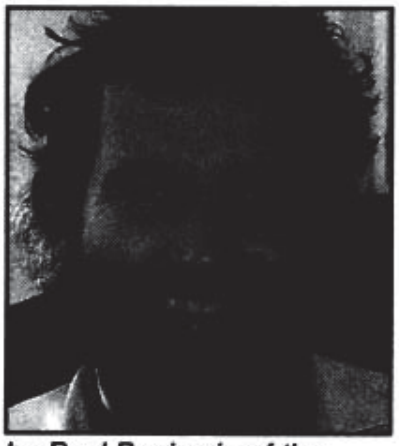
Farm labour law: *recent developments*

1993 has been a busy year for the extension of labour laws to agriculture. On 1 January, the Unemployment Insurance Act was extended to farmworkers. This was followed by the Basic Conditions of Employment Act (BCEA) on 1 May. More recently, COSATU and the SA Agricultural Union have been involved in extensive negotiations. This should result in the extension of the Labour Relations Act to farmworkers in the near future.



by Paul Benjamin of the Centre for Applied Legal Studies (CALS)

Basic Conditions of Employment Act

The BCEA prescribes minimum conditions of employment (other than wages) for most workers in the private sector. (With the extension of the Act to farmworkers, the only major group still excluded is domestic workers). The Act applies to all workers whose conditions of employment are not protected by either an industrial council agreement, a wage determination or a labour order. The Act sets minimum conditions and it is an offence for an employer to employ a worker on less favourable conditions unless the employer has obtained an exemption from the Department of Manpower.

The BCEA is particularly important for unorganised workers (such as workers in small operations) who are unable to improve their conditions of employment through collective bargaining. In theory, therefore, the Act is of great importance to workers in agriculture, where union membership is low and organisation difficult. Whether in practice the Act will be of value to farmworkers remains to be seen.

The basic conditions of employment for farmworkers include the following:

- A basic 48-hour working week
- A meal interval of at least 30 minutes after five hours work
- 10 hours maximum overtime per week (at time and a third)
- Double pay for work on Sundays and public holidays
- Two weeks paid leave per year
- Six weeks paid sick leave over a three-year period
- Protection against victimisation

- Notice of a week for weekly-paid workers and a month for monthly-paid workers (the same as in common law)
- Sundays, notice and annual leave must include the value of non-cash benefits such as food, accommodation and the use of land.

The Act also caters for the seasonal nature of agricultural work. Farmworkers may be required to work extended hours during any four months of the year, provided they then work shorter hours for an equivalent period. This is designed to allow for extended working hours during peak periods, such as harvest time. There are also provisions to assist farmworkers who have their own cattle or crops.

Now that unions have won the battle for basic protection for farmworkers, the focus is shifting to the quality of protection the BCEA offers. Many of the Act's conditions of employment are far worse than those enjoyed by most South African workers, particularly those who engage in collective bargaining. The average working week is now closer to 40 hours, compared to the BCEA maximum of 46.

Another example of the poor conditions set in the BCEA is annual leave. Surveys indicate that under 5% of South African workers have less than three weeks annual leave per year. But the BCEA only guarantees two weeks.

Casual workers' rights are also a problem. At present, the Act defines 'casual workers' as all employees who do not work for a single employer on more than three days in a week. They are not entitled to paid leave or paid sick leave. As growing numbers of workers are employed on a part-time or casual basis, the Act should be changed so that all workers in regular employment qualify for benefits.

The BCEA is well below international standards as well as standards in neighbouring countries. For instance, the ILO recommends three weeks annual leave per year. The recent Namibian labour code, drafted with ILO assistance, gives Namibian workers a minimum of 24 days leave per year.

Perhaps the BCEA's most significant failure to comply with international standards is in the area of maternity leave. In virtually every country in the world it is unlawful to dismiss workers on account of pregnancy. This is reflected in a number of ILO conventions and recommendations. But the BCEA only prevents women from working (four weeks before birth, eight weeks afterwards) and does not protect their job security. Again, many women workers in organised industries have won the right to return to work without loss of benefits after paid maternity leave. This protection should be included in the statute to protect women workers in less organised industries.

How will the law be enforced? There are too few inspectors at the moment and it is hard to imagine the government employing enough new inspectors to visit every farm. Anyway, it is unlikely that such a strategy would be successful. What is needed are more imaginative approaches to promoting acceptable standards. Incentives could be introduced to ensure that farmers comply with labour legislation and basic employment standards. For instance, most farmers have loans from the Land Bank – it would be easy enough for a new government to require compliance with labour legislation as a condition for such a loan.

The extension of the BCEA is therefore only the first of many steps necessary to give farmworkers effective protection. What is now needed is a thorough scrutiny of the Act to see how appropriate and relevant its protection is. The same logic applies to the Unemployment Insurance Act: the benefits are limited (45% of earnings), available for a short period (six months only) and claiming benefits is time-consuming and involves long delays.

Farmworkers and the LRA

The extension of the BCEA to farmworkers does not protect them against unfair dismissal. To achieve this and to extend collective bargaining requires the extension of the Labour Relations Act. COSATU and the SA Agriculture Union have spent much of this year in negotiations on this subject and in August reached a settlement which is reflected in the Agricultural Labour Bill currently before Parliament. The Bill extends the working of the Labour Relations Act to agriculture with two important exceptions.

The first is that it creates a new court known as the Agricultural Labour Court (ALC). This is headed by the president of the industrial court and it can hear any unfair labour practice dispute between an employer and employee in farming activities. The ALC is therefore, in effect, a special labour court for agriculture. It will have all the powers of the industrial court, including the ability to order the reinstatement of dismissed workers. Any ALC decision on whether or not to reinstate a worker is subject to appeal in the industrial court. Other appropriate cases may also be taken to the industrial court.

It is likely that the ALC will deal with individual dismissals. More complex cases, such as mass dismissals or cases about collective bargaining, will go to the industrial court. The ALC will be simpler, quicker and cheaper than the industrial court and may become the model for the creation of a 'small claims' industrial court to deal with individual cases.

The other difference is the manner of resolving collective bargaining disputes. Workers may not strike and employers may not lock-out over unresolved disputes. Instead, any party to such a dispute can refer it to compulsory arbitration. Therefore, if farmers and workers reach a deadlock in negotiations over wages or other conditions of employment, the unresolved dispute can be referred to arbitration. However, farmers and workers may agree to opt out of this and have the general rules concerning strikes and lock-outs apply to them in place of the right to arbitration.

This is the most controversial part of the Bill. COSATU has said that it would have preferred the normal provisions about strikes and lock-outs to apply to farmworkers. However, in the light of farmer opposition and the low level of unionisation, this was probably the best deal it could get. In assessing the arrangement, one should not forget that farmworkers, because they frequently live on their employers' property, are very vulnerable if they go on strike. Unions' first priority is therefore to build up membership. At this stage, arbitration may offer more benefits in the short term than industrial action.

Compulsory arbitration over wages and other conditions of employment could have immense benefits, particularly in the light of the low wages paid to many farmworkers. A few strategic arbitration cases could impact on wage patterns and become an important boost for trade unions in agriculture. Once farmworkers' unions are stronger, they should have no difficulty in persuading a future government that the normal regime for industrial relations should be extended to agriculture.

In all other respects, the LRA will be extended to farmworkers. Their unions will be able to register and industrial councils can be formed. But the Act neglects a very important aspect – union officials' right to enter farms to recruit workers or consult with members. The absence of the right of access will severely hamper agricultural unions' growth and, unless this is remedied by future legislation, unions and workers will not be able to take advantage of the Act's protection.

Legal protection is only a small part of the battle – effective protection for farmworkers can only come through strong unions. ☆