# Proposed amendments

## *slitting the working class's throat*

*Ighsaan Schroeder gives a political analysis of the proposed labour law amendments and finds a further shift in the balance of class forces in South Africa in favour of the capitalist class. He also questions whether COSATU's response has confused and disarmed workers.*

The government's proposed amendments to the LRA, the BCEA and Insolvency Act have met with a threat of 'blood on the floor' from COSATU. COSATU argues that 'the current proposals completely undermine the logic of government's labour market transformation programme'.

In this article, I argue that:

- the LRA and BCEA were neo-liberal from the beginning;
- the latest amendments build on and strengthen existing neo-liberalism in those laws.

### Labour market reform

The aim of ANC labour market reform has been to introduce greater labour market flexibility, which means quite simply, more efficient exploitation of labour. The 'logic' is that it will increase the competitive advantage of local capitalists and make them more internationally competitive. The ANC argues greater international competitiveness will lead to economic growth, which will translate into more jobs and higher standards of living. This line of argument is central to neo-liberal orthodoxy, and can be found in Gear. Interestingly, it is a line of argument even the World Bank has been distancing itself from.

### Flexibility in the LRA

Although the new LRA marked important gains for the working class, it is worse than the apartheid LRA it replaced in two critical respects.

#### *No legal duty to bargain*

The old LRA, through its unfair labour practice provisions, imposed a legal duty to bargain. This meant that representative unions could rely on the law through the Industrial Court to compel bosses to recognise and bargain with them. The new LRA has no such legal duty to bargain. Instead, it provides only for advisory arbitration, which a boss can ignore. Workers must then strike just to get the boss to bargain with the union.

The memorandum accompanying the Labour Relations Bill gave this motivation:

'The model adopted allows the parties, through the exercise of power, to determine their own arrangements. [The] fundamental danger in the imposition of a legally enforceable duty to bargain is the rigidity which is introduced into a labour market that needs to respond to a changing economic environment. The ability of the South African economy to adapt to the changing requirements of a competitive international market is ensured only where the bargaining parties are able to determine the nature and structure of bargaining institutions and the economic outcomes that should bind them.'

What the writers mean to say is this: if workers are too weak to force the bosses to bargain with them, they must take the consequences. Unlike before, the LRA will not help them. If the result of a refusal to bargain is a wage freeze or the bosses' withdrawal from a bargaining council, so be it.

Through years of struggle, the working class forced the bosses and state to include a legal duty to bargain in the old LRA. By removing that legal duty to bargain the new LRA attacks the strengths and gains of the working class from previous struggles. All in the name of labour flexibility and making the South African bosses more profitable, more internationally competitive.

### *Limiting the right to strike*

The apartheid LRA allowed workers a choice of weapons when fighting dismissals, including retrenchments. They could use the law or strike, depending on the balance of power in the workplace. The new Act does not allow workers to strike over dismissals. Instead, disputes over dismissals, must ultimately be decided by arbitration, or adjudication in the case of retrenchments. Why? Because there is 'an unacceptably high incidence of unnecessary and unproductive strikes'. As a result, we find an LRA that 'provides a framework for social partnership within which productivity can be increased, wages and living conditions ... improved, labour disputes ... avoided or resolved quickly and a climate of stability attractive to foreign investment can be fostered'.

To whom is the number of strikes 'unacceptably high'? To the foreign investors, to the local capitalists? Certainly not to workers. Unfair dismissals, including retrenchments, have often been the second highest cause of strike action after wages.

Workers have never hesitated to defend themselves and their union against attacks in the form of unfair dismissal. With workers' most potent weapon now taken away from them, it is hardly surprising that there has been a decline in the number of strikes since the passing of the new LRA. But when the general secretary of COSATU uses this decline in strikes as an example of the success of the new system, we must ask: for which class is he speaking? Does he not think that just maybe there is a connection between the decline in strikes and the massive retrenchments we have seen over the past few years – something COSATU has been in the forefront of opposing? The LRA has already produced blood on the (shop) floor. And it is not the bosses' blood.

When the right to use scab labour during strikes, no compulsory centralised bargaining and the workplace forums are added to the list, it is clear the new LRA's neo-liberal thrust has offset some gains workers won.

## The BCEA and flexibility

It is no different with the BCEA. Here government has been even more explicit about it's policy orientation for labour market reform. The accompanying memo

*The new LRA poses no legal duty to bargain.*

to the bill proposes a policy approach of 'regulated flexibility', which aims to 'balance the protection of minimum standards and the requirements of labour market flexibility'. This 'regulated flexibility' has two parts: minimum standards and rules and procedures for how the minimum standards can then be lowered (downward variation).

The apartheid BCEA also set minimum standards but did not allow lowering of those standards. The new BCEA allows for lowering of standards 'to remove inappropriate restrictions on working time, permit the introduction of arrangements for more productive use of working time, and ... provide for wider variation of employment standards'. Again, in this critical respect, the new Act is worse than the one it replaced. As COSATU itself points out, 'once you start varying some rights, your basic floor of rights will ultimately completely disappear'.

In line with this, the Act allows for things like a compressed working week, where workers can end up working a 12-hour normal working day (without being paid overtime) instead of the nine hours laid down earlier in the same Act. Trade unions and individual workers can agree to work in this way. Another example of downward variation and the labour flexibility it brings about is the averaging of the working week. Here, unions can make agreements where their members work an average of 45 hours per week over a period of four months. The practical effect of this would be that workers can end up working up to 60 ordinary hours per week, potentially for months, without being paid overtime in spite of the Act's stipulation that workers should work no longer than 45 ordinary hours per week.

The Act gives most scope for downward variation to the Minister of Labour and to bargaining councils. There is only a core set of rights which neither the Minister of Labour nor bargaining councils can vary.

But the Act does give trade unions and even individual workers the right to agree to vary a whole host of standards, including weekly rest periods, Sunday work, pay for Sunday and overtime work. The overwhelming majority of workers in this country are not unionised and therefore rely exclusively on the BCEA for their employment rights. The Act opens up the prospect of the greater exploitation of workers by permitting individual workers to agree to lower their employment standards. Unorganised workers, especially when dealt with on an individual basis by the boss, will simply sign away their rights in order to keep their jobs. Of course, this is exactly what is intended by labour flexibility.

While the new LRA and BCEA introduce important new advances for workers it is also clear that these laws have never introduced the 'delicate balance' claimed by COSATU. Their essentially neo-liberal thrust far outweigh and undermine the advances they contain for the working class.

## The proposed amendments

The proposed amendments seek to strengthen the neo-liberal side of the laws. In short, they aim at even more labour flexibility. For example, there is a proposal to give the Minister of Labour the discretion not to extend bargaining council agreements to non-parties. This is a power the minister enjoyed under the old LRA.

The 1995 memo correctly criticised this arrangement: 'over the years the registrar and the minister exercised the discretion in such a way as to undermine collective bargaining at industry level'. A year later, Gear called for this discretion to be given back to the minister. Now the proposed amendment – to undermine collective bargaining at industry level? Bargaining council agreements are often held up as prime examples of 'imposing rigidities' on the labour market through the minimum standards they set, with SMMEs cast in the role of unfortunate victims. The truth is that it is the big bosses who are wanting to pull out of centralised bargaining, not the SMMEs. For if you do not extend the agreement to non-parties, you simply provide an incentive for those who are party to the agreement to pull out of the bargaining councils.

The proposed amendments intend making dismissal even easier by calling for 'simplified internal procedures'. Bosses will no longer need to hold enquiries in the way workers have become used to because 'this can impose an unrealistic obligation upon employers'. This change must be seen together with the proposed shortening of notice periods in the BCEA. Greater ease in dismissing workers' amounts to greater numerical flexibility.

Regarding retrenchments, the proposals come nowhere near COSATU's demands to negotiate and be able to strike over retrenchments. This is hardly surprising, for that would indeed 'completely undermine the logic of government's labour market transformation programme'. COSATU correctly comments that the proposals could in fact lead to a speeding up of retrenchments.

## Political significance

The proposed amendments mark a further shift in balance of class forces in South Africa in favour of the capitalist class. The conscious agent for this shift is the ANC government. This attack on labour legislation is consistent with the intensified implementation of Gear, as can be seen in other attacks, such as stepping up the privatisation process.

The further shift in the balance of class forces can be seen in how the ANC

*Workers do not find strike levels unacceptably high.*

government has presented its labour market reform programme to date. In the beginning, the government cloaked both the LRA and the BCEA in relatively cautious and sometimes obscure language. The talk was very much one of 'balancing' the need for protecting worker rights with the need for greater international competitiveness.

The bourgeois press, in keeping with the class interests it serves, has of course presented the new labour laws as essentially working class victories. The government has done nothing to dispel this myth. The reason for government's initial caution was the strength and ongoing militancy of the working class. A frontal assault was not possible under such conditions.

But as the bosses' retrenchment offensive on the shopfloor has gained momentum and the laws began to bite the working class, government has become more bold in the amendments it is proposing and even the manner in which it is portraying them.

This time round, there has been less talk of 'balance' and more explicit acknowledgement that the amendments are 'investor friendly'. This attitude is in line with the greater confidence the state has in dealing with the organised labour movement, best reflected in its unilateral implementation of wage increases in the public sector last year. The behaviour of the ANC government in proposing even stronger neo-liberal measures in the labour laws makes perfect sense. The ANC has become a party of monopoly capital. As such, it implements a bourgeois programme, whether it be in housing, education, transport, privatisation of state enterprises or labour law.

What is more difficult to understand is the attitude of the COSATU leadership. COSATU opposed the absence of a legal

duty to bargain and workplace forums. It demanded compulsory centralised bargaining and outlawing scab labour, as well as retaining the right to strike over disputes of right, including dismissals. Parliament did not accommodate any of these demands in the LRA that it passed. In the case of the BCEA, COSATU demanded a 40-hour week, six months paid maternity leave, no employment of child labour under 16 and it opposed downward variation of standards. Again, none of these was met in the final Act.

In both cases, COSATU welcomed the legislation but noted its concerns around those demands it had not won. Despite not having any of its major demands met in either of the two pieces of legislation, COSATU then increasingly started proclaiming the two laws as major victories for the working class. It did not present them to its constituency as perhaps necessary compromises that needed ongoing struggle – dubious as such an analysis in itself would be considering that the June 1995 march against the LRA was one of the biggest in the history of working class struggle in this country. No, it presented these essentially neo-liberal laws as working class victories.

Has this not confused and disarmed organised workers, thereby paving the way for the latest state offensive? In passing, there is nothing to suggest this is government's last offensive either. That will be determined only in the course of struggle, which makes resistance to the laws and the proposed amendments important.

When the Minister of Labour outlined some of the proposed areas of change in his address to parliament on 8 February, he made known his intention to make precisely some of the changes which COSATU now opposes. Yet, COSATU issued a press statement on the same day, wherein it again stated that 'the fundamentals of our labour market policy are sound and the overall thrust of the legislative framework remains correct. The statement as a whole does not constitute an attempt to unravel the thrust of the labour legislation'.

Even now, in the midst of what its president proclaims a major political crisis, COSATU still does not critique the ANC's labour market reforms as being essentially neo-liberal. According to COSATU, there has simply been a leap of bad faith somewhere, which threatens to 'completely upset the delicate balance achieved and threatens to seriously destabilise the degree of labour stability which has been achieved by the new dispensation'.

The neo-liberal programme of the ANC does not sit well with a working class which, although weakened, shows little sign of giving up the fight. Is there not a danger of the COSATU leadership, wittingly or unwittingly, playing the role of managing the anger of organised workers and disarming them, thereby smoothing the path for the neo-liberal policies of the ANC government? Is there not this danger in portraying defeats as victories, by announcing campaigns from the top then ditching them? Is there also not a danger of portraying the problems as simply narrow organisational ones, of a lack of consultation, of meetings not taking place? Does this not run the risk of concealing from workers and the working class the essentially hostile class programme the ANC is implementing? In the meanwhile, the ANC gets on with the job of quietly but vigorously slitting the working class's throat. ★

*Igbsaan Schroeder works as a trade union education facilitator for Khanya College. The article is written in his individual capacity.*