Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE

Briefing Paper 346

April 2014

Labour Legislation and Social Relations

1. Introduction

In May 1891, Pope Leo XIII released his momentous encyclical *Rerum Novarum*, addressing the conditions of work during the industrialisation of the world, and considering the rights and duties of labour and capital. What necessitated the Pope's intervention was the escalating conflict between workers and business that was manifesting itself not just as labour unrest and social instability, but also as class warfare and even social and political revolution.

Over the past few years there has been a rise in the number and length of labour strikes in South Africa, and an associated escalation of violence that has led to the deaths of many people, with the fatalities at Marikana being the highest in a single strike since 1994. These deaths occur not simply at the hands of the police but also when workers kill other workers and – sometimes – police. Even though the violence and strikes in the mining sector have received the most attention, they have also been present in other sectors, such as the transport sector, which has also contributed to the increasing death toll, violence to persons, and the destruction of property associated with strikes.

Over the past few months new labour legislation has been going through Parliament, with the new amendments to the Basic Conditions of Employment Act 20 of 2013 recently signed into law. Though most legislation is directed to employers and employees, these latest amendments also directly affect individuals and groups that might not realise that they are acting within the ambit of the new law.

During the many services around Nelson Mandela's death, everyone kept repeating the need to remain faithful to his legacy of reconciliation. But barely a few weeks after that, violence recurred in service delivery protests[i] and labour strikes. How can we talk of reconciliation and a peaceful society when sectors of our society appear to be in perpetual conflict with each other?

2. Protection from Exploitation and Peaceful Resolution of Conflict

The idea of unprotected employment, where the worker is at the mercy of the employer, brings back images of slavery, indentured labour, workhouses, and child labour. Historically, around the world, these modes of exploitation have led to serious social conflict and revolution. The American civil war, the Russian and Chinese revolutions, the feminist movement, and many Latin American and African liberation wars have, directly or indirectly, been about unjust and exploitative employment and social conditions. The rise of the trade union movements in this country was a reaction to this kind of exploitation, especially in the mining sector, which had the worst record of injustice.

Now, after decades of labour activism, it seems that as a society we are trying hard to create a more normal, more just, and more equitable employment environment where, because the law protects the employees, there is no need for perpetual strikes and conflict over conditions of employment. Today, most strikes are about levels of pay rather than conditions of employment. Those who remember the bad old days will recall how the country had to live through perpetual labour strikes about everything from salaries to

expulsions, lockouts, discrimination, and failures in basic conditions of employment. Where there used to be strikes over unfair dismissal, the CCMA now provides a forum for resolution. Where one group felt they were disadvantaged in some way, the labour courts and equality courts have stopped those conflicts spilling out into the streets. These are the conditions conducive to reconciliation.

However, as Marikana has shown, progress does not mean success; there is still much to be done. It seems as if history has shown that there can be no workplace peace without just employment conditions. There will never be reconciliation if one group always feels victimised by another. There can never be social cohesion if one group feels exploited by another. It is in this context that labour legislation is located. One does not often associate employment legislation with reconciliation or peace-building in society, but as history shows, labour conflict has been the spark of much greater conflict and violence.

In a country like South Africa, where conflict seems to rear its head almost everywhere, any structures or measures that help to bring calm and just resolution of disagreements, without anyone feeling they have to resort to violence, should always be welcome. This is not to say that our labour laws are perfect, but that when one is tempted to complain about too many employment rules and regulations, one should remember where the country comes from and the level of violent conflict that was a regular feature of labour disagreements. The days when people would routinely lose their lives, or have their cars and homes destroyed, or when businesses were regularly burnt or vandalised, should not be forgotten.

3. Rebuilding Society Through the Mundane

The project of justice, peace, and reconciliation that President Mandela espoused so much is not simply a miracle coming from heaven, but a complex one achieved through the often mundane and ordinary creation of just processes to resolve and regulate disagreements before they become points of serious conflict.

It is worth remembering that labour unrest is not simply a matter of workers and employers losing income, it has a huge impact on the rest of society: services are not supplied or are interrupted; transport is often disrupted; police resources have to be moved from crime to deal with labour matters which can lead to great tragedy and loss of life; emergency services and the costs involved have to be mobilised; families struggle because of loss of income with resultant deepening poverty; businesses lose income or even close; and general social unrest and instability ensues.

Had there been a way of resolving the Marikana labour dispute other than by a strike, at least one of the conditions that led to that tragedy would have been neutralised. It seems that the need to strike, and the brinkmanship that goes with strikes, especially to achieve higher pay, needs to be looked at very seriously. If the only point at which any side can back down during labour negotiations is if the very existence of the business or the industry is threatened, then we are encouraging conflict.

4. Is Labour Law Too Restrictive?

On one side there are many who argue that South Africa has very restrictive labour law that retards business development and strangles entrepreneurship. They argue that this hampers foreign direct investment and that it is killing the mining sector and stunting economic growth. On the other side there are those who argue that this is just scaremongering by business used to exploiting labour. As to which of these is true is for society to discuss and find a point of consensus. What is indisputable is that it does not matter which is true when there is the kind of violence seen in the labour sector. It does not matter if business claims that labour law is restrictive; if people are seriously unhappy, there will be conflict. For instance, the conflict in the Platinum Belt was as a result of workers believing that they had certain grievances, and that even the trade unions were not responding radically enough. Thus the workers engaged in unprotected strikes and the result was major conflict and violence, and serious damage to the economy. Though trade unions were there, they were simply ignored by the workers.

5. Strikes: Getting Better or Worse?

In 1999, 74.2 % of strikes in South Africa were about wages and related compensation matters. In 2010 this figure had increased to 98.8%. This means that all other issues of social grievances, disciplinary matters, organisational rights,

retrenchments, working conditions and so on had all but disappeared. This suggests that substantial progress had been made in making sure that that these other areas of potential disagreement were solved using methods other than strikes.
Over the past three decades, the number of annual strikes has declined greatly. Strike numbers increased from *101* strikes in 1979 to *1148* in 1987. By 1990 the number stood at *948.*[ii] In 2009 the number of strikes had dropped down to *51*.[iii]

The question of wages is another contentious issue here. Many have argued that South Africa has one of the lowest productivity ratios in the world. Thus the question of wages is often linked with that of productivity and the argument is made that, before higher wages are demanded, greater productivity is required. Again, that is not an argument to be answered here. The question for all is whether justice is being observed. Addressing the question of wages, Pope Leo XIII says

> "Let the working man and the employer make free agreements, and in particular let them agree freely as to the wages; nevertheless, there underlies a dictate of natural justice more imperious and ancient than any bargain between man and man, namely, that wages ought not to be insufficient to support a frugal and well-behaved wage-earner..."[iv]

This is a fundamental and moral position that says that the level of wages cannot and should not be left simply to the bargaining between employer and employee. Natural justice demands a minimum level of equity. This is important because one of the cries of workers when they go on strike is that their salaries support not just themselves, but their extended families and should reflect that reality. Maybe there needs to be a discussion about what constitutes fair, just, and sufficient remuneration, and what is simply the burdening of employers with matters that are way beyond their responsibility.

6. Breakdown in the Rule of Law

Having said all this, all the labour law in the land amounts to very little if the parties involved decide to ignore or break the law when it suits them. The worrying factor about recent labour disputes is the rise in unprotected strikes where workers simply ignore the law, the unions, and any agreements reached in bargaining councils, and go on strike. According to the Department of Labour, in 2012, *44%* of strikes were unprotected. This is a sign either that workers believe that they can do what they like, breaking agreements and ignoring procedures, without facing any consequences, or there is a systemic breakdown in the labour relations framework and a loss of faith in the procedures set up to resolve and manage disputes.

Whether one is in support of particular legislation or against it is not the issue here. What is worth recognising is that South Africa has come a very long way from the days where labour conflict and violence was the norm, to the point where the 99 strikes in 2012 are seen as a crisis. The fact that there was a time when the country had over 1000 strikes in a single year should not be forgotten. Likewise, the fact that these strikes were about issues beyond simply wages, should also not be forgotten. If we do forget, there will always be the temptation to become pessimistic and to blame the current labour laws for labour unrest and problems, rather than seeing them as an imperfect but valuable tool in dealing with labour conflict.
Some economists and experts argue that the centralised bargaining system should be done away with, and that each company should deal with its own employees[v]. Again, short memories and selective amnesia lead to people forgetting that one of the major factors in the number of strikes in the 1980s was that every company and group went on strike anytime they wanted, for any reason. If two different companies in the same sector paid different wages, workers who were paid less went on strike to demand parity. Thus, it might sound like good competitive economics to allow a free market in salaries, when in reality that only works if one is dealing with a skilled labour market that can take its skills somewhere else and shop for better wages. In South Africa, where the majority of workers are unskilled or semi-skilled, they are unable to shop for better wages and so will fight to the bitter end.

What is also unacceptable is those who, though they have the right to strike, protected by law, decide that they will engage in intimidatory and criminal bullying and destruction. For them it is not enough to withhold labour, they then move to violent and destructive behaviour, especially against other workers seen as 'scab labour'. The failure of law enforcement in these conditions contributes further to the breakdown in society.

7. Conclusion

Employment legislation might look as though it is concerned only with employer-employee relations and really has nothing to do with wider society. But in reality every single Act or piece of legislation, directly or indirectly, affects society. In this case labour legislation can be viewed not only in terms of what it does in improving the economy, but also in how it contributes to reconciliation and nation building. In our society there are sacrifices that have to be made for the sake of reconciliation. If there is a choice to be made between violence and conflict on one hand, and a more tedious and inefficient labour relations framework, choosing tedium over violence would be better. Then maybe society can still have another day to discuss differences, rather than be burying people. That is what reconciliation and healthy social relations are all about.

Matsepane Morare SJ
Researcher

[i] There are similarities between the dynamics in service delivery protests and in labour protests. However, here we will not address the service delivery violence and the breakdown in relations associated with that phenomenon.
[ii] Sjaak van der Velden et al. Strikes Around the World, 1968-2005: Case-studies of 15 Countries (2007)
[iii] Industrial Action Reports of the Department of Labour : http://www.labour.gov.za/DOL/media-desk/media-statements/2013/industrial-action-report-2012
Note: Though there has been a general downward trend over the past three decades, from 2010 to 2012 the numbers have risen from 51 to 99 strikes per annum.
[iv] Pope Leo XIII, *Rerum Novarum* # 45
[v] One of the major points of contention comes from the section demanding 'equal pay for equal work'. This is also reflected in the Employment Equity Act 55 of 1998, which is even more stringent.