

Fossils from the past:

resurrecting and restructuring the National Manpower Commission

Trade unions, employers and the state are currently negotiating the establishment of a new National Manpower Commission (NMC) with radically different composition and powers. In an important policy paper, COSATU* negotiator GEOFF SCHREINER puts forward the federation's perspective on the NMC.

In considering the restructuring of the NMC, it seems to me there are three key issues which need to be addressed. These are:

- (i) How do we make sense of the 'social contract' debate?
- (ii) How do we restructure the NMC to facilitate effective national negotiations?
- (iii) Does COSATU have the capacity for effective engagement in a restructured NMC?

This paper discusses these issues in making a case for COSATU (and NACTU) to participate in a disciplined way in a properly restructured NMC.

1. The 'Social Contract' debate

Recently the *Labour Bulletin* tried to assess the state of the debate on a 'social contract'. It published the views of John Copelyn, general secretary of SACTWU, and counterposed these to NUMSA's 'reconstruction accord' or 'liberation pact'.

At the risk of some oversimplification, the Copelyn/SACTWU position argues for a social contract between employers and trade unions, one leg of which would depend on the

acceptance of industry bargaining arrangements. Copelyn borrows from the example of the LRA campaign, suggesting that aspects of this contract, once concluded, might be presented to the state for ratification and implementation. It is concluded that, by excluding the state from negotiations in the first instance, trade unions will be able to maintain their independence.

NUMSA, on the other hand, we are told, wants to negotiate a 'social contract' with the future government-in-waiting. Pointing out that the employer camp is paralysed by narrow self-interest and short-sightedness, NUMSA argues for a social contract between COSATU, the ANC and other popular organisations, which would later, after elections, be foisted on the captains of industry.

The central difference underlying these two positions, it appears, is the view of the future relationship between the state and the trade union movement. Copelyn fears that COSATU's commitment to independence would be undermined if there were too close a relationship between unions and governing

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party. He suspects that the state will be all too eager to seize control of the institutions of civil society.

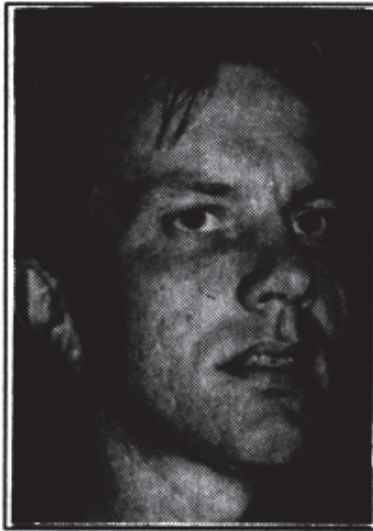
NUMSA on the other hand, it is stated, envisages a sympathetic and powerful state which, together with a determined trade union movement, would be able to thrust upon employers what they otherwise would not accept. This, however, is only a partial view of NUMSA's position. NUMSA does not advocate ignoring the

employer camp in favour of the liberation pact'. On the contrary, NUMSA has led the COSATU initiative to set up national negotiations with SACCOLA on a range of macro-economic issues, and NUMSA has also fully backed COSATU's initiatives to restructure the NMC.

NUMSA came to the idea of a 'liberation pact' from two angles. Firstly, it was felt that the current alliance structures were not working, and that the alliance programme had to be given some *real* content - for example, an alliance perspective on the future of the economy. Secondly, because of the employees' resistance to restructuring, the union felt that all possible means of bringing pressure to bear on them should be explored. It was argued that a liberation pact could help. But this does not mean that such a pact, by itself, would break their resistance, or that a future government would have the power, or even the will for that matter, to push the employers into line.

Copelyn's position is generally seen within COSATU as being on the right of the spectrum. On the other hand, the far left (for want of a better address), has vacillated between calling for a more central role for the state (see M Jansen, 'Weaknesses of the anti-LRA campaign', *SA Labour Bulletin* Vol 14 No5) to full endorsement for a minimal role for the state - as advocated by Copelyn.

What Copelyn, the far left, the *Labour Bulletin* and others have focused on is the question of who we negotiate with. However,



Geoff Schreiner

Photo: W. Mottala/COSATU

they misunderstand the real issues at stake. The focus should not be who we negotiate with, but rather the questions of

- (i) how we approach negotiations, and
- (ii) what negotiations are about.

These issues need to be explored a little.

1.1 Process of negotiation

At plant level, no one debates whether we should negotiate with management - it is taken

for granted that, once we are representative, we will approach management for recognition. Even in the communities where the transition from the politics of opposition to the politics of reconstruction has been a much slower one, there is now agreement that organisations will have to negotiate with the holders of power - in this context the state.

So, why the concern about national negotiations? This is not to dismiss the concern about remaining independent - but what does 'independence' mean? 'Independence' should, from the trade union perspective at least, be equated with having the will, capacity and - ideally - the right to back up independent bargaining positions by mass action!

This has got nothing to do with *who* one negotiates with. It is the *process* of negotiations which is important. In COSATU's LRA Campaign - the only sustained mass campaign initiative the federation has ever run - some important principles of process were endorsed:

- Open negotiations - all meetings with SACCOLA and the state were open and widely publicised. Unions were invited and encouraged to send their own representatives to meetings.
- Report back/mandate - representatives were required to report-back to affiliates through the federation structures after all meetings. Principled mandates were sought from the grass roots of our organisations and, on more technical issues, from

affiliate and federation executives committees.

- Right to mass action - throughout the LRA Campaign, Cosatu maintained and exercised its right to mass action (that is, for as long as the September 1988 amendments were on the statute books and/or used by employers).

It is these kind of principles – and it is not necessarily suggested that the above are exhaustive – which will safeguard the federation's independence. In this case, COSATU did not ask for the right to take mass action to support its demands. It simply confirmed its intention to exercise this right at any stage, and built its capacity for this purpose by regular information flows through mandates and report backs.

A very similar kind of thinking underpinned the five conditions that COSATU set down for its interim participation in the NMC. COSATU decided to participate in order to ensure that the LRA (and other legislation) was extended to farm and domestic workers, and of course to negotiate the restructuring of the NMC. The conditions set down by COSATU were that :

- (i) The Minister should appoint whoever COSATU elects to the NMC.
- (ii) COSATU will have the right of recall over any of its representatives.
- (iii) COSATU will not be bound to any decision of the NMC with which it disagrees.
- (iv) Representatives will report back and seek mandates from the federation's structures on all important issues, regardless of any existing NMC secrecy provisions
- (v) All COSATU positions should be recorded in full in any report submitted to the Department of Manpower, the Minister and general public.

As will be outlined later, these process principles are very much at the heart of COSATU's current proposals to restructure the NMC into a negotiating forum for independent, mandated parties.

These proposals clearly spell an end to the concept of the NMC as a talk shop, where so-called experts debate future industrial relations and scenarios in which they have no

direct involvement or, at best, represent small sectional interests.

So much for *how* we negotiate. But what issues do we negotiate *about*? There is no magic recipe.

1.2 Content of agreements: strategic perspective

For some it has become fashionable to argue that the 'social contract' equals wage restraint and no strike clauses. Therefore social contracts are bad. Therefore the trade union movement should have nothing to do with them. This is like leading a paraffin-soaked paper tiger to a very hot place. The argument is manipulative and misleading. The equivalent of wage restraint and very explicit no strike agreements are sometimes accepted by unions at plant and company level. Why not the same howls of horror? Because all unionists acknowledge that, under certain circumstances, taking into account the balance of forces, such accords, contracts, pacts, agreements - call them what you like - might be necessary for tactical reasons.

And such agreements need not be seen only in negative or defensive terms, as concessions borne out of weakness. One could well postulate a situation (and provide a practical example or two) where - in exchange for price-fixing and improvements to the social wage (directly affecting the more marginalised sections of the working class) - the trade union movement agrees to restraints on wage increases and further agrees, for the period of the contract, not to take strike action on the issues contained in that contract.

Whether such an agreement works depends essentially on whether trade union members fully understood and endorsed the contract in the first place. This is a point about process again, related to democratic practice. Equally important, of course, would be the question of whether the parties to the contract actually abide by their undertakings. If the trade unions agree to a wage restraint concession, in exchange for price controls and social wage benefits, then one cannot expect that the trade unions will stick to their side of the bargain if the state and employers renege on theirs.

In the short term, there are no magic recipes regarding what should or should not form the basis of any agreement, be it with a single employer, employers generally, and/or the state. But it is critical that decisions regarding what and what not to accept should be informed by a strategic perspective which embodies our aims and objectives as a federation. In short - a perspective which culminates in socialism. Any agreement with any party should be measured in terms of its value in taking the working class towards this objective, whether this is in organisational or political terms or both.

In summary, I have argued that:

(i) Trade unions which have the strength and capacity should engage both employers and the state at national level and other levels as well.

(ii) Independence (as defined) from the state and employers is critical, but this is ensured not by abstentionism but by principled engagement which ensures democratic practices and worker control.

(iii) It does not matter what is negotiated and agreed upon by the parties, provided the agreement has the full support of the relevant constituencies and it is guided by a clear strategic perspective.

iv) Social contracts, agreements, accords etc have no immutable laws about them - they are simply a product of what the parties put into them. There are good social contracts and bad ones, ones that work and ones that don't, ones that advance the interests of the ruling class and ones that assist in building workers' power and organisation. We would be politically irresponsible to miss out on the latter.

2 National negotiations through a restructured NMC?

Assuming that a case has been made for national level negotiations, what forum are we going to use? COSATU had three options. It could have fought for a new institutional forum recognised by the state. It could have opted for a looser, ad hoc forum for negotiation. Or it could choose to resurrect and restructure the NMC.

In fact, the federation has attempted to keep

open all these possibilities. COSATU agreed to proposals by the state and employers in October 1990 to participate in the NMC, provided it was restructured to become a very different institution. At the same time, COSATU signalled that it would continue with other non-institutionalised negotiations - at least until it was satisfied that the new NMC was established along the lines proposed by the federation. Even having reached that stage, COSATU made no commitment to abolishing any other forums which might have been established by that time.

We therefore have a situation where COSATU is conditionally participating in the current NMC in order to transform that body into an effective negotiating forum, while simultaneously the federation is in the process of setting up a series of meetings with national employer organisations and various state departments, in order to begin negotiations around a range of macro-level issues.

If the former process flops because the Minister is unwilling to accept the basic propositions put forward by COSATU (and endorsed by NACTU), then the federation can leave the NMC, and begin a campaign of mass action to force acceptance. At the same time, COSATU can continue engagement, where necessary, through non-institutionalised options.

In the short term, therefore, our thinking is to keep a few irons in the fire and to continually assess if and when to opt for a single, institutionalised forum for the negotiation of all labour market issues.

How should we then approach the question of restructuring the NMC? In broad terms, one perspective must be to develop a structure which we can use to help build the power of the working class to achieve our medium and longer term objectives. What can we learn from our struggles and experiences about appropriate organisational forms for this purpose? In the context of the LRA campaign, the following emerged:

- simple, single focus initiatives have the greatest prospect of success
- effective negotiations have to be linked with mass action

□COSATU's own shortcomings are a problem in national campaign initiatives.

I want to touch on the first two of these points in a little more detail. The last is picked up in the final section of this paper.

2.1 Single focus initiatives

One reason for such success as was achieved in the LRA campaign in retaining mass participation and commitment was the fact that negotiations took place in a single forum. All mobilisation and organisation was built around this forum. Also our basic demand was simple: 'Scrap the LRA amendments'. It was an immediate, realistic demand and we pursued it to the bitter end.

The second phase of the LRA campaign has been much weaker. Why? Partly because the campaign has become so fragmented. It aims to extend the LRA to the unprotected - farm and domestic workers, public sector workers, workers in the bantustans. At the same time it aims to win new rights in the LRA: the full right to strike, organisational rights, a proper industrial court system etc. Added to this, there are separate negotiations (with their own timetables) for each class of unprotected worker and for each bantustan. It is not difficult, then, to understand why our leadership - let alone the rank and file - get completely lost in this campaign.

The conclusion we can draw from this is that a single-focus forum, with clear demands, is essential for effective organisation on our part. We simply do not currently have the capacity to spread our limited resources across a broad spectrum of different forums.

If the NMC is to become the forum in which we negotiate all macro-level issues, we would have to ensure, in the short term at least, that the scope of the NMC's responsibilities are widely defined to include all matters related to the labour market which the trade unions may want to negotiate from time to time. In fact, the current definition of the NMC's functions in the LRA: "to make such investigations as it may consider necessary into, and submit recommendations to the Minister concerning all labour matters, including labour policy," - is

already sufficiently widely couched, and therefore does not really require amendment at this stage.

Going one step further, however, COSATU would have to look, in the longer term, at the possibility of drawing in existing advisory, policy-making and executive forums under its ambit - such as the National Training Board, and the UIF Board. In the short term, structured links between these forums and the NMC will be critical.

One last point on the merits of a simple forum: it would facilitate building unity across sectors of the economy. For, as long as public sector workers have their own negotiation mechanisms, it will be very difficult to gain support from the more powerful sectors. Although farmworkers are weakly organised, it could become more feasible via single focus national negotiations to get metal, mining and other organised sector workers to take action in support of rights for those on farms. This could mark an important political development for the trade union movement in our country, to help us avoid the chauvinist, sectional responses of other once-progressive and militant federations evident in other parts of the world.

2.2 Effective negotiation and mass action

COSATU has to ensure that it retains its independence. This means the will, capacity and right to support its demands, where necessary, by mass action, in its engagement with capital and the state at national level (and in fact other levels as well).

Welding mass action and negotiations into a coherent strategy at national level is a massively difficult project. The current negotiations between the ANC and the government demonstrate this. The ANC leadership, which is heading the negotiations, continually under-emphasises (and even demobilises) the mass action component. Other sections of the ANC - the youth for example - continually push militant action without any clear conception of the limits and possibilities of the negotiations component.

Mass action linked to negotiation does not

mean simply that there is negotiation at the same time as there is mass action. This is what has happened in the ANC/COSATU Constituent Assembly Campaign. There was negotiation, and there was mass action, but the two were not linked together. In order to get beyond mass action which is simply about protest, we need to ensure that our action links directly into the negotiation process and is part of a clear sustained campaign programme. If deadlock is reached, then mass action must follow. Our constituency must be clearly appraised of what precisely has caused the deadlock and why they are being called upon to debate, themselves, the issue of taking action. Participation in mass action should not be based simply on an instruction from on high and loyalty to a particular organisation.

There is not much point in trying to get employer and/or state endorsement for the exercise of the right to mass action. It just wouldn't be forthcoming. Far more sensible for the federation, would simply be to initiate mass action whenever it was deemed appropriate, and the issue and its consequences could be squabbled about at the time of the strike, stayaway, boycott or whatever was taking place.

In this context, COSATU's focus would be on ensuring that participation in the NMC did not restrict or compromise its right to exercise such action. Here we need to draw a distinction between participating in the institution, and entering into a contract via the mechanism of the institution. COSATU should never allow itself to accept limitations on the right to mass action *as a precondition* for participating in the institution. This is quite different from the case where, *as part of* a social contract negotiated *through* the institution, the trade union movement could conceivably agree to restrict strikes (on certain issues, for a certain period of time) provided the trade-offs were sufficiently attractive.

In short, what has been argued above is that if the NMC is to become an effective negotiating forum and, importantly, if COSATU is to gain from such a forum then:

(i) the NMC must have a widely defined brief which allows it to become *the* central negotiating forum for macro-economic issues; and

(ii) we should ensure in practice, that we will remain an independent actor in the terms defined.

What of the questions as to who should participate in such a forum, and what powers it should have?

2.3 Who participates?

At present NMC representatives do not really represent anyone at all. With one or two exceptions, they are not appointed by constituencies.

COSATU's proposals on representation are as follows:

- the NMC ought to remain a fairly small body of 20-30 persons
- employers and trade unions ought to have equal representation and be the majority parties
- provision should be made for representation by the state in its full capacity
- all employer and trade union representatives should be elected from clearly defined constituencies
- NMC procedures should encourage representation through the major groupings in each camp
- employer and trade union representation ought to be roughly proportional, according to membership and national presence
- the state as employer, such as the Commission for Administration, should form part of, and negotiate alongside, other employer interests
- the Department of Manpower should be represented, although not necessarily with voting rights.

Comment on some aspects of these proposals is appropriate.

Representation by the Department of Manpower: The wolf in sheep's clothing during the LRA campaign turned out to be the Department of Manpower (DOM). DOM was the prime mover - both in designing the 1988

amendments and ensuring that they got into the statute books, and there were just too many "misunderstandings" with the DOM during the process of getting rid of these amendments, to avoid the conclusion that there was more than a little secondary resistance taking place within the hallowed portals of Laboria House.

The major LRA players obviously questioned the right of DOM to tell both employers and employees what should and shouldn't pertain legislatively, when these parties had already agreed on what rules they were willing to accept (at least on an interim basis). This was of course at the stage when COSATU, NACTU and SACCOLA had signed their 'Accord' and were now trying to get the state to give effect to that agreement.

Unflustered by its run-ins with the Accord partners, the DOM has continued with its interventionist approach, both in relation to the exercise of consolidating the LRA and to the extension of the Basic Conditions of Employment Act to farmworkers.

This intervention eventually resulted in a unanimous NMC decision calling for a restructuring of the relationship of the DOM and the NMC.

Against this background, COSATU's proposal that the DOM would have to be part of a restructured NMC and would have to express and debate its views in this forum, has received unanimous support. It will help remedy the situation where the NMC made recommendations, based on substantial negotiations and research, only to have them shot down by the DOM who were not part of that process.

The state as employer: There is wide agreement that the state should be represented as employer in the negotiations. The question of where exactly they belong is, however, under debate. COSATU has argued that they must form part of the employer representation. SACCOLA has opposed this on the basis that their interests as private employers are *fundamentally* different to those of the state as employer because of the latter's special relationship with the state and their capacity to operate outside of 'normal

profit/loss principles'.

COSATU has rejected this view because it would lead to weighted employer representation in the NMC. Moreover, SACCOLA's contentions are based on spurious grounds. Being part of the employer constituency cannot be dependent on a complex identity of interests. Rather, it is their particular role in the labour process that defines the *broad* interaction of interests between private and public employer, irrespective of what differences they may have. If the 'private sector' trade union parties were to adopt a similar approach, public sector employees would have to be defined outside their constituency - an obvious nonsense. Furthermore, what measures would decide that the divergent interests of COSATU and SACOL for example are any lesser or greater than those of SACCOLA and the state employers?

Whether these parties should or should not caucus together is another issue altogether.

The role of the state in the NMC: If the state was representative and democratic this would be a far less vexing question, and COSATU would probably have little problem with substantial representation (and voting rights) for the state as representative of broad public interest. That the current state has to be represented in some form and has to be an effective negotiating party is clear, but how much sway it should hold in any voting process, and how its representation relates to that of the DOM, are matters still under discussion in COSATU and in the NMC itself.

Which parties actually get to the negotiating table: As indicated, COSATU has proposed a fixed size to the NMC, and representation based on membership strength and broad spread within the national economy. Furthermore, COSATU has argued that representation must be through national federations of trade unions and employers associations. This means:

- individual trade unions and employers will not be represented
- national groups with a presence in only one or two sectors of the economy will also not be represented

- the total number of seats for each constituency will be divided amongst federations in rough proportion to their membership strength
- 'experts' and 'academics' agreed to by the parties might have a small, limited number of seats, but would have no voting rights as such.

2.4 What new powers for the NMC?

Presently the NMC is merely an advisory body. The Minister is entirely at liberty to choose which recommendations of the NMC to endorse and which to reject.

This is completely unacceptable. The point has already been made that, if the major players reach agreement on rules which they are prepared to abide by, then they cannot have the executive arm of the state, in this instance the DOM, redrafting those rules. But this applies equally to the Minister.

Accordingly, the federation has proposed that:

- No draft legislation related to labour should be put before parliament unless it has been through the NMC.
- Where there is consensus on proposed legislation within the NMC then a) the NMC should be entitled to draft such legislation, and b) it should be placed before parliament in that same form. The Minister would be entitled to adopt whatever approach he chose in relation to such proposed legislation.

The intention behind these proposals is clearly to prevent NMC recommendations (agreements) ending up in the Minister's bottom drawer. But the proposals do accept that parliament (a democratic one) should have the ultimate right to pronounce on proposals from the NMC. Parliament would have to weigh up the possible consequences if it rejected or even amended proposals from the NMC.

Two important issues remain to be clarified. Firstly, the question has been raised many times as to why proportional representation and voting are important in the context of a body which is essentially about negotiation. The short answer is that there

has to be some method of determining what constitutes "consensus" within the NMC, sufficient to warrant referral of an agreement to the Minister/parliament. The majority of the current NMC have proposed 75% of participating parties as a consensus parameter, while COSATU has proposed 66% of each of the trade union and employer parties respectively.

Whichever proposal is eventually adopted, the important point is that the definition of consensus has to be determined by votes, and voting strength ought, in turn, to be related to membership strength. Importantly, however, dissenting parties would *not* be bound to support "consensus" positions.

The second issue is to highlight that this proposal introduces a third mechanism for getting draft legislation before parliament. Currently this is done either through cabinet or through MP's individual bills. Now, it could also be done by a forum in which organisations of civil society (those mass-based organisations which are neither political parties nor part of the state) would be major stake holders.

The broad thrust of this approach would, undoubtedly, be to strengthen the organisations of civil society in relation to the state and thereby enable them to play a more effective watchdog role.

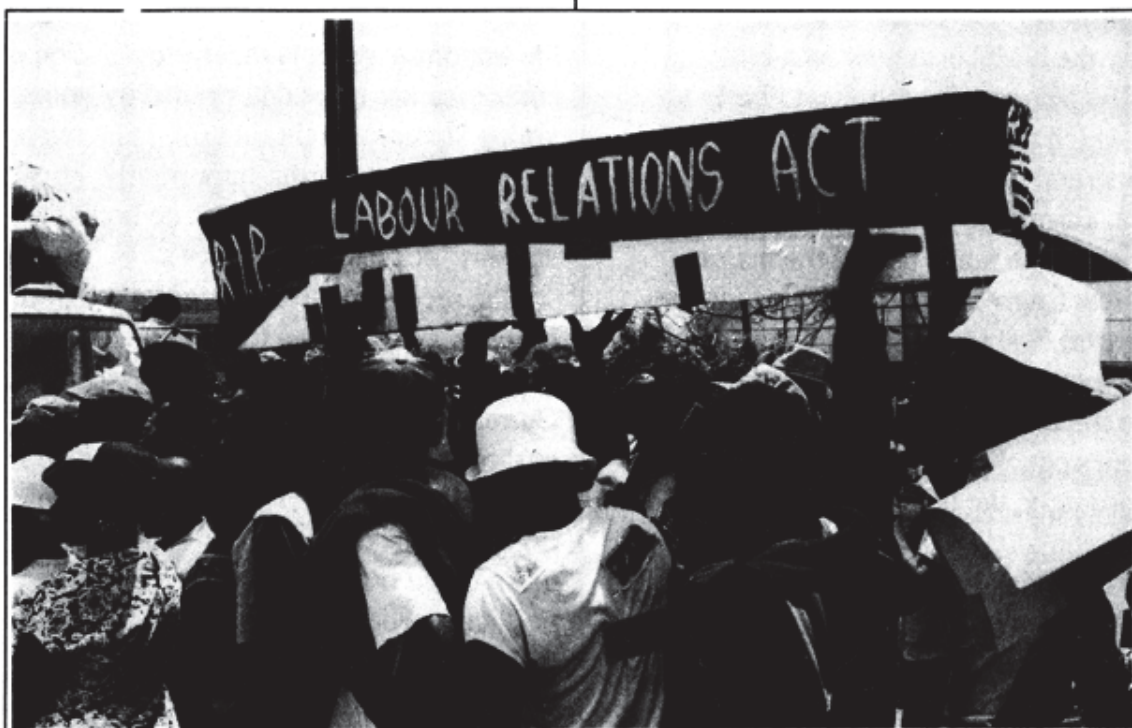
A further variation on this would be to open up the NMC itself to representation by a broader range of actors than employers, trade unions and the state. It makes sense, for example, that women's organisations should be invited to make representations on labour market issues. This kind of approach, which currently pertains in Canada for example, could well have the effect of moderating trade union chauvinism and helping to ensure better representation for the more marginalised groups in society.

3 Does COSATU have the capacity for effective engagement in a restructured NMC?

Once again, the LRA campaign is instructive. While we eventually made substantial gains in this campaign, COSATU's capacity to

handle the process was sorely stretched at times. The federation's infrastructure, the state of development of its affiliates, and the general shortage of skills and resources, made principled engagement difficult at times, to say the least. As the pace of events speeded up in the last months of the campaign, and as the procedures, schedules and agendas

- they are drawn from affiliates)?
- How is it going to absorb and disseminate the mass of information which will arise from a new NMC?
- How will it facilitate clear mandates from affiliates to NMC representatives involved in negotiations?
- How will representatives be backed-up



The anti-LRA campaign: learning from successes and mistakes

Photo: Morice Smithers/Labour Bulletin

became more complex, our information flow bogged down. Many workers lost touch with actual developments.

In fact, all important decisions were made within the constitutional structures of the federation, but delegates were less well prepared and had less real control over the actual process. These are important considerations which must guide our future thinking and approaches to national campaigns and negotiations.

Although COSATU has decided to engage with the NMC and restructure it, some serious voices within the federation quite rightly raise the problem of COSATU's own capacity to engage. They point out that COSATU has not seriously thought out:

- Who will actually represent the federation on a new NMC and whether they will actually have time to do so (especially if

with research and resources in their negotiations?

Many of these issues have not been settled, even in regard to COSATU's interim participation on the NMC. So the problem is a very real one, and it is the kind of situation which could lead the entire NMC initiative into disaster.

To avoid this problem, COSATU will have to ensure that, over the next few months, it engages in a comprehensive programme to develop its capacity and its ability to participate in national negotiations. In this way, the federation would be able to take advantage of current political openings to work towards the empowerment of the working class. ☆