

Year of fire

industrial action in 1998

There was a marked upsurge in industrial action during 1998. A sector-by-sector survey concludes that 2 825 709 working days were lost during the period to end October. We can expect to have lost three million working days by year end.

The impact in terms of lost production and earnings is almost impossible to calculate. These are sometimes made up post-strike, through overtime and increased output drives. However, some losses may increase post-strike and the damage suffered is long-term if jobs or market share are lost.

Sectoral impact

It is important not to overstate the extent of industrial action. Most sectors experienced little or no action. A number saw moderate levels of action and four saw extensive action.

Major, well-publicised strike action took place in private security, goods transport, motor, auto assembly, chemicals, fabric knitting, footwear, some retailers, dairies and some universities. In other sectors, specific firms were affected or relatively minor actions occurred.

Duration

The duration of industrial action was frequently long - with some major strikes lasting between two and five weeks. The major sectoral actions were frequently

A report by Jeremy Baskin and Renée Grawitsky analyses the reasons for the upsurge in industrial action this year and recommend measures to smooth the path of future bargaining rounds.

protracted, as were a number of isolated strikes, such as those at HL Hall (seven weeks), certain dairies (six weeks and ongoing), Dilokeng Chrome (three months) and Edgars.

There were also a number of planned short actions - largely demonstrations or sympathy strikes. Those in communications, metals and energy are examples.

Strikes and lockouts

The industrial action consisted almost entirely of strike action. The strikes were almost all procedural. There was no evidence of any offensive lockouts, with the arguable exception of Stuttafords. A number of defensive lockouts - in response to strike action - took place, notably in the chemical industry.

Triggers and issues

The strike wave revolved almost entirely around the issue of wages. All the big

sectoral strikes concerned wage bargaining, as did the key strikes in the sectors without industry level bargaining.

Settlement levels

The settlements reached were almost all above 6% and below 10%. The average settlement range was about 8%. This amounts to a small real wage increase, given the August inflation rate of 7,6%.

Some minimum wage rates and work categories received bigger increases.

The lowest settlement was 4,5% on minimums, less on actuals, and at least one instance of a wage freeze. The highest increases rarely hit double digits.

Exceptions included 9% to 11% increases at Telkom and Sapos, 12% in parts of construction and 13% in road transport.

Other notable features were:

- fairly basic agreements, which covered very few non-wage matters;
- employers took a 'hard line' - there was very little movement on their part once a strike had begun;
- there were widespread employer threats to replace labour and reduce their workforces;
- very few agreements accommodated the impending BCEA;
- agency shop agreements featured in a number of settlements.

Violence and damage

There were a number of serious incidents of violence and damage to property. An estimated 11 or 12 people lost their lives during the strikes and an unknown number of strikers, non-strikers and replacement labour (scabs) were injured.

There was serious damage to property in a number of strikes. In the chemical industry there were arson attacks at a number of plants and against vehicles. A group of workers destroyed the conference centre at Eskom. Security firms

were widely used by employers and the SA Police Service was called in on a number of occasions. There were a number of assaults on strikers. The Labour Court was inundated with urgent applications for interdicts from employers and other affected parties.

Why have there been so many strikes this year? At one level, this question is easily answered. While there has been an increase in days lost - approximately four times more than last year - this peak is still below the levels of the pre-transition period.

The strikes have been highly visible. The high levels of violence also makes them more noticeable. They also took place against the background of last year's strike activity being at the lowest level in decades.

It is too early to say whether the sharp upturn in strike activity marks a blip on the chart of an otherwise longer-term downwards trend, or whether we are seeing the beginning of a move back to historically high levels. The former is probably the case, but this cannot be said with a high degree of confidence.

There have been high expectations that the new LRA, and the operations of the CCMA, would lead to a reduction in industrial conflict. In this regard, any upsurge is disappointing.

However, just as it was premature to wax lyrical about the sharp decline in industrial action last year, excessive gloom about this year is also premature. Strikes are a necessary lubricant of industrial relations in a democratic society with a market economy. Finally, the fact that almost all strikes this year concerned wage issues suggests that many other rights-based issues - such as grievances, dismissals or retrenchments - which, in the past, would have led to strikes, are now being solved at the CCMA and elsewhere.

One should always be cautious about analysing strikes and collective bargaining



NUMSA rally, 22 September 1998.

issues while they are still 'hot'. Nevertheless, a few cautious observations may be made in an attempt to understand some key dynamics and factors associated with the latest bargaining and strike round.

Politically motivated?

Press reports have suggested that the strike wave was, at least in part, politically motivated. It was argued that the unions are expressing dissatisfaction with government 'non-delivery' and that COSATU unions knew that they would find it difficult to strike next year (because of the elections). Analyst Steven Friedman has argued that the latest strike wave has been exacerbated by the political rift between COSATU and the ANC (*Business Day*, 19/10/98).

It is certainly true that many of the strikes were accompanied by sloganeering against government policy. One or two strikes even had anti-privatisation components in their demands (teachers, municipal workers and Eskom). There may have been underlying sentiments amongst workers of government not

meeting their expectations.

It is also true that some union leaders feel marginalised and ignored by government and that a sub-text of 'we'll show them who has a mass base' is sometimes present. There was also a sense amongst employers that government would not judge them harshly if they took a hard line against union demands.

There is, however, little substantial evidence to support the argument that the strikes were political. The overwhelming sense is of narrowly economic and short-term demands, even if they took place in a context of some political dissatisfaction.

Inflation

The crucial, and perhaps underrated factor, is the inflationary dynamic that prevailed at the time.

In South Africa, wage rates adjust to changes in the inflation rate relatively quickly in respect of more skilled and professional employees, with a longer time-lag for less-skilled workers. Ordinary workers tend to compare the rand amount

on offer (rather than the percentage) with that received in previous years.

Employers generally measure their wage offers in terms of cost-to-company and benchmark the increase against the prevailing Consumer Price Index (CPI). Although there was no direct evidence of collusion, there was certainly a sense, after the transport and security strikes, that employers wanted to keep increases close to the CPI and avoid double-digit settlements.

The CPI fell sharply during the negotiation period. In 1997 overall inflation ran at 8.6%. In January 1998, the year-on-year rate was 5.6%. It remained lower than this right through until June, reaching a record low of 5% in April, before starting to climb again in July and August.

In short, inflation fell more than inflationary expectations. This tightened the range in which settlements were possible and may have contributed towards tipping a number of bargaining disputes into industrial action.

Global constraints

Global pressures meant that employers in manufacturing had to be highly cost-conscious, with declining possibilities of passing on cost increases to consumers. Fiscal constraints played a similar role in the public sector.

In the circumstances, it is not surprising that bargaining focused on such a narrow range, and that employers were relatively immovable once strike action commenced.

In one case (auto), the settlement reached was arguably less costly to the employers than their pre-strike offer. In other cases, settlement was reached after only minimal concessions by the employer, and after unions saw diminishing returns in continuing the action. The strikes in security and

transport were the only ones that produced relatively high wage increases.

Causes

'What caused the strike wave?' is a difficult question to answer, and often not a useful question to ask. In general, the strikes were caused by economic considerations. Workers wanted more than employers were offering.

The other contributory factors included:

- *Sector-specific or enterprise-specific issues.* Security workers, for example, embarked on a desperate effort to put some basic conditions (provident fund and annual bonus) in place.
- *Power play – key strikes, notably security, chemical and motor, had strong power play elements.* The unions felt a need to mobilise and show their strength to employers. In the chemical strike, this power play was as much related to the rivalry between the CWIU and SACWU.
- *Imitation on the part of both employers and unions.* This involved a sense of a 'year of action' among unionists and a determination to 'face-down' unions amongst employers.
- *High levels of militancy and determination to act amongst much of the union movement's middle layers.*
- *Pressure on union leaders to 'deliver'.* This applies particularly to leaders who have not yet established themselves firmly and where 'succession' issues and leadership challenges still prevail.
- *Poor negotiation management.* Some of the pre-strike negotiations were not handled as well as they could have been. In some cases, bargaining deadlocked prematurely. Weaknesses

amongst negotiators on both sides of the table, and even amongst conciliators, contributed to protracted action.

Employment pressures

Employers who were interviewed repeatedly expressed the view that they intended to cut jobs further after the strikes, that they had seen that they could do with less workers, and so on.

It is always difficult to analyse such responses, and to work out whether job cuts relate to industrial action, or would have happened anyway.

A number of conciliators interviewed suggested, however, that retrenchment threats were made more often in private than in public, and were rarely used as an explicit threat during negotiations. This is disturbing. It suggests that the level of industrial action does contribute to employer perceptions of the costs and hassle of employing people, and this adds to the low labour-absorption rate of the economy.

A vicious circle

This suggests that we are in danger of entering a vicious circle, especially if protracted industrial action leads only to marginal differences in settlement levels.

Sluggish or negative employment growth means that those in employment have to support increasing numbers in the household. In some households, where no one has a job (or at least a relatively 'good' job) one can expect an increasing tendency to take any job, whether low-paid, unregistered or as a 'scab', simply to improve household income. In households with a wage earner in a better paid, unionised job, the tendency will be to use bargaining power to maintain household income, at least in the short-term.

The second strategy makes short-term sense for union members, but is

unsustainable in the longer term. It is likely to contribute, even if only partly, to further declines in employment levels or to further sub-contracting and outsourcing.

In the auto and motor sectors, a strange consequence emerges. It is increasingly difficult for auto assemblers to pass cost increases on to their customers. What they are doing is squeezing suppliers, in this case, component manufacturers.

To some extent, then, the gains and actions of auto workers become the constraints of component workers. The auto strike – and even the solidarity strike by auto workers in support of their lower-paid comrades in motor and components – becomes a double edged sword. It increases pressure on the components employers at the same time as it reduces their room to make concessions to their employees. This poses major strategic challenges to the union movement if it hopes to retain both 'rich' and 'poor' workers in one union, let alone if it hopes to overcome such distinctions.

Replacement labour

The violence that marred some of the strikes highlighted two issues: the use of replacement labour and the decision-making process when calling strikes.

At the heart of the LRA lies a negotiated trade-off. Workers who embark on a procedural strike are protected against dismissal. By being absent, they inflict economic damage on the employer through lost production. Typically, they do not expect to be paid when on strike.

Employers, in turn, can try to continue production using non-strikers or replacement labour (scabs). Only in the (rare) case of an offensive lockout is it illegal to use scabs.

A number of observers suggested that this trade-off was often either not known or not accepted at shopfloor level. The



CWIU members on strike, 5 August 1998.

intense battle over strike rules and picketing during the CWIU strike arose from this problem. In practice, in the security and transport strikes, the use of replacements and non-strikers was not tolerated by those on strike.

It can be expected that, over time, especially if an education campaign is launched, there will be greater knowledge of the 'no dismissal-replacement labour' trade-off. In the coming years, we can also expect unions to campaign for amendments to this aspect of the LRA, and for employers to vigorously resist this.

There is clearly a need for more work to be done in respect of strike rules.

Balloting

A noticeable feature of the strike wave was the declining incidence of pre-strike ballots. In the major strikes, members were not balloted. The CWIU was a notable exception, although it did not ballot on the employers' final offer.

Balloting is no longer obligatory in terms of the new LRA. Some unionists argued it was logistically difficult to ballot in sectors like security and petrol service

stations. By not balloting, however, unions were in breach of their own constitutions. A lack of balloting is not good for the unions. It discards an important democratic instrument, reduces the necessity to mobilise effectively and contributes to increased levels of violence, as strikes must then be enforced on non-participants.

Multi-unionism

Multi-union and multi-employer talks are increasing in frequency, with more negotiations being conducted at sector or industry level.

In most cases, there have been relatively high levels of co-operation between unions. Sometimes, the party unions have only broken ranks at the final settlement stage. In the footwear sector, however, the major union, the National Union of Leather Workers (NULW), settled, leaving SACTWU in dispute. In the public sector, the established unions, the PSA and HOSPERSA, broke ranks with key COSATU affiliates, NEHAWU and SADTU.

The most serious problem occurred in chemicals, where co-operation between the CWIU and SACWU is historically poor.

It is probably desirable to work out, either by agreement or through jurisprudence, clearer rules of the game for multi-union bargaining or minority union dissension.

Agency shops

A significant feature of this year's bargaining round is the dramatic increase in agency shop agreements. This will have a number of longer-term effects on the industrial relations environment:

- *It will increase union income.* The public sector unions, for example, are expected to receive about R200-million each year in monies deducted from non-unionists in the public service.
- *It will lead to an increase in union membership,* with many workers calculating that, if they are paying fees, they might as well become members.
- *It will lead to pressures on unions to account for these funds in terms of the LRA.* This will open union finances as a whole to public scrutiny.
- *It will result in the expectation that unions account to the workforce as a whole* for bargaining deals reached and for decisions to embark on industrial action.

Sympathy strikes

A very significant feature of recent industrial action is the use of the new LRA's sympathy strike provisions.

The rules related to sympathy strikes are still relatively undefined. A bid by auto assemblers to get an intended sympathy strike declared illegal was rejected in the Labour Court, largely on technical grounds. In a number of instances, NUMSA was challenged by employers on the grounds that their business had no possible links with the motor sector. In most instances, the union advised its members that sympathy action would be unprocedural.

Employers are looking for a limited

interpretation of sympathy strike action, while unions think the law is 'too restrictive'.

Who won? At one level, no one 'wins' in a strike, since the parties must still live with one another after the strike and, in general, both suffer economic losses.

Has the balance of power shifted post-strike?

The security and transport strikes led to significant longer-term economic gains for union members. The chemical, motor and auto strikes yielded few gains for members, certainly none in proportion to the extent of these actions. Unions in these sectors argue that they made organisational gains. At the narrow economic level, however, it is hard to see the motor settlement - 4,5% increase in minimums for low-paid petrol pump attendants and even less for those earning above the minimums - as adequate compensation for a bitter, five-week long strike.

Employer representatives are generally satisfied that they 'held firm' and managed, on the whole, to maintain production. Non-strike settlements were, on average, no lower than strike settlements.

At the public level, the violence was widely condemned. The strikes provided ammunition for union critics in the media and opposition political parties. Lack of ANC and government support for the strike action was a notable feature.

The CCMA

Was there anything more that could have been done to make the strikes shorter, less violent, or help avoid them altogether? What role did the CCMA play?

The dominance of wage-related strikes and the almost total absence of rights-based matters leading to strikes suggests that the new LRA is taking rights disputes out of contention and resolving them through the CCMA and other mechanisms.

Industrial action was overwhelmingly procedural. This suggests respect for the LRA. The parties seem to be broadly satisfied with the CCMA's role in handling mutual interest disputes. There are concerns, however, that the quality of the commissioners is not always good enough for major disputes and that efforts to resolve these disputes are not always robust enough.

There is a problem when the parties treat the CCMA process simply as a legal hurdle *en route* to a pre-determined outcome - the holding of a procedural strike.

A number of the strikes seem to have been unnecessarily long. However, the CCMA played a major role in diffusing tensions associated with violence in the security and chemical strikes. In the Western Cape, it went from plant to plant to facilitate agreement over strike rules.

Recommendations

There are two public policy recommendations that could be considered as mechanisms for the better management of bargaining and industrial action and which might, in particular, reduce levels of violence. These are:

□ *A more proactive approach by the CCMA*

While mutual interest disputes make up only a small proportion of disputes referred to the CCMA, the importance of resolving these disputes is clearly a major public interest matter. A more proactive approach might involve:

- ☛ identifying the 40 to 50 key bargaining events and tracking these prior to any dispute being declared;
- ☛ tracking bargaining intentions at the earliest stage by personal interaction with key players;
- ☛ identifying the scene-setting bargains.

□ *A more robust approach to conciliation of disputes. This includes insisting on bona fide efforts by the parties to settle in the conciliation phase.*

- ☛ placing particular emphasis, if the dispute is unresolved, on the development of workable strike rules;
- ☛ conducting preventative work regarding strike rules and picketing;
- ☛ having a Rapid Deployment Force able to intervene effectively in disputes in which conflict threatens to get out of hand.

Nedlac

There would also seem to be a role for Nedlac in facilitating a common approach to collective bargaining and industrial action. This might involve:

- commissioning an annual analysis of bargaining and strikes for release at the end of every year;
- holding a high-level meeting of key union and federation negotiators/leaders and their employer counterparts in January each year to reflect on this analysis and highlight areas of common approach for the coming year. Particular issues which might merit discussion include picketing and strike and replacement labour rules, a common approach to violence and ways to facilitate balloting around final employer offers. ★

Jeremy Baskin is a freelance public analyst. This article is based on a much more detailed survey and analysis conducted by himself and Renée Grawlsky. The report was commissioned by the ILO Swiss Project for the Department of Labour, but should not be taken to reflect their views. The full research report can be obtained from the ILO (012) 341-2170 or the Department of Labour (communications section).