

Pandy was served a notice to appear before a disciplinary inquiry on charges of “gross misconduct consisting of insubordination, verbal abuse and setting a poor group example” and “refusal/failure to submit reports.”

She was subsequently found guilty on both charges and dismissed on November 24, 1997.

Galant found the board’s decision was taken on untested allegations that Pandy had attempted to defraud KID subsequent to her dismissal, by forcing the KID administrator to sign over cheques to which she was not entitled.

This was a serious procedural defect and Pandy was not given an opportunity to address the board.

— Staff Writer
Chief must face music for firing union member

Petersburg - Trade unionists in the Northern Province are set to make history this week when they bring a traditional leader before the Commission for Conciliation, Mediation and Arbitration for alleged unfair labour practices.

A Zolobela tribal chief, Kgosi Sello Kekane, will have to explain tomorrow why he had fired his administrative clerk immediately after she joined the Trade Union of South African Authorities.

Kekane is the first traditional leader to be called before the commission and will serve as a test case for tribal law versus new labour regulations.

The union lodged a complaint against Kekane last week after its new Northern Province secretary, Josephine Kekane, complained that the chief had dismissed her.

Kekane, who is not related to the chief, said she had been ordered to vacate her office at the Zolobela Mandelebe tribal authority by February 23.

"It's a blatantly unfair labour practice and he'll have to explain his actions whether he is a chief or not. You cannot fire someone just because they join a union," said union secretary-general Naledi Mogale.

Confirming that the union had targeted tribal employees during a recruitment drive over the past six months, Mogale said the union believed the hearing would serve as a test case.

"A lot of our new members in tribal offices have been receiving threats or are being harassed. Chiefs seem to think the unions will undermine their traditional authority and are therefore fighting us," he added.

Josephine Kekane claims she received six death threats from various unknown people.

-African Eye News Service
SA mediators' feud has the public fretting (167)

Internal problems constrain the CCMA, writes Reneé Grawitzky

The Commission for Conciliation Mediation and Arbitration (CCMA) had done little to allay public fears on its continued effectiveness following reports of internal disputes, labour consultants said yesterday.

The commission has in recent months been portrayed as an organisation embroiled in internal divisions which have led to low staff morale and resignations at a senior level. The suspension two weeks ago of national registrar Monde Zimela has underlined these concerns.

Durban-based consultant Pat Stone said the commission could not keep its legitimacy in the eyes of members of the public — who were the ultimate users — if the organisation was perceived not to be able to manage its own internal affairs.

Sources said the organisation was developed with the expectation that it would handle a case load of 40 000 a year. From its inception in November 1996 to November last year, the commission handled 131 000 disputes. The huge case load did not bode well for a new institution employing close to 400 people and this in itself created tension as commissioners had huge caseloads.

Commission sources said the CCMA lacked management structures and proper reporting lines when it was established. This led to a situation where individuals, without having the authority, established themselves and yielded great power in the organisation.

The sources said tension existed because there were competing management structures. At the outset senior commissioners and registrars in the provinces were of equal status. This created tension in the provinces over who was in charge. This situation has been clarified and now senior convening commissioners are in charge in the provinces.

The CCMA said yesterday proper management structures were now in place and proper reporting lines had been established. This was stabilising the situation.

A number of consultants, while acknowledging that the commission was overburdened and underfunded, questioned the quality of the service being provided.

Andrew Levy & Associates consultant Jeremy Crawford said the experience of "our clients has not always been positive".

Consultant Gavan Wener said some strange and unreasonable decisions were being handed down, while there was increasing concern over the rising backlog in arbitration cases.

Crawford said there appeared to be significant structural problems in the organisation while the capability of certain commissioners was questionable, particularly with regard to certain jurisdictional issues and an understanding of certain legal principles.

Consideration, he said, should be given to amending the Labour Relations Act to grant a limited right of appeal as opposed to the current situation where there was a limited form of review.

A source close to the process said the commission's success rate in resolving disputes had to be measured against the success rate of the dispute resolution procedures stipulated under the old legislation.

The commission's success rate in settling disputes was about 70% compared with the old industrial court and conciliation board's 20% to 30%.
CMMA brokers new wage deal for municipal workers

FRANK NXUNALO

Johannesburg – The Commission for Conciliation, Mediation and Arbitration (CCMA) yesterday broketed a wage deal between the South African Municipal Workers’ Union (Samwu) and the South African Local Government Association (Salga).

"The deadlock-breaking settlement of the greater of R230 per month or 5,5 percent is a figure on which Samwu compromised significantly," said Dale Forbes, the Samwu collective bargaining officer.

Forbes said this had been an improvement on last year’s increase of R202,50 or 5 percent.

Samwu said for the first time, municipal workers would be getting a minimum wage of R1 335 a month, which would in turn bring much-needed improvement to the living standards of those now on about R600 a month in small and rural municipalities.

As part of the agreement, a sliding scale would be introduced in next year’s wage negotiations to correct distortions in the salary structure mainly affecting workers in the clerical, supervisory and artisan grades.

"The ongoing dispute that has disrupted the focus on the forthcoming elections has ended, and now the union is keen to redirect its focus to supporting the ANC," Forbes said.

"Samwu believes that the positive approach from Salga evident in the last round of negotiations will continue in other matters confronting local government," Forbes said.
Labour director's rights violated, commission finds

ROBERT MOORE

The Human-Rights Commission has found that a refusal by the director-general of the Department of Labour to hand over information on which he decided to suspend provincial labour director Brian Williams was on the face of it, a violation of his constitutional rights.

The commission has given director-general Sipho Pityana until noon today to respond to complaints by Williams that he had not been given copies of "strengths and weaknesses" reports compiled after a training programme and that a prohibition on speaking to the media was a violation of his constitutional right to freedom of expression.

Williams was suspended on a charge of misconduct for allegedly disobeying an instruction, but was reinstated. However, his human resource management functions were withheld.

In October, he was again suspended by Pityana and charged with misconduct on the grounds that he had involved himself in a human resources management function.

At an internal disciplinary inquiry which started in December, Williams pleaded not guilty.

Zwe Ndlala, Pityana's lawyer, argued that even if Pityana's instruction was unlawful, as contended, Williams was duty bound to obey it.

Ndlala was removed as Pityana's legal representative when it emerged that he had telephoned presiding magistrate Liana Myles at home days before she was due to make a ruling on whether Williams should face misconduct charges.

She told the inquiry that Ndlala threatened that she would be removed if she did not rule in the department's favour.

Myles said she had been placed under duress and had been victimised to the point where she offered to recuse herself. She was later replaced and the inquiry started from scratch. When Pityana appointed Thabani Jali as the presiding officer...
The Commission for Conciliation, Mediation and Arbitration

(16)

golden tempered

commission that
Landmark ruling backs mothers-to-be

Edgeworth Woodworth's mother made the surprising announcement that the Woodworths and their friends were no different. "What happened in this case does not apply to the Woodworths and their friends in any other situation. The following is a true story about the Woodworths and their friends:

Bill of Rights: Why is it a day that should be observed? The Woodworths and their friends were no different. The Woodworths and their friends were no different.

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Williams has the right to talk,' HRC tells Labour

RONALD MORRIS

The Human Rights Commission (HRC) has recommended that the Department of Labour remove a ban on speaking to the media slapped on Brian Williams, the provincial director suspended for alleged misconduct.

The HRC has further recommended that the department review and amend internal policies where necessary in order to ensure compliance with the Constitution.

The recommendations came after the HRC received a complaint from Williams that the ban violated his constitutional rights to freedom of expression and access to information.

The High Court has already ruled that Williams' constitutional rights had been violated when he was refused access to documents on which the decision to suspend him was based.

Williams, who has pleaded not guilty to the misconduct charge at an internal disciplinary hearing, has also challenged the legality at the Commission for Conciliation, Mediation and Arbitration (CCMA) of the decision to suspend him.

At the CCMA, Deon Haasbroek, chief director of administration and Williams' manager at the time, testified that an important report, in which it was decided to suspend Williams, was withheld from him on the instructions of Sipho Pityana, the director-general.

In her report, Faranaaz Venava, an advocate with the HRC, expressed concern over a statement in the department's response that the matter was "merely an internal departmental disciplinary inquiry and to evoke the provisions of the Constitution in respect of it (is) disproportionate in respect of the issues to be decided" Venava said central to the development of a rights-based and open democracy was the belief that rights guaranteed in terms of the Constitution, and the values underpinning these rights, informed decision-making at every level and that "internal matters" were not immune from constitutional scrutiny.

In order to justify the ban on speaking to the media, the department argued at the HRC that a disciplinary inquiry was underway and therefore the proceedings were still sub judice. The HRC, however, found that sub judice did not mean that the parties concerned were automatically prohibited from making statements to the media.

The HRC said in any event the media ban was not restricted only to statements pertaining to the disciplinary inquiry but a general prohibition pertaining to matters beyond the disciplinary inquiry.

In response to a claim by the department that Williams may make damaging or untrue statements to the media in respect of the inquiry or departmental matters at large, the Commission said there had been many media reports, some of them at a level of detail that would be peculiar only to Williams.

The ability to discuss matters in the public domain was consistent with the government's commitment to open and transparent government and the department could use other legal remedies, the Commission said.

Venava said the various arguments put forward by the department was not in line with the Constitution.

These arguments undermine the nature and meaning of the rights as set out and places an undue restriction on this guarantee of the right to freedom of expression, the HRC said.
New chairman at CCMA

By ELIAS MALULEKE

AXED Gauteng government director-general Vincent Motlamme has been appointed for three years as chairman of the governing body of the Commission for Conciliation, Mediation and Arbitration (CCMA).

Motlamme left government last year after an apparent fallout with the then Housing MEC Dan Mofokeng.

The CCMA is an organisation consisting of representatives from government, organised labour and business which resolves labour disputes.

The governing body oversees the strategy and sets policy direction for the CCMA.

Minister of Labour Mabatu Moladiana has expressed his confidence in Motlambo and the governing body.

He said they would further build, consolidate and guide the destiny of the CCMA, to ensure its success during their term of office.

Since leaving government as the first director-general of Gauteng, Motlambo has focused on consulting and advising top managers in both the private and public sector in the areas of strategy and transformation.

He is one of the five founding partners of Sediba Consulting. He is also the executive director of Everest Systems, a black economic empowerment information and technology company, and serves on the the Board of Trustees of the Independent Mediation Service of South Africa (IMSSA).

Dr Michael Gering, former director of KPMG and now a partner at Sediba, said Motlambo was a top mediator, facilitator and process consultant and the commission would benefit greatly from his experience and skills.
CCMA chief in at deep end

Johannesburg – Vincent Mntambo, the new chairman of the governing body of the Commission for Conciliation, Mediation and Arbitration (CCMA), joins the commission at a time when the institution is experiencing a record escalation in labour relations disputes.

The incoming chairman, who was the director-general of Gauteng’s public service department, will serve a three-year term.

A constitutional and international lawyer by profession, Mntambo spent some time teaching law in the US and at the universities of Natal and Unisa. He brings to the CCMA experience in conflict resolution spanning some 10 years.

Mntambo said last weekend he would be responsible for giving strategic direction to the work of the CCMA and ensuring balance between the interests of labour, government and business. The biggest challenge remained the growing workload at the commission.

“It takes up to three months from the moment a case is lodged with the CCMA up to the time it is finally resolved. We have to find a way of improving on that time frame,” Mntambo said.

But Mntambo (45) is privileged to be presiding over a new era at the CCMA because, for the first time ever, the institution credited with having been a brandchild of the revolutionary Labour Relations Act, will be outsourcing its service by accrediting Independent Mediation Services of South Africa (IMSSA) and bargaining councils to handle cases referred to it.

He believes this arrangement will cut the CCMA’s workload in half, although it is not a permanent solution. The tax-funded institution still has to subsidise its new partners before a longer-term solution is found.

Bokkie Botha, the outgoing chairman of the governing body, said the record escalation in cases placed an enormous strain on commissioners. He believed Mntambo had the energy and experience to lift the institutions out of the doldrums.

Botha said he did not see the growing preference for IMSSA over the CCMA as a “competitive issue” because the latter had been established as only one part of a range of dispute-settling organisations including IMSSA, the industrial court and statutory council. He said it was surprising that big companies preferred the CCMA to other alternatives.
The Ashutdown Department says...
Desperate plea from ‘clogged-up’ CCMA

CLEAN JACOBSON

A DESPERATE Thandi Orleyn, the director of the Commission for Conciliation, Mediation and Arbitration, has called on trade unions and management to stop clogging up mediation services with petty cases — including thousands of shoplifting complaints.

She was speaking as the government announced that 3.8 million man-days were lost because of strike action over the last year — the highest figure since apartheid-era confrontations in the early '90s.

Orleyn said: “Research in the retail sector shows that a major issue is theft and shrinkage.”

She said the sector did not have a central bargaining council where disputes could be resolved. This meant that almost every issue was referred to the commission and there were no uniform codes of conduct with which to solve disputes.

“There is also an adversarial relationship between employers and employees. It is a very fragmented sector, with much competition between unions,” she said. Unions don’t want to lose support if they refuse to refer cases. They may follow the right procedures but they also clog the system and we are trying to be more effective. It is taking up a lot of energy and public funds,” she said.

The commission’s annual report, released this week, shows a 35 percent increase in cases referred to the body last year. Most of the 60,000 cases referred to the body — some 20 percent — came from the commercial or retail sector.
Aspiring Labour Judges put through tough interviews
CCMA Swears in Millennium Commissioners

People with Empathy: The new millennium commission make their affirmations and

FRANK NXMALMO

LABOUR CONFLICT

Reduction body adopts industry best practices in resolutions
Grievances at Labour Commission

IN BRIEF

Call for dismissal of CCOA director for financial mismanagement

(3) 43149
New crisis as CCMA acts on leader

By Jimmy Seepe
Political Correspondent

The Commission for Conciliation, Mediation and Arbitration could be plunged into a new crisis following a decision by the organisation’s governing board to institute a disciplinary hearing against one of the leaders of the staff association.

The commission’s staff association general secretary Maynard Dyakala told Sowetan yesterday that the CCMA management took a decision to bring disciplinary charges against the commission’s legal unit head, Advocate Russell Moletsane, who co-signed a memorandum submitted to Parliament.

The memorandum, which was submitted to Parliament’s public accounts committee, called for an investigation into charges of financial mismanagement against the CCMA director Thandi Orleyn.

The CCMA governing body, which met following publication of the staff grievances in Sowetan, had agreed to meet the staff association to discuss their grievances.

The staff association has since expressed doubts about whether it will meet the governing body following the decision to have Moletsane appear before a disciplinary hearing next week as a result of his part in drafting the memorandum.

Dyakala said the decision to put Moletsane before a disciplinary committee was a clear example of union-bashing on the part of the CCMA.

He said the association now fears that the CCMA was planning to fire Moletsane after his appearance before the disciplinarity hearing.

"Their actions are tantamount to a plan to divide and silence the staff association," he said. "This is clear harassment and does not augur well for the CCMA."

In a document submitted to the public accounts committee, the association alleged that racism was rife within the CCMA.

It also listed a number of alleged irregularities relating to the appointment of commissioners, flawed interviewing procedures and the unequal climate relating to internal industrial relations.

"The Irish coffee syndrome continues to surface with regard to commissioner’s appointments."

"Since the inception of the CCMA, capable black people have always found themselves at the bottom of the hierarchy," the CSA memorandum said.

The association also called for an investigation into claims that the director had abused her powers by making irregular trips overseas.

The CCMA spokesperson, Sibhende Tshwete, promised to come back to Sowetan with reasons behind placing Moletsane before the disciplinary committee but failed to do so at the time of going to press.
Internal dispute rocks labour conflict body

SOUTH Africa's first statutory body set up to resolve and avert industrial conflicts is embroiled in a dispute over racism, nepotism, sexual harassment and financial mismanagement, writes CELEAN JACOBSON.

The staff association at the Commission for Conciliation, Mediation and Arbitration this week called for director Thandi Orleyn's dismissal amid allegations of mismanagement.

A memorandum signed by the head of the commission's legal unit, Rusele Moletsane, and the staff association's general secretary, Maynard Dyakala, and handed to Parliament, also alleged that racism was rife.

The association's Gauteng branch has also referred the CCMA to the Human Rights Commission for alleged violations of members' rights.

Moletsane, meanwhile, faces disciplinary charges for circulating a petition supporting the association's president, Ace Magogodi. He, in turn, is being disciplined for attacking a senior commissioner and allegedly defaming the organisation.

Disciplinary action will also be taken against Dyakala for his part in writing the memorandum and bringing the organisation into disrepute.

It has also emerged that Moletsane and a former association president, Sipo Mahlobo, who has been dismissed, were implicated in the hearing of national registrar Monde Zimeno, who was fired in September.

Zimeno, was convicted on about 20 charges, including sexual harassment, gross insubordination and negligence.
Orleyn is just a scapegoat – CCMA

THE Commission for Conciliation, Mediation and Arbitration on Thursday came out in support of its director, Thandi Orleyn, saying allegations levelled against her and the commission by a staff association were scurrilous and untrue.

The staff association demanded Orleyn’s dismissal, accusing her of financial mismanagement and abuse of power.

It also claimed racism was rife because white commissioners were being promoted faster than their black counterparts.

The national directorate, consisting of senior management, said in a statement on Thursday it had reviewed all the allegations and found them to be without foundation.

“We affirm our admiration and support for the director and the effort she has made to improve good governance of the commission and efficiency of service to the public,” said the directorate.

The statement said it appeared the association general secretary Maynard Dyakala and other staff members were discontent, and “in the foreseen inquiry into their misconduct saw fit to denigrate the director and the governing body of the CCMA”.

The allegations by the staff association have been raised repeatedly over the past two years.

The claim of financial mismanagement originated from an auditor-general’s report submitted to Parliament in September this year, and is being dealt with in co-operation with the auditor-general.

Other allegations presented to the parliamentary public accounts committee involved unauthorised overseas trips by Orleyn, and the discipline and dismissal of national registrar Nomfundo Zimena.

The resurfacing of grievances followed negotiations on the renewal of employment contracts for commissioners.

Commissioners were on three-year contracts which expired in June.

Some commissioners were not re-employed while others accused the CCMA of employing them on contracts less favourable than those they previously had.

The national directorate said it had taken the auditor-general’s report very seriously.

A thorough check was made of the CCMA’s IT system, and national registrar Zimena – who as chief operating officer was responsible for all financial security and controls – was disciplined and dismissed.

The head of the finance department and the CCMA’s accountant chose to resign after being suspended.

Regarding the employment of commissioners, the directorate said all appointments were the function of the governing body, which comprised elected representatives of organised business, organised labour and government.

“All disputes over commissioner recruitment are therefore disputes with the Governing body.”

On allegations of racism and nepotism, the directorate said: “The Irish Coffee comment that has often been used since inception to describe the racial composition of the CCMA, with its implication that white staff are located at the top of the structure with a large black staff contingent below, is as inaccurate as it is offensive.”

Of the 11 members of the National Electorate, six were black, two were white, two Asian and one coloured. Sixty-five percent of the staff were black, they said.

The directorate said Orleyn had been on five official overseas trips since her appointment in December 1997. Some trips were sponsored by international funders and others by the CCMA, all with the governing body’s approval.

The governing body met on Monday to formulate a response to the claims against the CCMA.

It expected to release a statement soon — Sapa
POLITICS

CCMA to meet staff association

By Jimmy Seope
Political Correspondent

THE long awaited meeting between the Commission for Conciliation, Mediation and Arbitration and its staff association will be held this week. It will aim to resolve simmering tensions that have bedevilled the organisation during the past week.

The meeting comes at a time when the staff association is contemplating industrial action against the CCMA following the suspension of its secretary-general, Mr Meynald Dyakala, over a memorandum he co-signed with the head of the legal unit, Advocate Russel Moletsane.

Members of the staff association, who are now afraid of talking publicly, are accusing the CCMA management of union bashing as result of the actions taken against Dyakala and Moletsane.

It is understood that the association, which now appears divided, plans to lodge a protest and petition against Dyakala's suspension.

The scheduled meeting also comes as representatives of the CCMA's governing body reaffirmed their support for the activities of the commission.

The governing body consists of the Congress of South African Trade Unions (Cosatu), Business South Africa, the National African Congress of Trade Unions and the Department of Labour.

The CCMA has interpreted recent allegations as an attempt to destabilise its activities and said it had devised “a plan of action to deal with any acts of misconduct by any member of staff.”

CCMA spokeswoman Ms Sue King said that the decision to suspend Dyakala related to his public comments published last week in Sowetan, which brought the commission into disrepute.

King said that their action to suspend Dyakala was not an attempt to cripple the staff association activities within the commission.

“We refute claims that there is union bashing in the CCMA,” said King, while adding that she could not answer other questions regarding Dyakala’s suspension because it is sub-judice.

She said Dyakala, although suspended, will be welcome to attend the proposed meeting between the CCMA and the staff association.

In a statement to Sowetan the commission said: “The CCMA holds dear its commitment to good industrial relations, respect for organisational rights and collective bargaining both within the institution and in the labour market.”

“The CCMA management welcomes the opportunity to continue to engage with the staff association and to build its relationship with the association.”

In a memorandum to Parliament’s public accounts committee, the staff association earlier called for an investigation into charges of financial mismanagement against the CCMA’s director Ms Thandi Orley.

The association also called for an investigation into irregular appointments and claims that the director had abused her powers by making several irregular trips overseas.

The CCMA has rejected all claims against Orley.

“The CCMA director is expected to represent the institution in both national and international forums as an essential function of the job,” King said in the statement.

“The director sits on a number of boards, which form part of her contract. Travelling commitments for this work are covered by these boards, again with the governing body’s knowledge.”
CCMA's third birthday marred by staff wrangles

Bitter divisions and tension refuse to go away as management; staff fight each other, writes Renée Grawitzky

The Commission for Conciliation, Mediation and Arbitration (CCMA) celebrated its third birthday last week amid rising concerns about whether it can fulfil its mandate as spelt out in the Labour Relations Act.

Like most institutions, the commission has its fair share of problems. But its high profile has ensured that these have entered the public domain.

Renewed tensions between management and employees surfaced when the staff association raised a number of grievances, in the media and demanded the dismissal of National Director Thandi Orellyn.

The staff's complaints range from charges of nepotism, financial mismanagement, abuse of power, sexual and staff harassment to claims that racism is rife because white commissioners are being promoted faster than their black counterparts.

Many of these allegations have been raised and dealt with in the past, while the claims of financial mismanagement originate from an auditor-general's report which was tabled in Parliament and was being dealt with in co-operation with the auditor-general.

Additional allegations range from unauthorised overseas trips by Orellyn to costs incurred when the commission spent more than its former national registrar, Mondi Zimeka.

The commission's governing body has dismissed claims of unauthorised trips, while management believes the renewed tensions stem from the dismissal of Zimeka.

Zimeka was employed by former director, Charles Nupen, and was given greater powers than his role required.

On the first anniversary of the commission, the governing body restructured the organisation in a bid to curb Zimeka's powers and reduce his influence as he had begun to build his own power base. It was acknowledged at the time that the tensions that were plaguing the commission emanated from the office of the national registrar.

When Orellyn took over from Nupen, Zimeka challenged her leadership when he, in fact, was supposed to report to her.

In the period leading up to Zimeka's suspension, the commission's managers appeared to be protecting him despite claims of sexual harassment and other irregularities.

He was eventually dismissed in September and found guilty of 20 charges ranging from gross mismanagement and attempts to undermine the authority of the director, to gross negligence in the performance of his duties and failing to respond to queries raised by the auditor general.

In addition, he was found guilty of sexual harassment and for making an irrevocable offer on behalf of the commission to enter into a lease with Liberty Life when he did not have the authority to do so.

Management claims that immediately after his dismissal, "those who supported Zimeka" began to challenge them.

However, a former commissioner says the organisation's problems cannot all be blamed on Zimeka.

Although management now seems to be asserting its leadership, there is a view that it has not always acted decisively. This goes back to when the commission was established.

A commissioner says "Lawyers do not generally make good managers." A source close to the organisation says there are real problems that need to be addressed.

A former commissioner says "All those who work for the commission are acutely aware of their rights. So, more than in any other institution, employees will challenge what they perceive to be any form of infringement of these rights."

Another commissioner says the organisation is full of precious egos. "Everyone thinks they are good and the institution will collapse without them. Commissions feel they need special treatment."

Another source acknowledged that people might appear to be complaining excessively, but this was a reflection of the fact that they performed "Commissioners spend the whole day in meetings to resolve other peoples' disputes. They operate in an environment of conflict and become very negative. That becomes their modus operandi."

Disatisfaction among commissioners, a source says, is partly related to the fact that their expectations of what the organisation would become did not materialise.

Despite the mud-slinging, the organisation has attempted to deliver. More than 220 000 cases have been referred to it since its inception, and 74% of these have been resolved.

But backlogs are being experienced with arbitration.

For many, harping on about the problems is becoming tiresome and is discrediting the young institution.

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GETTING IT RIGHT

ALMORIE Morkel left the Engen, not Rob Vred
d Business Reporter on
Friday
Independent investigation will look into allegations

Facilitator appointed to heal rifts at CCMA

FRANK NxUMALO
LABOUR EDITOR

Johannesburg – The governing body of the Commission for Conciliation Mediation and Arbitration (CCMA) yesterday decided to appoint an independent facilitator to mend damaged relations between management and staff following allegations that have threatened to tear the organisation apart.

The CCMA gave the facilitator three months in which to complete an investigation into the allegations and report back to the governing body.

A separate investigation into allegations of financial mismanagement against Thandi Olwethu, the director of the CCMA, by the Auditor-General would run at the same time.

Allegations including unauthorised overseas trips, financial mismanagement, nepotism, abuse of power and racism were presented to the parliamentary public accounts committee.

Vincent Mntambo, the CCMA's chairman

The head of the CCMA's finance department and the head accountant chose to resign after being suspended.

Vincent Mntambo, the chairman of the CCMA's governing body said the in-fighting had not damaged the organisation's ability to function and that the independent facilitator had been appointed to avoid pre-judging issues on the strength of the allegations.

"These problems have not impacted on delivery, our dispute settlement rate has been improving over this whole year. This organisation is functioning and I wouldn't make an irresponsible statement if weren't delivering," Mntambo said.

"Since it was established three years ago, the CCMA had dealt with an average of 256 conciliations a day and 117 arbitrations a day, the national conciliation rate for October 1999 was 71 percent," Mntambo said.

He said the in-fighting within the CCMA was restricted to the Gauteng region.

The facilitator would be testing the allegations with each of the parties concerned, including the staff association, management and the tripartite governing body and would present a report at the end of the investigations, he said.

"A lot of CCMA-type organisations are going through this growth and development process; it may be that the CCMA attracted disproportionate attention."
CCMA hit by internal wrangling

STAFF REPORTER

South Africa's labour dispute facilitator, the Commission for Conciliation, Mediation and Arbitration (CCMA), must now itself engage a facilitator to sort out internal wrangles between staff and management.

This emerged yesterday at a media conference in Johannesburg.

The CCMA has been embroiled in controversy recently following allegations by the CCMA Staff Association (CSA) against management. The allegations include financial mismanagement, nepotism, abuse of power, and racism.

Following a meeting between the CSA, management and the governing body yesterday, it was resolved that a facilitator be appointed to look at all allegations.

There will be a special audit by the Auditor-General at the same time.
CCMA head in funding scandal
Allegations fly, but life and work go on at the CCMA

Orleyn says inquiries will decide, writes Simphiwe Xako

INTERNAL division, backstabbing and acrimony have rocked the Commission for Conciliation, Mediation and Arbitration (CCMA) this year. Nevertheless, director Thandi Orleyn is upbeat about the organisation's role in labour relations.

First came the claims of financial mismanagement, nepotism and corruption by the CCMA staff association against Orleyn. Then internal auditor Jabu Magadele issued a report supporting the association's claims.

Orleyn has, however, continued to maintain her silence concerning the allegations, saying she awaits the outcomes of the inquiries.

Public protector Selby Baqwa, together with the parliamentary public accounts committee and an internal investigator appointed by the governing body, is looking into the matter.

Commission insiders say the feud was partly sparked by the non-renewal of some commissioners' contracts after they had expired. Most staff members believed their tenure would be automatically renewed.

The commission dismissed national, regional and local members, including management, the case is still in dispute. It also suspended its staff secretary, Maryds Zuma, for bringing the CCMA into disrepute.

Orleyn says many CCMA staff members 'do not understand matters of governance'. She also says the governing body has not approached her with any concerns.

In October this year, the commission mediated and conciliated 71% of the disputes that were referred to it — with each commissioner faced with a mammoth task of wading through 25 cases in 25 days. This year, the body, which has 146 full-time and 250 part-time commissioners, handled 7,000 cases in 25 days.

In October the commission handed 367 cases a day, with more than 250 referrals over the past 12 months. Only 11% of disputes were arbitrated within the mandatory 30 days this year.

Government businesses said the trade union movement — the so-called social partners — last month reaffirmed their mandate and support for the CCMA.