changes *in the* law

Paul Benjamin, Centre for Applied Legal Studies

In September 1990, the Government, unions and business agreed that labour legislation must be extended to the three "cinderella" sectors: the public sector, agriculture and domestic workers. In the minute of 6 November 1992, further deadlines were laid down for this process. In this article, we look at the progress that has been made.

Public Sector

A Public Service Labour Relations Bill was published for comment in December last year. It is the product of negotiations between the Commission for Administration (CFA) who are responsible for public sector labour relations and the staff associations of public servants.

Agreement was reached on some but not all aspects of the Bill. Its principle features are:

- ☐ it establishes a public sector bargaining council;
- ☐ the jurisdiction of the Industrial Court and the unfair labour practice are extended to the public sector;
- ☐ the Act creates dispute resolution procedures and strike procedures;
- ☐ striking is forbidden in essential services but these employees can refer their disputes to compulsory arbitration.

So far so good. But a closer look at the Bill shows that it will not achieve effective labour relations and dispute resolution in the public sector. Let us look at a few examples. First, the Bill creates a number of different categories of disputes – different types of disputes are referred to different forums – some go to conciliation boards, others to industrial councils. This will create many problems and lead to technical objections about whether a dispute has been correctly classified.

A single dispute such as a retrenchment which combines rights and interests issues could give rise to four or five different types of dispute meetings and procedures.

Many features of the Act favour the interests of employers over employees. For instance, a union must give 20 days' notice of a strike but the employer can interdict it on two days' notice. After 30 days of a legal strike, the Act authorises the employer to dismiss or penalise workers. Workers can also be dismissed before this if the strike is conducted in an "unreasonable" manner. The pre-strike procedures are as complex as those in the LRA.

The definition of essential

Farmworkers: soon to be covered by legislation

Photo: Santu Mofokeng

services in which striking is prohibited is extremely wide, going beyond the ILO recommendation of only services whose interruption would threaten the health and safety of the community. The results of compulsory arbitration in disputes with financial implications are not binding on the Government.

The Government was keen to push the law through early this year. For this reason, it published it for comment in mid-December and required parties to make their comments before the end of the year. In February, COSATU gave evidence before a Parliamentary Committee who, surprisingly, put a spoke in the Government's wheel and ordered further consultations over the Bill. Hopefully, this will mean that an improved Act is passed later this year.

Farm workers

The NMC investigation into the extension of labour law to farm workers began in 1989. Its first fruit was the extension of the Unemployment Insurance Act to agriculture on 1 January 1993. The Government has also promised to extend the Basic Conditions of Employment Act on 1 April – a major step forward for farm workers and unions.

In December, two further Bills to extend labour law to farm workers were published for comment. These will extend the LRA and the Wage Act to agriculture.

Both Bills are controversial. The LRA Bill would severely restrict the ability of farm workers to bargain collectively by restricting their right to strike:

- The Industrial Court could declare strikes by farm workers, even if legal, to be unacceptable. This could be done if the strike was accompanied by acts or threats of violence or if the court believes that it is not "functional" to collective bargaining.
- Farmers could enter into annual no strike/no lock-out agreements with their workers. These workers would not be able to strike nor could they go to arbitration over their disputes.

The ban on "unacceptable" strikes is similar to the provision that allowed the Industrial Court to interdict strikes as unfair labour

practices in the 1988 Act.

The Act proposes that a special labour court be created for farm workers. The court would only deal with individual cases and parties could not have representation. The court would be inquisitorial – the presiding officer would ask questions. The Bill proposes that the court should not have the power to reinstate workers dismissed unfairly - merely to award financial compensation of two weeks' wages per year of service up to a maximum of 30 weeks' wages.

This feature has been severely criticised. Although farm workers could still take their cases to the ordinary Industrial Court, many will not be able to do so because of distance and resources and they will be prevented from fighting for their reinstatement.

The Bill also proposes that the National Manpower Commission establish codes of fair labour practice for farm workers. This is seen as a forerunner of more general codes from the NMC. More controversially, it proposes that farmers and their employees (or trade unions) should be able to negotiate labour codes for submission to the minister for promulgation. This type of labour code for a particular sector is unacceptable - it could lead to employers, for instance, pressurising their workers to give up the right to a hearing.

The Wage Amendment Bill hardly "extends" the Wage Act to agriculture. While the Wage Board can presently set minimum wages and conditions of employment for other workers, the Bill proposes that the Board can only set guidelines in agriculture. These would not be legally enforceable and the failure to comply with them would not be an offence. The desirability of minimum wages in a sector such as agriculture is very controversial. This proposal ends the debate between those who favour minimum wages and those who oppose them, in favour of those who oppose them. The Wage Board could be an important forum for investigating the conditions in agriculture and for parties to put forward their arguments as to what the effect of minimum wages would be.

The South African Agricultural Union, the biggest farmers' organisation, wants separate labour laws for farm workers. It has therefore drafted a Farm Workers' Act that would include the LRA and the BCEA. If no agreement can be reached, the Government will have to decide whether the Acts are extended through the present legislation or through a separate agriculture Act. Whatever the Government decides, it has committed itself to extend these last two labour laws to agriculture this year.

Domestic Workers

A Bill to amend the BCEA to cover domestic workers was also published in December. The Government's commitment is to get the law through Parliament this year and bring it into effect in the second half of 1993.

This would extend most of the BCEA to domestic workers including a 46 hour ordinary working week, 14 hours maximum overtime, paid annual leave and paid sick leave. This will be the first time that the conditions of domestic workers have been regulated by statute. At the same time, committees are meeting to investigate the extension of other labour laws to domestic workers. These committees will investigate an appropriate structure for the Industrial Court to deal with domestic worker cases and the problems raised by extending social security legislation like the Workmen's Compensation Act and the Unemployment Insurance Act to domestic workers.

The extension of basic rights has been a principle aspect of COSATU's initial participation on the National Manpower Commission. The process has not been easy and the attitude of the Government has often been obstinate, but a combination of patience and pressure is beginning to show dividends. However, laws alone will not improve the position of farm workers and domestic workers who are poorly organised and difficult to organise. It is therefore important for the unions to use the extension of labour laws to these three sectors as a spring-board for stronger organisation. ☆