

Farm workers: proposed labour legislation

by DAWIE BOSCH

Farm workers, who are excluded from nearly all labour laws, are likely to be covered by at least some of them within the next two or three years. The majority of the National Manpower Commission (NMC) — with the participation of COSATU and NACTU for the first time — recommended that all labour laws should cover farm workers.

The government's final response to these recommendations will probably only be known by next year.

Basic Conditions of Employment

The *Basic Conditions of Employment Act* (BCEA) sets minimum conditions of employment. The changes to this Act which are summarised here must still be confirmed by Parliament before it will be law. This will probably happen in the first half of 1992.

The SA Agricultural Union (SAAU) accepted that the BCEA will have to apply to farm workers, but wanted various basic conditions changed for agriculture. These included longer ordinary working

hours for farm workers (with limitation only on the total average hours worked over a year), unlimited lunch breaks, 14 days leave for guards (instead of 21 days) and "light" child labour between ages of 12 and 15.

Labour felt that the *Labour Relations Act* (LRA), which sets standards of fairness and provides for mechanisms to resolve disputes, should have been the first labour law to be extended to farm workers. Since the government proposed to extend the BCEA before the LRA, labour supported the inclusion of some rights granted by the LRA in the BCEA, with respect to farm workers. This included protection of farmworkers against unilateral changes of conditions to the detriment of workers and against victimisation and a prohibition on dismissal of farm workers in anticipation of new law.

Labour also argued for the closing of loopholes which could be used to avoid provisions of the BCEA — such as paying on a piece or taskwork basis and using labour brokers and labour-only

* Dawie Bosch works at the Centre for Rural Legal Studies in Stellenbosch. He was a member of the NMC's technical committee investigating applications of labour legislation to farm workers.

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contractors to perform work.

The SAAU and labour compromised and reached consensus on various issues in the NMC (see pp 51ff).

Farm workers are likely to be covered by the following basic conditions:

- Conditions will be the same as for other workers: 14 days annual leave (21 days for guards), overtime pay of one and a third times ordinary wages, maximum overtime of three hours per day and ten hours per week, seven public holidays, a right to a certificate of service, a ban on employment of children under 15 and of women one month before and two months after the birth of a child;
- 48 hour working week (46 for other workers);
- 9½ ordinary working hours per day (9¼ for others);
- Extension of ordinary working hours by four hours a week for up to three months a year with a corresponding reduction of working hours in another part of the year;
- A right to minimum notice of one month (instead of one or two weeks for other workers), and a right to accommodation and use of grazing for at least 30 days even where a worker has been paid in lieu of notice; where a worker gets the right to grow crops as part of remuneration, the worker will still be entitled to a reasonable opportunity to tend and harvest the crops;
- No limit on the length of meal intervals (1¼ hours maximum for others);
- Payment in kind to be seen as part of farm workers' wages for purposes of determining overtime pay, leave pay and notice pay (not the case for other workers);
- 30 days sick leave over three years and 36 days for guards (as for other workers) – but if a farmer demands a doctors' certificate he/she has to give reasonable assistance to a farm worker to get to a doctor;
- Payment for Sunday work may be different (the Bill proposed lower pay than for other workers) but farm workers who work on Sundays are likely to get a right to one day off in the following week;
- Minimum payment of workers doing piece or task work, set at the wage of permanent workers on the farm.

The following changes applying to all workers are also proposed:

- All workers will be allowed to enforce any BCEA rights (such as unpaid wages) in a civil court (at present workers have to claim through the Department of Manpower, which is slow in enforcing rights and is often accused of believing employers rather than workers);
- Added protection against victimisation: an employer will not be allowed to victimise workers for the reason that they discussed their conditions of service with any person, or that they refused to carry out an order which is in conflict with the BCEA;
- Increasing fines for transgressing provisions of the BCEA from R1 000 to R4 000, and for victimising workers from R2 000 to R8 000. It is still unclear whether or not the following proposals (among others) will be included in the final Act:
- Summaries of the BCEA should be posted in a *prominent and accessible position* on the work place (proposed by the NMC);
- Allowing the Minister to set new minimum conditions of employment on application by an association of farmers for its worker, as long as the farmers' association consulted its workers *at any time* before making application (proposed in the Bill but opposed by the NMC and others);
- Protection of farm workers against exploitative practices of shops owned by their employers (proposed by labour and others).

Unemployment Insurance

The *Unemployment Insurance Act* (UIA) provides for a limited and mandatory insurance against unemployment. Seasonal workers in industries which have been declared by the Minister of Manpower as seasonal (for example, canning of fruit) are presently excluded from making contributions and from insurance for the first eight months of their employment by one employer.

As with the BCEA, changes to the UIA which are summarised here must still be confirmed by Parliament before it will be law. This will probably happen in the first half of 1992.

The SAAU strongly opposed present cover of farm workers under statutory unemployment

insurance. The SAAU opposed the idea of reducing the seasonal period from eight months, as proposed by others.

The majority of the NMC supported full cover for farm workers by the UIA, with no changes to the Act specifically for farm workers. Labour further proposed the reduction of the seasonal period from eight to four months.

Possible changes to the UIA:

- Reduction of the seasonal period in seasonal industries (the Bill proposed that this be done only in the case of farm workers);
- In determining whether seasonal workers have worked continuously for one employer, any break of between two and four weeks to be disregarded;
- Permanent workers in seasonal industries to be covered by UIA from first day of employment (now they are only covered after eight months);
- The UIA will apply to farm workers only after 12 months from the date the changes are made by Parliament, and the Minister gets the power to extend this period even further for specific employers (this was opposed by various parties).

Manpower have not yet responded to the NMC recommendations on changes to the Unemployment Insurance Regulations. These include making it easier for people to change the place where they sign while they are unemployed and the introduction of mobile UIA offices in the rural areas.

Labour Relations

The *Labour Relations Act* (LRA) requires fair labour practices, regulates collective bargaining and provides mechanisms to resolve disputes. The NMC's proposals for changes to the LRA, aimed at including farm workers, were published for comment, but the Department of Manpower and Parliament have not yet responded.

The SAAU opposed extension of the LRA to farm workers, on grounds that a formal labour relations system should not be applied to agriculture because the joint application of the BCEA and common law should protect farm workers sufficiently. Earlier the SAAU supported a separate statutory labour relations system for agriculture. At the NMC the SAAU

representatives agreed to all central principles of the LRA — such as that common law is inadequate in ensuring fairness, and legislation should enforce fair labour standards — thereby contradicting its earlier (and subsequent) positions.

The majority of the NMC supported full extension of the LRA to farm workers, without any changes specifically for farm workers. The NMC also supported general changes to the LRA especially in the case of small and rural businesses.

Changes proposed by the majority of the NMC include:

- The creation of a circulating small labour court, which an applicant could decide to use instead of the Industrial Court, where no legal representation and no appeal will be allowed;
- Chairpersons of conciliation boards should play a more facilitating role in the conciliation procedures;
- If the parties to a dispute so decide, mediation or arbitration may replace the conciliation board stage;
- Methods of limiting strikes and lock-outs in certain circumstances (when they are “undesirable”) should be investigated.

The Wage Act

The *Wage Act* provides mechanisms by which the Wage Board can set conditions of employment and wages in specific industries and geographical areas, after conducting investigations. This is used especially in unorganised industries or in industries where employers/employees are not prepared to form Industrial Councils.

The SAAU opposed application of the *Wage Act* to agriculture, while labour proposed various other general changes to WA (such as that the Wage Board should be a tri-partite body, representing the state, organised employers and organised employees) which were not considered by the NMC.

The NMC's majority proposal was to include farm workers within the ambit of the WA, but to delay the date of implementation for two years. These recommendations were published for comment. The response from the Department of Manpower or Parliament to these recommendations is not yet known. ☆