THE POTENTIAL IMPACT OF THE LABOUR RELATIONS ACT 66 OF 1995 ON ORGANISED LABOUR AND LABOUR ORGANISATION IN THE WESTERN CAPE AGRICULTURAL SECTOR

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Abstract

This dissertation looks at the history of farmworker organisation on farms in the Western Cape, and factors which have played a role in the demise and the growth of the union movement in the last few decades. In particular it focuses on the role which legislation has played, and will play, in influencing trade union activity in this sector.

The new Labour Relations Act 66 of 1995 (hereinafter referred to as the LRA) affords farmworkers a host of new rights, which are inevitably going to impact upon labour relations on farms. The dissertation looks critically at this legislation, and whether or not the underlying aims of the act are capable of being adequately realised in the agricultural sector.

The LRA provides a number of opportunities for trade unions, which agricultural unions may struggle to access. The suggestion in this dissertation is that farmworker trade unions are going to have to operate more strategically in this sector, if they hope to achieve maximum benefit from the LRA for their members. Possible strategies for farmworker unions are discussed in this dissertation, which may make it easier for unions to advance the interests of their members, and make a greater impact in certain sectors within agriculture.

Unfortunately however, not all workers in agriculture are going to benefit from organisation, in light of the peculiar difficulties which rural organisations experience in accessing farms. The LRA strongly favours workers who are unionised, and the result is that non-unionised workers are going to be severely prejudiced if they do not have access to trade unions. The dissertation looks at initiatives in the rural sectors which have emerged to ensure that agricultural workers are not left out in the cold as a result of the union-bias of the legislation.

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1. INTRODUCTION

1.1 A brief history of Labour Relations on Western Cape farms

The peculiar nature of labour relations between employer and employee in the agricultural sector can be attributed to a number of factors. Those who work on the farm are not simply in an employment relationship with the farmer, they live together as a community. The farmer has extensive control over virtually every aspect of the worker's life, from his or her work, housing, access to medical facilities, food, electricity, water, to the movement and labour of his or her children and spouse. Struggles on farms are therefore not limited to wages and working conditions alone, but to housing, recreation, education, and the rights of children and spouses living on the farm, to mention only a few.

In most cases farmworkers are at the mercy of their employers in respect of all aspects of their livelihood. As du Toit (1992:10) notes :

> "The notion of the farm as family is only one of the themes of paternalist discourse. As important is a second element : the special and prominent place of the farmer within this community. Wine and fruit farm paternalism is, of course, more than a discourse about workers and farmers. It is also a discourse on race. Racial and social identities are virtually interchangeable. Farmers and managers as often as not refer to the workers as "ons kleurlinge" (our coloureds), while in the parlance of the workers themselves, the most common term for the farmer is simply "ons witman" (our white man). If the farm is a community of sorts it is a profoundly unequal one."

This profoundly unequal relationship between farmer and worker has existed since the very beginning of commercial agricultural activity in the Western Cape in the 17th Century, when slaves were imported to cultivate the land, and reap the crops.

The abolition of slavery in 1836 did not significantly improve the lot of farmworkers, many of whom had to remain on farms in order to maintain a meagre existence. Although employment was based on contractual principles, the Master and Servants Act 15 of 1856 ensured that the balance of power was heavily stacked in favour of employers.

> "The rationale behind the legislation was to create an integrated and disciplined workforce, which became necessary as a result of increased industrialisation. The statute sought to enforce discipline by means of penal sanctions, which were weighted heavily against the servant." (Jordaan 1992: 63)

One way in which farmers in the Western Cape in particular sought to minimise the movement of workers off the farm, and to maintain a loyal and fixed labour force, was through the introduction of the tot system. This involved providing workers with wine, in lieu of or as part of payment, in some cases up to six times a day. Although the tot system is still in existence on a very small percentage of farms, the remnants of the system are evident on most farms in the Western Cape.

> "After several generation of farmworkers had grown up under the tot system, alcoholism constitutes the single biggest social problem on Western Cape farms" (Hamman 1996)

For decades, the law has served to repress farmworkers, rather than to protect them from the arbitrary whims of their employers. The control of the farmer was bolstered through legislation such as the Trespass Act[1], and various other pieces of legislation which where introduced to enable the state (and, indirectly, employers) to exercise control over the movement of workers within the borders of the country, and to tie farmworkers to the land.[2] There was no law against victimisation of workers for trade union activities, and farmworkers could be dismissed and evicted without just cause.

Paternalism and dependence have had devastating long term effects on employees in this sector. Farmworkers' relative lack of power (which the legislature failed to address until as recently as 1994) [3] meant that these workers were (and still are) the most vulnerable and exploited employees in South Africa. When a farmworker did lose his or her employment, the consequences were devastating. Extreme poverty, and the shortage of accommodation in towns in the rural areas, meant that farm workers were destined to work on farms for the rest of their lives. Workers had no option but to seek employment, and all the other fringe benefits which farm work entailed, on neighbouring farms.

While industrial workers received legislative protection in 1979, farm workers did not, despite the recommendation of the Wiehahn Commission (1977 : par 4.70) that the exclusion of farmworkers from the provisions of the Industrial Conciliation act and the Wage Act, be deleted.

> "It is generally recognised that the intimate and long established personal relationship between farmers and workers in most branches of agriculture, the wide geographical dispersion of the work force in agriculture, the lack of effective means of communication, the long distances involved, the problems which would be encountered, in both utilising and administering legislation of such a nature etc. would make it extremely difficult to organise agricultural workers in certain branches of agriculture and in certain regions... The Government appreciates the difficulties involved but would be failing in its duty if it did not give attention to this state of affairs." (Wiehahn Report 1982 : 626)

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[1] Act 6 of 1959

[2] The Natives Act of 1952 established Labour Bureaus from which black workers where required to get passes before they could enter and work in South Africa. In most cases employers would assist workers in applying for this permit. However once the worker had the word farm worker stamped in his pass, he could not perform any other form of labour in the Republic.

[3] It was in this year that the Agricultural Labour Act 147 of 1993 was passed, which brought farmworkers within the scope of the Basic Conditions of Employment Act of 1983, and afforded them at least similar rights to industrial workers who fell under the Labour Relations Act 28 of 1956.

It was only in January 1994 that labour legislation was extended to cover farmworkers. Although COSATU supported the full incorporation of farmworkers under the Labour Relations Act and the Basic Conditions of Employment Act, this was rejected by the South African Agricultural Union. The result was the Agricultural Labour Act 147 of 1993, which gave farmworkers virtually the same rights as industrial workers. The most important difference was that farmworkers were prohibited from going on strike in order enforce their demands. Interest disputes would have to be referred to arbitration by the Industrial Court for determination.

Any farmworkers who attempted to infringe the legislation by going on an illegal strike did so at their peril. In the case of *Shongwe v Val Egg Farm*[4], de Kock held that:

> "employers engaged in farming operations may not strike. It is trite law that the court can and in suitable circumstances does, come to the aid of illegal strikers. The court's approach is and must be much stricter where a strike is prohibited by the law and in particular where that prohibition is contained in an Act which was accepted by organised labour as the Agricultural Labour Act was."[5]

Further, de Kock (citing Freemantle in a case concerning the illegal strike of workers engaged in an essential service[6]) states[7] :

> "This court has never, as far as I could ascertain, come to the assistance of strikers where they have been prohibited from striking in terms of the Act...These principles apply with equal, if not greater force in the agricultural sector because of the immense harm which can be caused by a strike in that sector"[8]

Finally, on 11 November 1996, farmworkers were afforded the same legislative protection as all other employees, with the implementation of the Labour Relations Act 66 of 1995 (hereinafter referred to as the "LRA"). Farmworkers now enjoy the same rights as any other employees in South Africa, including the right to strike.

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[4] (1995)16 *ILJ* 1584 (IC)

[5] at page 1588 A-B

[6] Transport and Allied Workers Union v Putco Ltd (Unreported case NH9/2/167)

[7] at page 1588 E-F

[8] The legislated prohibition of strikes on farms was contrary to international standards on the right to strike.

> "The substitution by legislative means of compulsory arbitration for the right to strike as a means of resolving labour disputes can only be justified in respect of essential services in the strict sense of the term (i.e. those services whose interruption would endanger the life personal safety or health of the whole or part of the population)" (ILO 1985 : par 387)

"Agricultural activities and the supply and distribution of foodstuffs cannot be seen as such essential services" (ILO 1985 : par 402)

1.2 The current position of Western Cape Farm workers : the context for union organisation.

Although the laws have changed, not much has changed for the average farmworker in South Africa. Wages and working conditions for farmworkers lag way behind those of workers in industry.

Employers are obliged to comply with the minimum standards set out in the Basic Conditions of Employment Act (the BCEA)[9], and in most cases, conditions on farms are very seldom more favourable than the legislated minimum provided for.

At present there is no minimum wage for farm workers. The Wage Act[10], which empowers the minister of Labour to set minimum wages in particular industries, does not cover farm workers[11].

On the whole, wages and working conditions for farmworkers in the Western Cape are still poor, although workers in the fruit and wine industry fair considerably better than farmworkers working in other sectors in this region. Surveys have been done on wages in the deciduous industry as a whole. In 1992, a survey was conducted of 10000 workers in the deciduous fruit industry. The 1992 wage rates are listed below, with a current equivalent, calculated by de Klerk (1994), allowing for a 10 percent increase per annum.

Category	1992 (Rands per month)	1995 (Rands per month)
General worker	342	455
Seasonal worker	311	414
Fruit packer	449	598
Tractor driver	465	619
Truck driver	639	850
Senior supervisor	1063	1415

A survey by Kritzinger et al (1994)[12] reveals that the 10 percent increase per annum may be more that the actual increase which farm workers engaged in this sector received. Their study revealed that the average daily wage of the female farm worker was R13.96 per day (an equivalent of R294 per month), while the average daily wage of the male worker was R16,50 (an equivalent of R 415.16 per month).

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[9] Act 3 of 1983, as amended by the Agricultural Labour Act 147 of 1993

[10] Act no 5 of 1957.

[11] See section 2(2).

[12] This survey involved 106 farming enterprises from 10 farming districts (Stellenbosch/Franshoek, Elgin/Grabouw, Paarl/Wellington, Ceres/Kouebokkeveld, Klein Karoo, Langkloof, Piketberg/Clanwilliam/Citrusdal, HexRiver/Worcester, North West Cape, and Villiersdorp). A representative sample of farms were selected. Details on 352 women workers and 355 male workers were eventually gathered. This study is referred to with the permission of the authors.

A survey on wages and working conditions on the eight largest farms in the Elgin area conducted by Steyn (1996) reveals that the average minimum wage for (male) farm workers was R26.33 per day. The highest minimum wage for male workers was R32.85 per day, whilst the highest minimum wage for female workers was R29.80 per day.[13]

Most farms provide housing for their workers. In the study compiled by Kritzinger, only 8 percent of permanent workers were not housed on the farm. Farmers who recruit seasonal workers from the former homelands (e.g. Transkei and Ciskei) house seasonal workers on the farm. However, with an ever increasing pool of surplus labour in the townships within the different farming areas, farmers are increasingly recruiting temporary (and seasonal) labour from this source. The advantage for these farmers is that they do not have to house these workers on the farm.

Housing on the whole is very basic, and differs quite substantially from farm to farm. One third of the houses in this study had only one bedroom, the majority had electricity (81 percent) and two thirds had running water in their houses (33 percent had cold water only, while 33 percent had hot and cold water).

As far as other benefits of employment are concerned, Kritzinger's study revealed that there are significant differences between bigger and smaller farms in this regard:

- Work pension schemes were available at approximately 75 percent of the large farming enterprises, but at only 25 percent of the smaller farming enterprises.
- Harvest or production bonuses are paid out on most farms (to both the men and the women workers. Amounts range from one week to one months wages, in addition to their ordinary remuneration, depending on the enterprise, and the profit margins for the year).
- Paid maternity leave for permanent workers is only available on one third of the farms in the study (and in these cases it only involves payment of a small percentage of the woman's wage)
- Most farms provide workers with work clothes (overalls and boots)
- Financing of large purchases and loans are also available on the majority of farming enterprises.
- Most farms provide workers with transport to the shops once a week, to church, and to the doctor where this is necessary.
- A higher percentage of smaller farms than bigger farms subsidise doctor's fees.
- Some farms have their own stores which provide basic food stuffs at the same or cheaper prices than the worker would get in town, however some charge very high rates for the food which they sell.

It is difficult to compare wages in the agricultural sector with wages in the industrial sector, in the light of the fact that farm workers receive considerable fringe benefits

[13] This study looks only at wages and conditions of employment on the eight largest farms in the Elgin Grabouw District. The names of the farms have been kept confidential. In the light of the fact that these are larger producers, wages and working conditions on these farms are, on the whole, more favourable than the wages and working conditions on the average farm in this district, or in other deciduous fruit growing areas.

(which are often difficult to evaluate) in addition to their cash wage. However, as a general illustrative point, the Labour Research Service was requested to provide us with the minimum wages which the different workers in industry are currently receiving. A few examples appear below.

Industry	Minimum wage per month in rands (July 1995 - July 1996)
Metal Industry	1590.50
Electronics manufacturing	1574.20
Iron & Steel	1434.93
Food Manufacturing	1433.27
Motor Vehicle Manufacturing	1175.40
Transport industry	1108.67
Building construction	802.33

The BCEA sets a maximum of 46 ordinary hours for all workers except farm workers, who have a maximum working week of 48 hours[14]. During the season, farmers and workers may enter into an agreement which extends the ordinary working week for farm workers to 52 hours. This agreement may be implemented for a maximum of 4 months, with the proviso that the farm worker's ordinary working hours must be reduced by the same amount of hours during the off-season[15]. Average working hours for farm workers are longer than average working hours of employees engaged in other sectors. Figures for 1992 show that the average working week for farm workers was 46.9 hours (this is exceeded only by the coal mining industry, which has an average working week of 50.7 hours). Figures for the same year show that workers in the manufacturing industry had an average working week of 44.7, the textile industry 46.0 hours, and the printing industry 42.6 hours. Steyn's survey (1996) of the eight apple farms in the Elgin district corroborates these findings. The average working hours per week on these farms was 46,20.

On the whole, labour relations on farms are poor. There is little consultation with workers prior to the taking of decisions, and paternalism is rife. Violations of human rights and abuse continue to occur on farms[16], although this has reduced considerably over the last few years with the implementation of the Agricultural Labour Act.

While rights abuses can be dealt with through the labour courts, exploitation of workers cannot. The only way that farmworkers are going to be able to advance their interests at the workplace is through organisation, collective bargaining and, where necessary, collective action to enforce demands for change in this sector. Without effective worker organisation, the cycle of dependence and poor wages and working conditions will not be broken.

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[14] section 2(1)(A)(a)

[15] section 6A (a)

[16] In the last two years, I have been involved in at least 4 cases involving assaults on farm workers by farmers in the Western Cape. All of these matters were referred to the Agricultural Labour Court. Two were settled, while the other two went to trail. Both cases were won by the farmworkers involved.

2. THE HISTORY OF FARMWORKER ORGANISATION ON FARMS IN THE WESTERN CAPE

It is against this background of dependence and vulnerability which one must examine the successes and failures of the different organisations which have attempted to organise farmworkers this century.

The first attempts at recruiting farmworkers in the Western Cape, were made by the African National Congress. The ANC started recruiting members from the rural areas as early as 1929, when they opened a branch in the Worcester area. Open meetings where held in the town of Worcester on week-ends, when farmworkers where brought into town to buy their supplies for the month. Matters such as low wages, unemployment and the tot system where condemned by the speakers, and it was in this fashion that the ANC managed to recruit farmworkers. After a year, the ANC had managed to recruit 1000 members, 200 of which where farmworkers.

The success of the ANC was short-lived. The political leaders where harassed by farmers in the area, and workers suspected of attending political meetings where dismissed. Moreover, the police started harassing those who attended meetings by arresting them for minor infringements of the law. In 1930, the Riotous Assembly Act was passed, which enabled the state to ban public meetings. In June 1930, the Minister of Justice banned all public political meetings held on a Sunday in the Boland (Community Education Resources 1989).

The National Party victory in 1948, a string of repressive acts, and the subsequent banning of the ANC in 1960, proved the death knell for any form of effective political mobilisation of workers on farms in the Western Cape.

The first attempt at unionising farmworkers was made in 1960, by the Food Plantation and Allied Workers Union (FPAWU), an affiliate of the South African Congress of Trade Unions. However, victimisation of farmworkers for joining the union, and a lack of financial resources in order to employ a full time organiser doomed FPAWU to failure.

The Food and Canning Workers Union (FCWU) started to organise farmworkers in the Western Cape in the 1960's. This union was responsible for organising workers in factories manufacturing farm produce, but also sought to recruit farmworkers as members. Liz Abrahams, the regional secretary of the union, recounts the difficulties which union organisers experienced in attempting to organise farmworkers. Lack of resources, the Trespass Law, threats to the lives of organisers by farmers, the isolation of farm workers and the unchecked control of the farmer over his or her employees made it impossible for FCWU to make an impact on farms (Community Education Resources 1989 : 18)[17].

[17] Even though industrial workers where not covered by labour legislation at this time, organisation of these workers was much easier in light of the lesser degree of dependence which workers had *vis-a-vis* their employers. Moreover, access to workers was not a problem for the union, which could quite easily meet with the workers off the employers premises. Strikes, although illegal, would be more likely to be effective

With the introduction of labour legislation for industrial workers in the 80's, some opportunities arose for the existing unions to organise farmworkers. In 1985, the Food and Allied Workers Union housed the Farm Workers Project, which began to organise workers on farms where a manufacturing process of sorts took place. In light of the production process on the farm, farmworkers on these farms where classified by the courts as industrial workers, therefore falling under the protections of the Labour Relations Act.[18]

When it became clear that farmworkers where eventually going to be covered by labour legislation, and would therefore be protected from victimisation, a COSATU workshop was held in September 1990 to discuss the formation of a farm worker union. Until this time, the only 'farmworkers' which were being recruited into existing trade unions, where those on chicken farms, who joined FAWU (The Food and Allied Workers Union) and forestry workers who where being assimilated into PPAWU (Paper Printing and Allied Workers Union)

In some cases it was felt that it would be appropriate that farmworkers would continue to be organised into existing unions, but it was proposed that a separate union should be formed to organise workers where the number of farm workers was greater than the number of industrial workers on the farm, or where there was no industrial component in the process (Ball 1990)

It was for this reason that the South African Agricultural Plantation and Allied Workers Union (SAAPAWU) was launched by COSATU in 1994. Prior to the launching of this union, a number of other independent trade unions had formed to organise farmworkers[19], one of which being the Farm Food and Rural Workers Support Association (FFRWSA), with its headquarters in Stellenbosch in the Western Cape. This union decided not to affiliate with COSATU.

2.2 The current state of unionisation in the Western Cape

The present level of union organisation in the agricultural sector nationally is very low. The total membership claimed by unions is little more than 10 percent of all farm workers, However, informed estimates of real and effective membership indicate a far lower figure of between two and eight percent of farm workers (Murphy 1995)

In the Western Cape, FAWU, FFRWSA and SAAPAWU have the greatest support. In terms of an agreement within COSATU, FAWU have transferred all their farmworker members to SAAPAWU.[20]

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in light of the support from different sectors of the community in which the workers lived.

[18] See *Tyekela & others v Chickwick Poultry Farms (Pty) Ltd* (1988) 9 *ILJ* 725

[19] See the Directory of Trade unions organising farmworkers, published by The Farmworkers Research and Resource Project (FRRP) in March 1995.

[20] Interview with Freddy Lindooor, FAWU organiser. According to Lindoor, FAWU are considering organising farmworkers again, in light of the restraints which SAAPAWU are facing organising farmworkers in particular areas.

Sectors which have been targeted for organisation by these unions are those which are vulnerable to solidarity action, are highly profitable, have a high concentration of workers, are labour intensive, are difficult to mechanise, are dependant on semi-skilled workers, and have high concentrations of agri-businesses and large employers.

Following the strategies set out above, the trade unions have made some gains on farms in the Western Cape. On the whole, the trade unions have concentrated their efforts in particularly profitable areas, on farms where worker density is greater. The greatest concentration of SAAPAWU and FFRWSA members may be found on deciduous fruit farms in the Elgin area, and on wine farms in the Stellenbosch area. Both these sectors are labour intensive, and have been particularly profitable over the past few years, with new foreign markets opening up for the distribution of South African fruit and wine, following the removal of sanctions, and the devaluation of the rand[21].

The problem is that neither union has confined themselves to organising on farms with the above-mentioned criteria. Both unions report that they have members on a range of different types of farms. Though they focus on wine and fruit farms, they are prepared to organise workers on vegetable, poultry, and dairy farms, amongst others. Moreover, they have not only targeted large farms. There is no restriction on the number of workers which they are prepared to organise. Both unions have recruited members on small farms, even where there are less than 20 permanent workers.

FFRWSA claim to have approximately 6000 paid up members in the Western Cape. The union has recognition agreements on 94 farms, 60 of which are situated in wine and fruit farms in the Stellenbosch area. SAAPAWU claim to have approximately 4800 paid up members in the Western Cape. The union has majority representation on 32 farms, 20 of which are situated on deciduous fruit farms in the Grabouw area.

According to a 1987 census, there are approximately 178 542 permanent and 168 886 temporary workers employed on farms in the Western Cape. This means that both unions combined effectively represent only 3 percent of farmworkers in this region.

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[21] Over the past decade or so, while agriculture in South Africa as a whole has been going through a difficult period, in the Western Cape it has been one of the highlights of the economy. Against the national trend, real income, employment and the real value of exports have grown fairly steadily for the deciduous farming sector in this region. (De Klerk : 1995) An average growth rate for real income of around 5 percent per annum has been recorded for farming in the Western Cape between 1980 and 1990, compared to the less than 2 percent nationally. Employment in this sector has also grown about 3 percent per annum, against the less than 0.5 percent for the country as a whole. Overall production of fruit has grown at an average of close to 4 percent per annum over the last 20 years. This was despite the negative effects of trade sanctions (Eckert : 1995) The 1 463 million tonnes produced in 1994 brought in R 1 836 million for the producers. Fresh fruit for consumption makes up approximately 50 to 55 percent of total tonnage, but (on average) brings in 80 to 85 percent of the industry income. 70 percent of this income is derived from export, although (on average) only 40 to 50 percent of the fruit is exported. (De Klerk : 1995)

While FFRWSA has 3 organisers in the Western Cape (including their General Secretary), SAAPAWU has only one full-time organiser in the Western Cape. Both unions have another organiser in the South Cape.

When questioned about the greatest threats which they felt their unions where facing, both FFRWSA and SAAPAWU felt that financial restraints would seriously hamper their union's ability to organise workers effectively. Although both FFRWSA and SAAPAWU charge a minimum membership fee of R6.00 per month, the agricultural sector is particularly costly to organise. Lack of resources available to the unions mean that the finances which they have are eaten up on running costs and salaries, and there is little left for the training and skilling of organisers and shop stewards[22]. Both unions have had to rely on funding from foreign donors, in order to train their organisers.[23] The level of education of shop stewards on the farms is low, and training on the legislation for shop stewards and organisers has not been a top priority for the unions.

2.3 Perceptions of trade unions in the Western Cape

Research by Kritzinger and Vorster (1995)[24] reveals that only 26 percent of farmers interviewed in the deciduous fruit sector were in favour of trade unions. The reasons given for this was that trade unions are important for the protection of farm workers rights, they benefited both the employer and the employee, and that it held no threat to them. If workers were treated fairly, then there is no need to fear trade unions. Some felt that unions formalised relationships and therefore facilitated the handling of conflict.

Forty six percent of the producers interviewed were opposed to trade unions, mainly because they saw trade unions as a threat. Threats included the disruption of the harvesting process, intimidation of the workers, impairment of the 'special relationship' between the farmer and the worker, and the fact that trade unions were perceived to have political agendas.

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[22] One employer stated that lack of training is the greatest problem which he experiences with the shop stewards on the farm. This was such a source of frustration to this farmer that he paid for the shop stewards on the farm to undergo a week's training by a reputable attorney in the Western Cape, at quite considerable expense to the farm. He also invited the local union organiser to attend this training.

[23] In order to achieve greater funding, both of these unions are in the process of negotiating agency shop agreements on the farms where they have recognition agreements. FFRWSA has already managed to secure 6 agency shop agreements in the Stellenbosch area.

[24] This survey involved 106 farming enterprises from 10 farming districts (Stellenbosch/Franshoek, Elgin/Grabouw, Paarl/Wellington, Ceres/Kouebokkeveld, Klein Karoo, Langkloof, Piketberg/Clanwilliam/Citrusdal, HexRiver/Worcester, North West Cape, and Villiersdorp). A representative sample of farms were selected. Details on 352 women workers and 355 male workers were eventually gathered. This study is referred to with the permission of the authors.

Only 2 of the producers interviewed indicated that trade unions were active on their farms. Of these, one was positive about the involvement of the trade union, while the other had problems initially, which have been ironed out.

Should trade unions start to organise on their farms, approximately two thirds of producers indicated that they would accept it under certain specific conditions. Eleven percent indicated that they would accept it without reservation, while 12 percent indicated that they would not accept it.

The research revealed further that workers are extremely uninformed about the nature and role of the trade union. The majority of female workers in the various regions had never heard of trade unions, while male workers seemed to be somewhat better informed.

Of the 59 female workers who have heard of trade unions, only 5 percent report that they are members of a trade union. Of the 98 male workers who had heard of trade unions, only 1 percent belonged to a trade union at present. A quarter of the female workers and more than a quarter of the male workers who knew about trade unions, indicated that they would like to join a trade union.

Workers who would like to join a trade union were divided as to how they think the farmer will react. A quarter of the women, and a third of the men believed that the farmer would be unhappy about such an action, while a quarter of the women, and more than a third of the men believed that the farmer would accept it. The rest were unsure how the farmer would react.

According to Murphy (1994), farmers' reactions toward trade unions have changed in more recent times:

> "although trade union penetration of agriculture remains minuscule in percentage terms, when compared to industry, it appears that those unions which are actually making the effort to get out to the farms are not experiencing a degree of resistance from farmers which is even remotely in keeping with the popular demonisation of 'die boere' as employers who are adamantly opposed to the presence of trade unions on their farms. In practice the pattern appears to be rather (despite resistance not atypical of employers in general, especially small employers) for individual farmers to quite quickly get down to the business of negotiation once it is clear that their employees have opted for a trade union to represent them. Incidents of union organisers being assaulted or driven off farms at gunpoint, which were reported frequently a few years ago, would now appear to have all but ceased"

2.4 Farmer strategies to counter the 'threat' of unionisation

While farmers on many farms have accepted the presence of trade unions when it has become clear that the workers have opted for this, research has shown that some farmers will still attempt to manage their workforce in such a way so as to avoid the threat of unionisation. There are a number of ways in which farmers have attempted to

achieve this, the most common of which being a change in management style, and careful recruitment strategies.

On some farms, management styles have started to change over the last few years, owing to a number of factors. Recent research by Ewert & Hamman (1995:147) on Western Cape wine and fruit farms concludes that:

> "the restructuring of labour organisation on wine and fruit farms [since the early 80's] has less to do with the political transition in South Africa or the recent extension of labour legislation to agriculture, than with the new competitive orientation on the part of leading farmers in the Cape fruit and wine industry, the sanctions and boycott campaign against South African export goods, and the potential 'threat' of unionisation of farmworkers".[25]

On both wine and fruit farms, farmers who export their produce have had to withstand critical foreign scrutiny of the conditions under which their produce is grown. The threat of boycotts has forced many farmers in this sector to reassess labour standards and labour relations on their farms.

> "In our survey, we found four distinct patterns amongst farmers. Many farmers persist with traditional paternalism, whereas other have adopted a new-paternalist attitude, introducing formal management systems and written disciplinary and grievance procedures, but retaining some of the features of paternalism. Others have adopted such formal management styles that they closely resemble industrial employers. A fourth group of employers have chosen to break with traditional paternalist labour relations in favour of more participative models" (Ewert & Hamman 1995: 29)[26]

Other ways in which farmers have managed to keep unions off their farms, alternatively to make unionisation on their farms more difficult, is through their labour recruitment practices.

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[25] At page 147

[26] Research by Mayson (1990) and du Toit (1993) confirm Ewert and Hamman's observations. The Rural Foundation, established in 1982, embarked on an extensive programme of social development for farmworker communities in the Western Cape. Part of this process involved the establishment of liaison committees (worker elected bodies) on farms. These bodies had very little say in managerial decision making, but played a role in facilitating communication between management and workers. A micro study on four fruit farms in the Elgin area found a marked improvement in living standards with the intervention of the Rural Foundation, and relations between management and workers appeared to be better (Mayson : 1990). However, the situation in the Elgin area was not representative of all farms in the Western Cape. A study by du Toit (1993) in the Stellenbosch area concluded "the Western Cape today is the scene of a three cornered hegemonic contest between traditional paternalist farmers, the new proponents of 'human resources management' and the beginnings of a militant farmworkers' union"

Although farm work has low status amongst the coloured community, high unemployment, and the growing pools of labour in the rapidly expanding townships have resulted in an oversupply of labour for farmers. Farmers can therefore afford to be very selective about whom they employ on a permanent basis.

One of the notable findings of Ewert & Hamman's research is that African workers "have not even begun to penetrate the core of permanent workers on [Western Cape wine and fruit] farms" (1995:157).

One of the underlying reasons given by farmers for their refusal to employ African workers on a permanent basis was in order to maintain a homogenous farming community which in turn would ensure greater labour stability. In most cases the coloured workers interviewed did not regard the African workers as "part of the farm family", and in most cases indicated that they would be reluctant to work under an African supervisor, owing to differences in language, religion, culture, lifestyle and even styles of working. The other reason is related to a perception on the part of the farmers that African workers are more militant and inclined towards collective action, and may bring the union onto the farm.

It would appear however as if farmers are less strict about whom they employ on a seasonal basis. The source of seasonal labour is varied. In some cases workers will be recruited from the local township on a temporary basis. In other cases, farmers will drive to economically depressed towns in Namaqualand and the Karoo to recruit labour at cheaper rates. The practice of recruiting labour from the Transkei is not as common as it was in the past, as many of these workers now live, and are recruited from the informal settlement in the town near the farm, owing to the scrapping of influx control legislation. Wives of farmworkers are the other source of seasonal labour for the farmer. However, in most cases, wives tend to work on the farm throughout the year, and in some cases farmers have been prepared to grant women permanent status on the farm.

Both FFRWSA and SAAPAWU complain that farmers in the Western Cape are making less use of permanent, and more use of temporary labour on farms. In the past few years in the Western Cape, and particularly in the Grabouw area, farmers have started making use of labour sub-contractors. In these cases, sub-contractors employ teams of workers who are recruited to do specific, temporary jobs on the farm, such as the pruning and thinning of trees. This work used to be the domain of the permanent workers on the farm. These workers are recruited from the towns near to the farm itself, and are the responsibility of the sub-contractor, and not the farmer.[27]

Traditionally unions have only recruited permanent workers as members. Thus the increased use of temporary farm labour and labour sub-contractors is likely to make it more difficult for unions to establish a stronghold on the farm.

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[27] This information was revealed to me in two separate interviews with SAAPAWU shop stewards in the Grabouw area. On both these farms, farmers where making more extensive use of labour subcontractors to perform specific tasks on the farm, which had previously be done by the permanent workers on the farm.

3. THE LABOUR RELATIONS ACT 66 OF 1995 AND ITS POTENTIAL IMPACT ON ORGANISED FARMS

3.1) New hope for farmworkers

It is against changes in recruitment patterns, the restructuring of the workplace by employers, low levels of unionisation of farmworkers, poor living and working conditions on farms, and the difficulties experienced by unions in increasing their membership, that one must assess the provisions of the LRA, and its potential impact on farms in the Western Cape.

The Labour Relations Act could potentially revolutionise labour relations in agriculture. However, the act is structured in such a way that this is only likely to happen on farms where workers are already unionised. The only way in which it is going to have an impact on farms which are not unionised, is if farmers restructure labour relations on their farms to the greater benefit of employees, in order to avoid workers seeking unionisation to advance their interests at work.

The new Labour Relations Act is different from its predecessor in a number of fundamental ways. However, for the purposes of this dissertation, I intend to focus on the sections of the LRA that bestow new rights on workers, which could potentially have a significant impact on labour relations on farms which are organised, provided the unions are able and prepared to make use of these new rights bestowed on workers. I have chosen to focus on the sections dealing with organisational rights[28], the right to strike[29], and the right to greater participation in decision making at the workplace[30], and the potential impact of these right on labour relations on farms which are organised. Thereafter, I intend to focus on the possibility of centralised bargaining for unions in agriculture, and alternatives to centralised bargaining should this not be possible.

The LRA provides a number of opportunities for trade unions, which agricultural unions may struggle to access. What I attempt to do in the following sections is to identify the major strengths of the new LRA for union organisation, and the role which farm workers trade unions are able to play in assisting workers to access their rights. In most cases, farmworker trade unions are going to have to operate more strategically in this sector, if they hope to achieve maximum benefit from the LRA for their members, and to restructure labour relations on farms. Possible strategies for farmworker unions are proposed, which may make it easier for unions to advance the interests of their members, and make a greater impact in certain sectors within agriculture.

Unfortunately however, not all workers in agriculture are going to benefit from organisation, in light of the peculiar difficulties which rural organisations experience in accessing farms. The LRA strongly favours workers who are unionised, and the result is that non-unionised workers are going to be severely prejudiced if they do not have access to trade unions. A number of initiatives have emerged in the rural areas, to

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[28] Chapter 3
[29] Chapter 4
[30] Chapter 5

assist farm workers who are not able to access the current farmworker unions with the enforcement of their rights. In this section, I discuss these initiatives, and their relationship with the bigger farmworker union movement.

3.2 ORGANISATIONAL RIGHTS AND THE LRA

a) Provisions and underlying assumptions of the legislation

The new LRA favours a strong union presence at the workplace, and it is for this reason that only unions with significant or sufficient representation at the workplace are able to access the organisational rights provided for in the legislation.

Whereas before the implementation of the LRA, unions with sufficient support at the workplace could insist upon the right to negotiate with employers over their members' terms and conditions of employment, this is no longer the case. The new LRA encourages collective bargaining, not by imposing a duty to bargain, but by giving unions and their members the right to refer the refusal to bargain to advisory arbitration in terms of section 135 of the LRA, and, thereafter employees enjoy the right to strike to enforce collective bargaining.

The assumption is that it is precisely in order to avoid the results of trade unions and employees exercising those rights that employers are more likely to enter into collective bargaining with employee representatives. Dialogue is likely to be more constructive where this is a voluntary process, and negotiations are likely to be more effective where there is a legitimate concern about the consequences which may follow if agreement is not reached.

The LRA's preference of fewer, stronger unions at the workplace is clearly demonstrated by its insistence upon sufficient and majority representation in order to access rights at the workplace. The test for representivity is even stricter than it was in the past, in that it relates to representivity at the workplace, and not representivity within a particular bargaining unit[31].

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[31] In section 213, a workplace is broadly defined as "the place where the employees of an employer work. If an employer carries on or conducts two or more operations that are independent of one another be reason of their size, function or organisation, the place or places where employees work in connection with each independent operation, constitutes the workplace for that operation." The provision that trade unions represent a majority of the workers at an enterprise may impact negatively on trade unions organising in the industrial sector, particularly where there is much diversification at the workplace, and where particular unions organise particular types of employees within that workplace. In some cases unions will be forced to widen their organisational scope, and to include workers which where not before included in their target group of employees in order to achieve the level of representivity required in the new LRA. However, it is unlikely to have a negative impact on unions in the agriculture sector, owing to the generally unskilled nature of the work, the relative lack of diversification of jobs on farms, and the fact that in most cases, all employees engaged in farming activities fall within the organisational scope of agricultural trade unions, be they unskilled or semi-skilled.

The LRA's encouragement of one strong trade union presence at the workplace is further evident in the factors which the Commission is required to consider in a dispute as to whether or not the registered trade union is a "sufficiently representative" trade union. The commissioner "must seek to minimise the proliferation of trade union representation in a single workplace and, where possible, to encourage a system of a representative trade union in a workplace"[32] and should "minimise the financial and administrative burden of requiring an employer to grant organisational rights to more than one registered trade union"[33]

The preference for majoritarianism is reflected not only in this section of the legislation. Other rights have been set aside for majority trade unions, which are likely to bolster their position at the workplace. Clear examples of this are the right of a majority union to request that an employer enter into an agency shop or a closed shop agreement with it, provided certain conditions are met beforehand.[34]

Trade unions with sufficient representivity[35] enjoy access onto the employer's premises in order to serve members interests, to recruit members, and to hold meetings with employees.[36]. Moreover, unions with sufficient representivity have the right to hold an election or ballot on the premises, and enjoy the right to deduction of trade union subscriptions or levies.[37]

Trade unions with majority membership[38] enjoy the above rights, but also the right to hold trade union representative elections on the employers premises[39] (who in turn enjoy certain rights in terms of the act, such as the right to represent members at disciplinary hearing, and the right to reasonable leave in order to perform trade union representative functions).[40]. Probably the most important right which majority trade unions enjoy is the right to disclosure of information about the business for the purposes of collective bargaining.[41]

The procedure which the union is required to follow in claiming these organisational rights, is to inform the employer in writing that it intends to exercise one or more of these rights in the workplace[42]. The employer is required to meet with the trade union within 30 days of receiving this notice in an endeavour to conclude a collective agreement as to the manner in which the rights will be exercised[43]. Should the parties

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[32] Section 21(8)(a)(i)
[33] Section 21(8)(a)(ii)
[34] See section 25(3) and section 26(3)
[35] Section 11
[36] Section 12(1), (2) and (3)
[37] Section 13
[38] Section 14
[39] Section 14 (2)
[40] Section 14 (4) & (5)
[41] Section 16
[42] Section 21(1)
[43] Section 21(3)

not be able to reach agreement, the matter may be referred to the CCMA for conciliation, and, if necessary, arbitration.[44]

b) Organisational rights and agricultural unions

It is submitted that the LRA's preference of strong trade unions, and its discouragement of trade union rivalry at the workplace by imposing high levels of representivity before rights can be acquired is fundamentally sound. Moreover, the requirement that trade unions and employers enter into negotiations over organisational rights is an important provision for unions hoping to establish a more formal bargaining relationship in the absence of a general duty to bargain. However, the problem with this section as it stands at present is that it does not actively promote the growth of strong trade unions in the agricultural sector.

The organisational rights given to trade unions are lacking in a number of respects. Firstly, they do not adequately cater for the problems which trade unions in agriculture have experienced, and are likely to continue experiencing, in recruiting members and building the union. By requiring that the union be "sufficiently representative" before it is entitled to claim a right of access, means that unions who do not have members on the farm, do not have a right of access onto the farm in order to recruit members and thereby obtain sufficient representivity.

The importance of a clear right of access lies in the existence of the Trespass Act 6 of 1959, which allows a landowner or a lawful occupier of the premises to lay criminal charges against any person who enters the premises without permission. "Lawful occupiers" do not include servants working or living on the premises.

In submissions to the Parliamentary Portfolio Committee, The Farm and Rural Labour Rights Advocacy Group (1995)[45] proposed that initially, where there is no union presence at the workplace, no threshold should be required for the right of access. In order to reduce competition, and to encourage the growth of one strong union at the workplace, the group proposed that, when a union achieves the status of sufficient representivity, rights of access may once again be restricted to unions with sufficient representivity. Moreover, the group proposed that any person or organisation representing workers with the enforcement of their labour rights, should be entitled to a clear right of access for the purposes of such assistance.[46]

Although this submission was not accepted by the Standing Committee, it would appear as if this problem may be addressed by other legislation. The Draft Extension of Tenure Security Bill of 1997 attempts to expand the presently limited occupational rights of farmworkers. The idea is that they should be entitled to enjoy the rights which tenants enjoy in terms of our common law. The principle of freedom of association is but one constitutional principle which has been extended to farmworkers living on the

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[44] Section 21(6) &(7)

[45] A national interest group comprising independent agricultural trade unions, rural advice offices, and NGO's concerned with labour law in the agricultural sector.

[46] This would include attorneys, labour consultants and paralegals who are representing farmworkers in any labour related matter.

land through this draft legislation. This implies that farmworkers would not only be entitled to join any union of their choice, but that the union should have the right of access to farmworkers on the premises, regardless of whether the employer has given permission for this or not, and regardless of the level of representivity which the union has on the farm. Moreover, the provisions of this legislation amend the Trespass Act.

The second problem with the organisational rights, is that they fail to take into account the problems which farmworkers may have in accessing trade unions. One of the major problems which farmworkers experience is lack of facilities or transport. In many cases, farmworkers do not have access to fax and phone facilities. Remote workers without telephone facilities are likely to be poorly serviced by the union.

The Labour Rights Advocacy Group recommended that employers be obliged to give trade union representatives access to telephonic and fax facilities, the right to use halls on the farm for meetings, and the right of organisers to stay over in union members houses for the purposes of servicing their members.

The Advocacy Group's proposals are in line a recommendation by the Governing Body of the ILO Freedom of Association Committee:

> "trade union officials should be able to carry out normal and lawful trade union activities among plantation workers who work and live on the property of their employer, only if they have access to these plantations and that officials should therefore readily permitted entry onto these plantations for such activities[47]".

Moreover, the First Session of the Plantation Committee of the ILO resolved in 1950 that employers should

> "remove existing hindrances, if any, in the way of the organisation of free independent and democratically controlled trade unions by plantation workers and they should provide such unions with facilities for the conduct of their normal activities including free office accommodation, freedom to hold meetings and freedom to enter."

Although these proposals where not accepted by the Standing Committee, and will therefore have to form the basis of a collective bargaining process, the last mentioned proposal has been incorporated into the Draft Extension of Tenure Security legislation. This will allow farm dwellers to house visitors overnight in terms of the extension of their occupational rights. As for the rest, this will have to form part of a collective agreement with the employer.

The requirement that trade unions have a majority on the farm before they qualify for many of the organisational rights provided in the act, means that unions are going to have to think twice before accepting members on farms where they are not capable of achieving a majority.

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[47] ILO : Freedom of Association : Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 3rd edition, ILO, Geneva, at paragraph 220

More than half of FFRWSA and SAAPAWU's membership are located on farms where these unions have not managed to achieve majority status. The service which the union is able to give these members is minimal. In most cases, these members do not pay membership fees.[48] However, there is still an obligation on the part of the union to ensure that these workers are not neglected entirely[49]. This inevitably places a drain on union resources, which could be better spent on farms where there is a greater chance of achieving majority status, and thereby of making a greater impact on the farm, with the benefit of the organisational rights provided.

Where majority status is achieved, this holds a number of important benefits for agricultural unions. Firstly, it holds the potential of greater financial benefit for unions, as majority status gives them a right to enter into an agency shop agreement with the farmer. Although SAAPAWU has not concluded any agency shop agreements in the Western Cape, FFRWSA claim that they are in the process of concluding 6 agency shop agreements on farms in the Stellenbosch area. This could potentially alleviate some of the financial difficulties which unions have experienced in the past.

Although there was much consternation on the part of the unions about the removal of the duty to bargain, it is submitted that, in some respects, the new LRA gives unions a better deal. The remains a duty to bargain over the exercise of organisational rights at the workplace. There is nothing to stop unions attempting to gain as many concessions as possible for their members in these negotiations (including the provision of facilities for trade union representatives on the farm). The legislation is even more interventionist in this regard than it was in the past. Where agreement cannot be reached on organisational rights, workers need not go on strike to enforce their demands, the Commissioner is given the power to arbitrate over the demands made[50]. Similarly, where there is a refusal to bargain over other demands, either party is entitled to refer the matter to advisory arbitration[51].

One of the most important rights provided for in this section, is the right to disclosure of information for the purposes of collective bargaining. The right to disclosure of information is widely construed in the legislation, and it is submitted that unions should make extensive use of this right. It is probable that employers are going to resist having to part with information which will favour the union's position in any collective bargaining process, resulting in much litigation over the extent of the duty to disclose information.[52]

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[48] This is mainy because the employer is not obliged to deduct subscriptions in terms of the legislation, and it would be impossible for the union to collect this money each month.

[49] For example, unions would be required to represent these members in disciplinary enquiries, and when workers are unfairly dismissed or retrenched.

[50] Section 21(7)

[51] Section 64(2), read withe section135(3)(c)

[52] Should the employer fail to provide the information requested, the matter may be referred to the CCMA for conciliation and arbitration.

The discrepancy of knowledge and information between employer and employee in the agricultural sector about the business has meant that trade unions have negotiated from an extremely weak position in the past. Trade unions in agriculture are not only going to have to make extensive use of the right to disclosure of information, but will also have to rely on the use of experts in analysing the information given, if they hope to make any gains for their members on farms. The fact that only majority unions have an automatic right to this information makes it imperative for unions to achieve majority status on farms before even attempting to enter into negotiations with employers.

3.3 THE RIGHT TO STRIKE

a) Legislative provisions

A protected right to strike has always been denied to farmworkers. In terms of the Agricultural Labour Act, farmworkers were prohibited from striking at all. In return they were given the right to refer interest disputes to compulsory arbitration.[53]

Compulsory arbitration turned out to be a poor substitute for going on strike, largely because of the time which arbitration took, and the level of skill required in representing workers at arbitration proceedings. Unions did not fare well when matters were referred to interest arbitration.[54]

Fortunately, the new LRA recognises that all workers should have the right to strike, and farmworkers now have a fully protected right to engage in a lawful strike. While illegal strikes hold imminent danger for workers, who may be dismissed for undertaking such action[55], the exercise of legal strike action does not. In terms of the LRA, workers who go on a legal strike may not be dismissed for striking per se[56]. Moreover, workers who are not on strike may not be dismissed for refusing to perform the work of striking workers[57].

In terms of the LRA, employers and trade unions are required to attempt to resolve their disputes through negotiations first. Where these are unsuccessful, a party to the dispute must refer the matter to the CCMA for conciliation.[58] Should conciliation fail, the Commissioner is required to issue a certificate to this effect. Notice of an intended

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[53] See section 46 of the Labour Relations Act 56 of 1977, as amended by the Agricultural Labour Act 147 of 1993.

[54] The problem lay mainly in the unions lack of knowledge about the business, their lack of experience in compulsory arbitration and the unions relative lack of expertise when it came to more complex economic arguments of affordability and comparative wage structures.

[55] Section 68(5)

[56] See Section 67(4). Protection for striking workers is entrenched in section 187(1)(a) which states that it shall be an automatically unfair labour practice to dismiss and employee for participating in a protected strike.

[57] Section 187(1)(b)

[58] Section 64(1)(a)

strike may only be given after this certificate is issued, or 30 days from the date of referral of the dispute, whichever is the earlier.[59]

The other party must be given at least 48 hour's written notice of the strike or lock out. The notice should specify the date on which the strike or lock out is to commence, and the employees and the workplace(s) likely to be affected.

While the farmer is not obliged to pay striking workers, he or she is not entitled to withhold payment in kind, if so requested by the workers[60]. This provision is very important for most agricultural workers, whose remuneration packages in general comprise mainly payment in kind.

The legislation does however provide that the farmer may reclaim the value of payment in kind provided during a protected strike, once the strike is over. This may not simply be deducted from the workers wage. The farmer is obliged to apply to the Labour Court, where he or she will have to prove the value of payment in kind, in order to recoup this.[61]

b) Strikes in agriculture

Since the implementation of the new LRA, there have been at least three illegal strikes on Western Cape farms. In each of these cases workers were driven to strike action after all internal means of resolving the problem had failed. Not one of these workers were unionised[62].

In each case, workers were unaware that their actions were illegal. The illegality of their actions stemmed from the fact that they had failed to comply with the prescribed procedures in terms of the LRA, and secondly, in each case the workers had recourse

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[59] Section 64(1)(a)(i) and (ii)

[60] Section 67(3)(a)

[61] Section 67(3)(b)

[62] The first illegal strike took place in the Stellenbosch area when management declared that workers living on the farm would have to pay R50 per month per person that was living on the farm, but was working elsewhere. This money was to be deducted from the salary of the farmworker responsible for that family member. The strike lasted for one day, and when the workers heard that their action was illegal, they returned to work. A meeting was held with management, who have employed a labour consultant/personell manager to resolve some of the problems which workers are experiencing on the farm. The second strike occured on a farm in the Hex valley. Workers stopped working after their R40 increase per month was just as suddenly deducted from their wages as "rent". Their protests where not heeded by management, and workers therefore went on strike. These workers also returned to work upon hearing that their action was illegal, and that a meeting would be set up with the employer to attempt to resolve the problem. The third strike occurred in the Paarl area, after an employer assaulted one of the farm workers. This had happened on a number of occassions in the past, and workers used the strike action to demonstrate that they had had enough of the abuse. The matter was resolved through facilitation. No disciplinary action has been taken against any of these employees.

to other means of resolving the types of problems which they where experiencing. However, the workers in each case where impatient for the resolution of the problem. Going on strike was the quickest and easiest means of demonstrating their dissatisfaction and getting management to take them seriously.

The right to strike is the single greatest threat to farmers in this country, and it is the fear of strike action which is likely to precipitate a number of changes in styles of management on farms. Although it is still too early to measure these changes accurately, it is interesting to note that in each of the above mentioned cases involving illegal strikes, there has been an increased awareness on the part of farmers of the importance of communication between management and staff. On all three farms, labour consultants have been called in to assist in the setting up of improved communication structures within the workplace, in order to avoid or reduce the incidence of labour unrest and possible strike action in the future.

It would appear (although much research is still needed in this regard) that the right to strike is one right in the LRA which has may potentially force all agricultural employers to rethink labour relations on their farms.

In calling for strike action, agricultural unions are going to have to take a number of factors into account if they want to ensure that strike action is effective for their members. These include the timing of strike action, replacement labour, and the impact of strike action on their members.

By the time that the negotiation process has run its course, employers are likely to have a good idea whether workers intend to take collective action or not, and are likely to make contingency plans in order to lessen the impact of strike action. The unskilled nature of farm work makes it easier for farmers to recruit replacement labour, and it would appear as if some farmers are already restructuring the workplace, not only to avoid the 'threat' of unionisation, but also to make them less reliant on their permanent workers both during and out of season times. The increased use of sub-contractual labour, temporary workers and seasonal labour on farms is testimony to this.

When asked what changes, if any, should be made to the LRA, both FFRWSA and SAAPAWU answered that the employer should not be entitled to make use of "scab" labour during a protected strike. This position was strongly endorsed by COSATU during the negotiations preceding the drafting of the act, but this did not make its way into the final draft.

The question is therefore whether employers should be denied the right to use replacement labour during a strike? Weiler (1990 : 413) does not think so:

> "the employer's right to hire replacements to reduce the impact of a strike is, to a large extent, reciprocal to the employee's right to take other jobs in order to protect themselves against loss of income. True, most workers are unable actually to exercise this right ... [However] if the labor laws forced employers to experience the loss of a strike as a real incentive to compromise at the bargaining table, fairness should require that the same legal constraints be placed on union members. But there are major problems, in both principle and

practice, in trying to enforce such an intrusive restraint on workers' freedom to support themselves and their families during collective work stoppages."

Moreover, the denial of a right to hire replacement labour is unlikely to pass the constitutionality test, as it means that employers are denied the freedom to trade[63].

The question is therefore whether the union is going to be able to convince temporary workers (most of whom will not be members of the union) to strike in solidarity with permanent workers on the farm, or at least to refuse to do the work of striking workers, in order to ensure that the strike has greater impact. Where seasonal workers are recruited from the town itself, this may be easier, as we will discuss later. However where seasonal workers are recruited from economically depressed areas of the Western Cape, economic survival, a lack of interest in the outcome of the fray, and the threat of future non renewal of the seasonal contract may overrule any principled stance in favour of worker solidarity.

The other tactic which the unions intend to employ, is to recruit seasonal workers as members, particularly those which work longer than four months in a year, where the employees are recruited from the town itself, and where the practice on the farm has been to re-employ these workers in the past. This may make sense in light of the added protection which seasonal workers are given in the new LRA. In terms of section 186, the failure to renew a fixed term contract of employment on the same or similar terms, where there is a reasonable expectation on the part of the employee that the contract would be renewed, amounts to a dismissal, and could be challenged if conducted in an unfair manner. It is submitted that a refusal to renew a fixed term contract of employment because temporary workers went on stike, is tantamount to an automatically unfair dismissal in terms of the act. The Labour Court will undoubtedly be called upon to decide what amounts to a "reasonable expectation". It is submitted that a regular renewal of a fixed term contract in the past, could give rise to a reasonable expectation that the contract would be renewed again in the future[64].

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[63] See section 22 of the Bill of Rights, Constitution of the Republic of South Africa, 1996

[64] In this regard, see the case of *Food and General Workers Union & others v Lanko Co-operative Ltd* (1994) 16 *ILJ* 876 (IC). This case concerned seasonal workers who had been employed by the respondent for a number of years during the season time in the past. When they tendered their services to the respondent in February 1992, at the beginning of the season, but were not re-employed. The employer did however employ ten "new" employees in their stead. The respondent could not prove that the criteria for selection for employment which the respondent alleged it normally took into account (service record, previous experience, age, own housing) were applied in this case, when selecting the new workers.The court found that it was clear from the evidence that no formal written agreement or undertaking existed to re-employ any of the seasonal workers. The probabilities however tended to show that there was a tacit undertaking by the respondent to employ all ex-employees who returned to work at the beginning of the next season. The court held that:

"taking into account the respondent's past practice and custom, as well as the expectations of re-employment that were created by the respondent's conduct... I am of the opinion that the respondent should have given preference

As far as unions are concerned, the timing of the strike is vitally important. A strike during the non harvesting part of the year is unlikely to have much impact, as there is not a great need for labour during these periods, and replacement labour is relatively easy to come by. On the other hand, a prolonged strike during the harvesting portion of the season may cause so much damage that it has a negative impact not only on the business, but on employment on the farm as well.

The problem which employers have to consider is that the employment of replacement labour invariably fuels conflict at the workplace, and brings with it the potential for intimidation of workers and even violence. Moreover, farmworkers do not have that much to lose by engaging in strike action. Cash wages are relatively low. Most of their remuneration is in the form of payment in kind, which may not be withheld during the strike.

Depending on the length of strike action, it is unlikely that employers are going to make use of the section 67(3)(b), which entitles them to recoup the value of payment in kind provided during the strike. An application to court is usually a lengthy and costly process, and the benefit derived from such action might be negligible, particularly if the strike was of short duration.

If employers do use this provision, how is the court going to evaluate payment in kind? In terms of the Basic Conditions of Employment Act, where the value of payment in kind has not been set by the parties, a presumption operates. Payment in kind is valued at one third of the employee's wage, or R100, which ever is the greater.[65] However, where the employer applies to recoup payment in kind, it is unlikely that he or she is going to want to make use of this presumption, as this would amount to an extremely low evaluation of payment in kind. It is more likely that employers will want the court to attach a market related value to payment in kind. What employers may well do in future, in order to avoid uncertainty, is to specify the rental or the cost of payment in kind in the employment contract, and to base their claim on this agreement.

This monthly rental required of farmworkers must be negotiated with workers,[66] before this may simply be imposed on them, particularly where this does not form part of an existing contract of employment. Trade unions are going to have to ensure that the rental levy is not so high that workers will be crippled if this is reclaimed after strike action on their part.

It is submitted that much thought needs to go into the planning and exercise of strike action on the part of the unions. What is clear is that well timed, and well planned, strike action could reek havoc for employers in the agricultural sector. The damages which farmers could suffer as a result of strike action are potentially far greater than the damage which many industrial employers are likely to suffer during strike action,

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to re-employing the applicants. The reason for its failure to do so is...unjustified and unfair" (at page 884 : I-J)

[65] See Annexure 4A, Regulation 4 of the Basic Conditions of Employment Act of 1983

[66] Section 19 of the Basic Conditions of Employment Act prohibits deductions from wages without the written consent of employees.

owing to the seasonal nature of agricultural work. It is in light of this reality that it makes a lot more sense for employers in agriculture to adopt a management style which is less likely to engender conflict. The preferred means would obviously be to introduce more democratic workplace structures into the workplace, in order to reduce the potential for conflict and therefore strike action on farms. Greater democracy at work is something which unions organising on farms should be striving to obtain for their members, particularly at workplaces where statutory workplace forums are not possible.

3.5 WORKER PARTICIPATION AND THE NEW LRA

a) Underlying assumptions and the provisions of the legislation

According to the Explanatory memorandum to the Draft Bill :

> "South Africa's re-entry into the international markets and the imperatives of a more open international economy demand that we produce value added products and improve productivity levels. To achieve this, a major restructuring process is required. Studies of how other countries have responded to restructuring warn that our system of adversarial industrial relations, designed in the 1920's, is not suited to this massive task.... If we are to have any hope of successfully restructuring our industries and economy, then management and labour must find new ways of dealing with each other'[67]

One of the "new ways" which the LRA hopes management and labour will deal with each other, is through the formation of more democratic workplace structures, which will give workers an opportunity to give input, before decisions are made by management.

Du Toit (1996 : 230) points out that initial trade union responses to the concept of workplace forums was not promising.

> "Workplace forums were widely regarded as potential competitors which could be manipulated by management to undermine union strength at plant level. COSATU responded by proposing that 'the composition of the workplace forum should be the shop stewards committee'[68]. At the same time alarm was expressed in business circles at what some considered to be excessive interference with managerial prerogative. In a bid to meet these conflicting concerns, significant adjustments were made to the Draft Bill. The result has been a greater degree of flexibility in the establishment of workplace forums, and greater legal scope for union involvement, than in most countries with comparable structures."

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[67] Explanatory memorandum to the Draft Bill at 135

[68] Section 81 of the LRA does provide for a trade union based workplace forum, where there is a collective agreement between an employer and a majority trade union which is recognised as the bargaining agent for all employees at the workplace. In this case, the shop stewards would comprise the members of the forum.

Although the new LRA clearly endorses greater worker participation in decision making at the workplace, in most workplaces, consultation with workers on workplace issues will remain a voluntary exercise. The opportunity for the establishment of compulsory participatory structures in the act is narrowly prescribed, and limited to workplaces where there are more than 100 employees, and a majority trade union which supports the workplace forum initiative.

In terms of the LRA, the workplace forum has the right to be consulted by management on certain work related issues (e.g. restructuring of the workplace, retrenchments, job grading, education and training of workers, export promotion etc.), with a view to reaching consensus[69]; and to participate in joint decision making with management on certain work related matters (e.g. disciplinary and grievance procedures, and measures to protect and advance persons disadvantaged by unfair discrimination.)[70]

In return, the forum has two 'duties' (du Toit 1996 : 230), namely to seek to promote the interests of all employees in the workplace, whether or not they are trade union members, and to seek to enhance efficiency at the workplace.[71]

Hamman (1996: 35) neatly sums up the assumption underlying greater worker participation at the workplace.

> "By associating employees with the decisions taken, it is expected that the quality and quantity of output and the utilisation of labour will improve, materials and equipment used more efficiently and that new techniques may be introduced more easily. Participation is intended to reduce conflict between management and labour and capture employees' capacity for innovation. Furthermore, morale and communication between management and employees is expected to improve."

b) Worker participation in agriculture

Recent research on the wine and fruit industries by Ewert & Hamman (1995) shows that there has been a "transformation of the labour regime from a low wage paternalism to a variety of arrangements, including neo-paternalism, formal collective bargaining and corporatist equity sharing and joint decision-making"

Examples of financial participation are rare in agricultural enterprises in the Western Cape. However, where these initiatives exist, they have proved to be very successful, for worker and farmer alike. The most well-known scheme aimed at increasing employee participation in agriculture by giving workers a stake in the business, is the Whitehall equity share scheme. Workers on this farm have been given a 50 percent financial stake in a large deciduous fruit enterprise, with concomitant decision-making powers. It is interesting to note that, barely three years after the project was first

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[69] Section 84
[70] Section 86
[71] Section 79

established, labour productivity has increased by 30 percent on this farm.(Eckert, Hamman & Lombaard 1996).

Although effective and legitimate worker participatory structures are rare in agriculture, there is at least one example of an uncommonly democratic farming enterprise in the Ceres area. The employees on this farm play an active role in decision making on the farm. Of course, much education and training of workers needed to be done before they were empowered to assist with the decision making process, but the result is that these workers have a far greater knowledge of the business than the average farmworker. There is transparency as far as income and expenditure of the farm is concerned. Productivity on the farm is high, workers on the farm are more skilled, and the wages of the workers on this farm are double those on any other farm in the area. Recently, the workers, together with the farmer, decided that the most lucrative route towards expansion would be to add value to their products by packing it themselves. They accordingly embarked on a joint venture to construct a packshed, which would not only pack the Schaaprivier produce, but also service neighbouring farms. This venture has meant that the women workers on the farm, who where employed to do seasonal work only in the past, now enjoy year round employment on the farm[72].

All the above initiatives were management driven. Employers where not compelled to take these steps, but the result of their actions have been extremely positive for both parties involved.

The question which we need to ask is what benefits statutory workplace forums will hold for workers in agriculture.

Although managerial prerogative is not restrained fully by the duty to consult, this does not mean that there is no point in establishing a workplace forum. The establishment of workplace forums is particularly important for workers in agriculture, as it may be a means of accessing information which has historically been denied to workers and unions. It may also be an important empowerment mechanism for workers in this sector. Consultation does provide workers with a number of valuable tools. Du Toit (1995: 794) recognises this when he states that:

> "the duty to provide workplace forums with relevant information - could have an important educative function and increase workers' ability to take decisions. It may also influence the decision-making process. [Section 64] gives workplace forums and workers an opportunity of seeking to win the employer over to their point of view. But, if they fail to do so, the employer may implement its proposal unilaterally. Workers must then either submit or take industrial action in terms of section 64".

As so few farms are unionised, the scope for the establishment of statutory workplace forums in the agricultural sector is extremely limited. Only 2 percent of farms in this

[72] Interview with John Wolfaardt, owner of Schaaprivier farm, September 1996

country employ more than 100 workers on their farms (Murphy 1995: 23).[73] However, owing to the unions' strategy to target the largest employers in the sector, many of these farms are unionised, and workplace forums could be established on these farms.

Neither SAAPAWU nor FFRWSA have contemplated triggering workplace forums on any of the farms which they organise. Although they understand the potential benefits of worker participation, their concerns are whether or not workplace forums will be the Trojan horse which will lead to the union's downfall. For both these unions, union participation in decision making over non distributive issues is an entirely new concept, not to be undertaken lightly. Both unions acknowledge that their trade union representatives are going to need training before workplace forums can be contemplated. The shop stewards whom I spoke to had not heard of workplace forums[74].

Baskin & Satgar (1995 : 46) argue that although many unions see the forums as a threat, this argument is, at least superficially, hard to sustain. A range of union safeguards have been built into the chapter on workplace forums[75]. Only a majority union may trigger a workplace forum. The union is also given the power to call for the disestablishment of the forum through elections. Unions have preferential rights in nominating candidates for election. The agenda for forum-management of negotiation excludes items which are the subject of collective bargaining in terms of a recognition agreement with the union. The union and the employer may agree to extend the items of consultation or joint decision making at workplace forum level.[76]

The one fear is that forums may be used as a means to replace the old workers liaison committees, where workers had no effective say in decision making, and the committee was therefore simply a means of legitimising managerial decision making, and co-opting workers to accept management initiatives. This is more likely to be the case where workers on the forum are not aware of their rights on the forum, and where they lack confidence in their own ability to criticise management decisions due to inadequate knowledge of the enterprise or business per se.

In the agricultural sector, workers are to a large extent unskilled, and have very low levels of education. This, combined with the historical inequality of knowledge between farmer and worker about business and economics, may limit effective participation of farmworkers on the forum. This problem will only be resolved through education of workers, not only on the legislation, and the meaning of consultation, but

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[73] Although the number of farms which employ more than 100 workers is small, the 2 percent of farms which employ more than 100 workers employ approximately 25 percent of farmworkers in South Africa.

[74] Interview with 4 shop stewards on Mizpah Farm, Grabouw

[75] See in this regard sections 82(1)(f),(h),(l),(u)&(v), and ss 84(1),(2),(3)&(5),s 86(1)&(2) &s 93

[76] van Holdt accepts the union safeguard argument, but states that, if the union control is so absolute, why have what amounts to sham elections for a separate body at all, and that it would be more reasonable for the legislature to give trade unions, and not workplace forums, the rights contained in section 84 and 86 of the new LRA.

also on technological issues, business process and simple economics, amongst others. Until this occurs, workplace forums are unlikely to operate as an empowering mechanism where workers are able to make positive and informed contributions to the process of decision making.

To this end, I would support Klare's (1997) proposal of a truly democracy enhancing approach to labor law:

> "A democratic culture should aspire to awaken and nurture in all people their capacities for self realisation and self governance. At minimum, a democratic society should provide all people with meaningful opportunities to participate in making the decisions that affect their lives. Democracy at work is both a normative end in itself, because of its contribution to human self realisation, and additionally, it contributes to civic democracy by enhancing peoples' capacities to participate in politics and by breaking down rigid divisions of labor that inhibit civic participation....achieving these ideals requires not only that people are afforded opportunities to make choices, and to participate in decision making and dialogue, but also that these choices and opportunities are not merely formal but genuine. For this, all people must be so situated in terms of the basic necessities of life, training, and legal entitlements, that they can meaningfully avail themselves of opportunities for choice and participation."

The problem is who is going to ensure that farmworkers elected onto forums are able to play a meaningful role? Is training going to be left to management, or will it be the responsibility of the union to ensure that its members on the forum are sufficiently empowered to take decisions which will advance the interests not only of management, but of workers as well.

In order for the trade union to play a constructive role in the co-determination of the workplace, it is going to have to ensure that it understands the working environment fully, and that it has the necessary skills to advise workers properly on workplace issues. Although management may be requested to pay for experts to assist workplace forums in making decisions affecting the workplace, it is only in exceptional circumstances that management is going to agree to provide this support. It is more probable that the trade union will be looked to provide an educative role in this regard. Where trade unions fail to provide support to the forum, they may lose credibility (Baskin & Satgar 1996). It is submitted that this issue needs to be addressed by agricultural unions. If the trade union intends to trigger a workplace forum, it would be well advised to ensure that it has the capacity to provide the necessary support to its members on the forum.

There is little doubt however that, should the union trigger a workplace forum once it is better equipped to provide the support which its members require, the benefits are likely to far outweigh any disadvantages which participation at the workplace may bring, not only for farmworkers, but for trade unions as well. Union officials and their advisors are entitled to attend workplace forum meetings. This gives unions an opportunity to gain greater insight into the business. This insight could prove useful not only for workplace forum participation, but at the collective bargaining table as well.

It is a sad reality that the only workers that are potentially going to benefit from compulsory democratisation of the workplace are unionised farmworkers on large farms. However there is nothing stopping trade unions which are organising on smaller farms from demanding the establishment of non-statutory forums at the workplace, and taking collective action to enforce their demands. If unions are committed to the empowerment of farm workers and the destruction of the remnants of paternalism on farms, this is an option which they should seriously consider on farms, particularly where they are able to provide workers with the support mentioned above.

The right to disclosure of information, the right to strike, and the right to greater participation at the workplace, are all rights which unions are able to use to fundamentally alter labour relations on farms, and to empower farmworkers to exercise a greater degree of control over their lives. Although these rights have been discussed under separate headings above, they are intricately linked. It is only when unions and workers have a better understanding of the workplace (which can be achieved through the insistence on disclosure of information and the triggering of a workplace forum) that they are able to make more informed decisions about the possible success or failure of strike action in achieving their demands. Moreover, on farms where worker participation is not compulsory, trade unions may have to make use of adversarialism, collective bargaining and strike action in order to bring about greater workplace democracy.

From an employer's perspective, there are obvious advantages to a more democratic approach to labour relations on farms. The interdependence of farmer and farmworker, the potentially devastating nature of strike action and the close living and working relationship of the parties mean that a more democratic approach to labour relations on farms could bear more fruit under the new LRA than paternalism and autocracy can ever achieve.

The above mentioned rights, if exercised properly, could potentially alter labour relations on individual farms. The question which we now need to ask is to what extent farmworker trade union can make use of the legislation to make a greater impact in agriculture per se.

3.4 CENTRALISED BARGAINING AND THE NEW LRA

a) The provisions and underlying assumptions of the legislation

The centralised bargaining provisions of the LRA are essentially a compromise between organised labour's demand for compulsory centralised bargaining at industry or sectoral level, and an employers demand that there be no legal compulsion to enter into sectoral collective bargaining.

COSATU in particular argued that the South African economy should be divided into a number of sectors, in each of which employers' organisations and trade unions would be compelled by law to establish a national collective bargaining forum. These forums would be empowered to exercise a variety of functions, including the setting of wages and conditions of employment for the sector (Le Roux 1996 : 61).

The arguments for and against centralised bargaining are well set out in du Toit et alia (1996: 137-138). The arguments for centralised bargaining are as follows:

> "It is the best means of establishing industry wide minimum and fair standards; it allows for an efficient use of skilled union and employer negotiators; it leads to one collective agreement in each sector, concluded by skilled negotiators, avoiding a plethora of poor quality collective agreements with the potential for litigation, it strengthens the capacity of the bargaining agents; it develops social benefit funds that are more meaningful and cost effective, and it leads to a proactive style of unionism in which common employer-employee interests are advanced, as opposed to a narrow defensive and reactive approach."

The arguments against centralised bargaining are that it:

> "undermines economic growth by setting high wage entry levels for small employers; it removes bargaining from the key actors at plant level; it denies access to bargaining forums for trade unions with strong plant representation but which lack sufficient representivity in the sector, it lacks flexibility by failing to take account of regional and enterprise differences, and it exposes employers to a double risk of strike action."

Although centralised bargaining is encouraged in the new LRA, the act maintains a voluntarist stance toward it. The establishment of bargaining councils[77] in terms of the LRA requires the co-operation of both trade unions and employer organisations. However, for the formation of statutory councils[78], the act provides for a measure of compulsion, although the powers of these councils are more limited.

In order to have the Bargaining Council registered, the trade union/s and employers organisation/s applying for registration will have to show, amongst others, that they are sufficiently representative of the employees in the sector and area for which they are registered.[79] and that no other council is registered for that sector and geographical area. Once registered. the Bargaining Council has extensive powers. These include concluding collective agreements, the prevention and resolution of disputes, and the promotion of training and education schemes. Collective agreements concluded can be extended to non parties to the Bargaining Council which are within its registered scope, where both the trade union/s and employers organisation/s agree to this, and where the union parties represent and the employer parties employ at least the majority of the employees employed within the registered scope of the bargaining council.[80]

The Statutory Council has fewer powers than the Bargaining Council. It may not set minimum wages for the sector and area for which it is registered, however it may perform dispute resolution functions, promote and establish training and education schemes and establish and administer pension funds and the like. Any collective

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[77] Section 39
[78] Section 27
[79] Section 29(11)(iv)
[80] Section 32 (1) & (3)

agreements reached bind the parties to the council, but may also be extended to non parties where the union members of the council represent the majority of workers in the sector and area of registration, and where the employer representatives employ the majority of workers in the sector and area of registration. Whereas the level of representivity required of the trade union and the employers organisation in order to establish a Bargaining Council has not been specified, section 39(1)(a) stipulates that for the purposes of establishing a statutory council, a "representative trade union means a registered trade union, or two or more trade unions acting jointly, whose members constitute at least 30 percent of the employees in a sector and area", while section 39(1)(b) stipulates that a "representative employers organisation means a registered employers organisation or two or more registered employers organisations acting jointly, whose members employ at least 30 percent of the employees in a sector and area."

The other important difference is that the statutory council is not dependent on both trade unions and employers organisation agreeing to the application for its registration[81]. Only one party need make an application, and the registrar, if satisfied that the application complies with the act, must establish the statutory council for the sector and area[82]. All registered trade unions and employers organisations, and any other interested parties, must be invited to a meeting, which will be chaired by the CCMA. The Commissioner's role is to facilitate an agreement on who will be parties to the council, and the content of the constitution which will bind the Council.

Where there is no agreement on who will be the parties to the Council, the minister is empowered to admit parties, in terms of section 41. The seats must be allocated equally to the two sides (employers and trade unions). The number of members on each side must be proportionately representative of the number of employees which the unions represent or the employers employ in the sector. However, in allocating seats, the Minister is empowered to take into account the interests of small and medium enterprises.[83]

If the applicant is a trade union and there is no registered employers' organisation that is a party to the statutory council, the Minister, after consulting the Commission, must appoint suitable persons as representative and alternates, taking into account nominations received. The same applies where the applicant is an employer's organisation, and there is no registered trade union.[84] Where there is no agreement with respect to the constitution of the statutory council, the model constitution referred to in section 207(3) will be applied (and adapted to the extent that there is agreement).[85]

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[81] Section 39(2)
[82] Section 40(1)
[83] Section 41(5)(b)
[84] Section 41(6) & (7)
[85] Section 41(8)

b) The scope for establishment of bargaining councils and statutory councils in the agricultural sector

At present, agricultural trade unions in the Western Cape are unlikely to be able to apply for either the establishment of Bargaining Councils or Statutory Councils. This is because they do not have the level of support required. Moreover, if the 30 percent representivity includes seasonal workers, then unions are going to experience even more difficulty in achieving this level of representivity. It is for this reason that it would have been preferable for agricultural unions had the COSATU proposal of national compulsory collective bargaining in defined sectors been accepted in the final draft of the LRA.

The extent to which farmworker unions are going to be able to enjoy the benefits of centralised bargaining in the light of poor membership levels nationally depends upon a number of factors. The first relates to the definition or meaning of 'sector' for the purposes of this section. The second relates to the way in which trade unions organise workers, and third relates to the willingness of employers to form associations and to enter into a centralised collective bargaining process.

i) What is a sector?

Section 213 defines a sector as "an industry or service." This exceptionally broad definition does not take us very far. The act itself does not pose any guidelines to NEDLAC in deciding upon the appropriateness of a sector.

The Labour Market Commission Report (1996) recommends that a number of principles should inform a rational approach to demarcation of sectors. First, the aim should be to bring together in one bargaining forum broadly similar producers or service providers. The industry scope should not be too broad nor too narrow. Second, it is important to take into account the labour intensity of the component parts of the industry to ensure that the same minimum conditions do not automatically apply to vastly different situations, possibly acting to discourage job creation. Third, account should be taken of the actual or planned structure of training arrangements in the industry concerned. Fourth, the number of employees covered should be sufficiently large to allow economies of scale in relation to, benefit funds, while not being too large such that sub-sectors with little in common are bunched together.

> "In practice, it is not envisaged that, say, biscuit making be treated as a stand-along industry. On the other hand, an all embracing food industry could be too broad in its coverage. Where bargaining councils do cover a broadly defined industry, it will be more important to set variable minima, where appropriate, for the different component parts, and for different regions if necessary. In general, the more extensive the defined scope of an industry, the less will be the ability of its bargaining council to set uniform conditions and vice versa. This could result in bargaining councils establishing sub-councils as in the case of the textile industry" (Labour Market Commission Report 1996)

The question which we need to ask is whether agriculture *per se* is a sector, or whether different industries and activities within agriculture could be defined as sectors.

Agriculture comprises a number of different types of farming activities, which can be further broken down into types of produce. An example of a possible sector could be the wine industry, or the deciduous fruit industry. These sectors could be further broken down into farms producing particular produce or crops, such as the table grape growers of the Hexvalley or the apple growers of Elgin / Villiersdorp. Could these producers also be classified as a sector in their own right?

Should NEDLAC (which has the responsibility of vetting the demarcation of sectors) decide that distinct farming activities are appropriate "sectors", for the purpose of the act, then it is submitted that it may be easier for trade unions organising in agriculture to access the benefits of centralised bargaining, provided the requirements mentioned below are met. However, should this not be the case, and agriculture is broadly defined as a sector per se, it is highly unlikely that Bargaining Councils or even Statutory Councils will be formed in this sector, as unions will never be able to achieve the required level of representivity in the sector as a whole.

From a union and employer perspective, it would make more sense if appropriate sectors for centralised bargaining purposes were sub-sectors of agriculture. If this is accepted, obtaining representivity may not be entirely out of the reach of unions as, in most cases, farmers producing crops within sub-sectors in agriculture are usually concentrated within a particular geographical area.

Let us take the deciduous fruit industry as an example. The vast majority of deciduous fruit farms are situated within the Western Cape. It will obviously be easier to determine minimum wages and working conditions for workers employed in this sector, as all farmers presently receive the same prices for their fruit, have similar expenses and running costs, and workers on these farms are subject to similar types of working conditions. Moreover, extensions of collective agreements to non-parties would be less problematic, in light of the above factors.

ii) Achieving sufficient representivity

As yet, unions have not managed to achieve representivity within agriculture alone, let alone sub-sectors thereof in order to enforce a demand for centralised bargaining. This is largely due to organisational strategy on the part of the unions. Instead of consolidating their resources and support in one area, and on farms which produce similar or the same agricultural produce, the unions have adopted a random approach to the organisation of workers, both in respect of the types of farms which they organise, and the geographical area in which these farms are situated. In the process, the unions have spread themselves very thinly.

If trade unions wish to access the different forms of centralised bargaining, in light of the observations made above, it is submitted that it may make more sense for unions to organise on the basis of geographical area and produce or crop and not on the basis of agriculture per se. Produce types should be chosen on account of the accessibility, profitability and labour intensity of the farming activity. It would obviously make sense for unions to target the bigger farming enterprises within that particular geographical area and sector, in an attempt to obtain representivity at the least financial and

resources cost to the union (Murphy 1995:25)[86]. This is the only way in which unions are going to be able to achieve centralised bargaining, either in terms of the LRA, or in terms of an agreement with employers in that sub-sector.

iii) Getting employers on board

Even if unions are able to achieve representivity within a smaller sector (e.g. a Western Cape deciduous fruit sector), employers are likely to be extremely reluctant to play along. Collective bargaining at farm level, let alone centralised level, is a foreign concept to the vast majority of farmers, who have never had to engage in this process. Moreover, according to the Regional Registrar of trade unions at the Department of Labour in Cape Town[87], there has not been a single application for the registration of an employer's organisation in the agricultural sector in the Western Cape. Not even the South African Agricultural Union, which represents the interests of farmers nationally, has applied for registration as an employer's organisation.

Because the legislation does not prescribe that employers organisations' join bargaining councils, the only way in which representative unions in agriculture are going to be able to coerce employers into forming an employers organisation for bargaining council purposes, is through labour unrest and strike action within the sector and area in which they hope to establish a council.

Where unions are able to achieve representivity in terms of the Act, it is more likely that they will opt for the Statutory Council option, as they do not need the initial support of employers organisations to do this. Although the powers of the Statutory Council are limited, it might still make sense for unions to make use of this option. Once a bargaining relationship has been consolidated, the next step would be to enjoin employers to form a Bargaining Council.[88]

iv) Alternatives to centralised bargaining

It is unlikely that unions are going to be able to achieve centralised bargaining for many years, in light of poor representivity in any sector of agriculture. Even where centralised bargaining is achieved, there are always going to be agricultural workers who will fall outside of the scope of that council.

The Labour Rights Advocacy Group submission to the Standing Committee on the LRA noted that it will be impossible to form statutory councils in marginal sectors, because of low levels of organisation of these workers. However, it is precisely

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[86] Murphy (1995:25) proposed that unions should target the larger farms in agriculture, as these farms employ a high percentage of farmworkers. There are approximately 76 farms in this country which employ over 500 employees, and 37 farms which employ over 400 employees nationally. He argues that if unions had to target these farms, they would aquire a stabilised membership of 50 000 to 60 000 permanent workers, and they would be in a powerful position to become the acknowledged "voice of farmworkers".

[87] Mr Ivan Paulse

[88] In this regard, see section 48(1)

because of the low level of unionisation of these workers that some form of statutory centralised bargaining is essential, as there was no way that unions where going to be able to get onto these farms in order to advance workers socio-economic interests at this level. What the Advocacy Group proposed was that the Minister have the discretion to lower the threshold of representivity, depending on the nature of the sector.

Although this proposal was not adopted by the Committee, the strength of the submission lies in its eagerness to get the parties to the bargaining table. However, what happens when the parties sit down to negotiate? If unions are weak, then collective bargaining is merely a sham, as unions do not have the collective muscle to enforce their demands, and there is no pressure on employers to make any effort at reaching consensus.

The answer for employees in these sectors lies not in a forum of compulsory bargaining, but rather in wage determinations, following an investigation into affordability and need in each of these sectors. Although farmworkers are not covered by the Wage Act[89], the Employment Standards Green Paper proposes the establishment of an Employment Standards Commission, which will replace the Wage Board[90]. The role of this Commission will be to investigate and recommend minimum standards of employment (not limited to wages only) within different sectors of employment.

The Commission will primarily investigate sectors which are difficult to organise, and where bargaining councils or statutory councils are therefore unlikely. However, any organisation representing a significant number of employers or employees in a sector may approach the Commission to investigate conditions of employment in that sector.

The proposal encourages the participation of trade unions engaged in the sector, as well as employer organisations in setting these standards through conciliation and negotiation. Where agreement is not reached, the Commission will make and publish its recommendations. There is opportunity for public participation in this process, in the form of hearings and written representations. Once this process is completed, the Minister will be empowered to implement the proposals in a Sectoral Employment Standard, which must be reviewed at least every 3 years.

It is hoped that the Employment Standards Commission is going to look at sectors within agriculture, and not at agricultural workers as a whole. Although there are minimum standards which should and could be made applicable to all farmworkers (e.g. conditions relating to housing and seasonal work), a minimum wage for the agriculture sector as a whole is likely to be so low, that it will only benefit a small percentage of workers[91]. It would be preferable if the Commission investigated the

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[89] Act 5 of 1957

[90] See Chapter E in this regard

[91] Murphy (1995 : 26) argues that a miminum wage, if not regularly revised, could act to the detriment of farmworkers. "The SAAU has been advised by Zimbabwean Commercial farmers that President Mugabe's minimum wage legislation was 'the best

different sectors and agricultural activities which constitute agriculture broadly, and considered minimum standards within each of these.

According to the Labour Market Commission Report (1996), the current Wage Board sets minimum wages and other basic conditions for approximately 730 000 workers. In practice, the board has become less active in recent years. Its coverage has decreased, and its determinations have not been updated frequently. The minima set are very low, and are rarely enforced by the Department of Labour.

The Labour Market Commission supports a revamped wage board which sets minimum wages and conditions for all sectors not covered by collective bargaining, but attempts to do so in a manner that facilitates the transition to collective bargaining. The assumption is that employers, who have resisted bargaining structures, are likely to get involved in negotiations where there is the threat that a minimum wage may be set by the Wage Board with or without their participation (Bethlehem 1996 : 61)

The Commission recommends that special consideration should be given to the needs of farmworkers whose wages and conditions are currently amongst the lowest in the country. The report notes that about 1.3 million farm workers currently work on South Africa's farms, forests and fisheries. A 1993 study found that 73% of male farmworkers earned less than R590 per month, while women in this sector were earning an average of less than R223 per month. In addition the study found that approximately 20 000 workers were receiving no wage at all.

Farmers organisations argued that a minimum wage in agriculture would be impossible to enforce, and could lead to substantial job losses[92]. They stressed the enormous differentiation between crops and regions. They conceded that agricultural employment was declining, even in the absence of minima, and attributed this to mechanisation, uncertainty about land reform and state assistance, as well as pressures to become more internationally competitive.

Those in favour of minimum wages argued that they would assist low paid workers, they would prevent businesses undercutting each other solely on the basis of low wages, they would reduce labour turnover and unrest, and spur employers to make productivity increases. Moreover, those in favour contested the argument that significant unemployment would necessarily result from minimum wages, as the primary aim of minimum wages was to prevent vulnerable workers from being exploited.

Although retrenchments may follow the setting of a minimum wage, the threat of a greater degree of mechanisation by farmers in response to a minimum wage is unlikely,

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thing that ever happened to them'. A very low minimum, which was not regularly revised, worked to the positive advantage of farmers in Zimbabwe".

[92] A study carried out for the Commission found that for every 10% increase in wages, there is a 7% decrease in employment levels. Orthodox ecomonomists have therefore argued that the best way to create employment is lower wages and to weaken the regulations which make wage levels higher than they would be in a completely free market.

particularly in the fruit and wine sectors of the Western Cape. According to Hamman (1996: 367),

> "harvesting of grapes is mostly done by hand, although it is possible to harvest wine grapes and some canning fruit mechanically. However, the cost of capital in relation to labour is such that hand harvesting is still the cheaper option.... Even if operations could be mechanised, as in the case of grape harvesting, a number of other pre-harvest activities, such as thinning and pruning increase labour requirements. These tasks are also extremely difficult to mechanise."

Organised labour strongly supported minimum wages. COSATU called for a minimum wage of R750 per month for farmworkers. The union agreed that minima would need to be varied according to the crop produced, and accepted both the phasing in of minima, and the need for some type of exemption system.

The commission found that international evidence suggested that minimum wages need not result in the loss of jobs, as long as they are set at realistic levels and do not attempt to regulate the conditions of too large a percentage of the workforce. The commission recognised further that minimum wages will not end poverty and disempowerment of workers in South Africa, and stressed that the setting of minimum wages need not exclude collective bargaining. The commission argued that minimum standards should facilitate the transition to collective bargaining wherever possible, and should involve extensive participation by all interested parties and role players.

One of the positive aspects to a minimum wage is that it protects the most exploited workers within the different agricultural sectors, for example children, temporary labour and illegal foreign workers, all of whom are most commonly employed in agriculture. Of course, a minimum wage means nothing if it is not easily enforceable, and it is therefore imperative that breaches of minimum conditions of employment be quickly and easily addressed in court, with the minimum of legal formalities. Moreover, even those who have entered into an illegal contract of employment (such as illegal 'aliens' and children under 15) should be entitled to pursue wage claims against employers in South African courts.

There are of course some negative implications with the implementation of minimum wages. The impact of minimum wages on the employment of women in the agricultural sector remains to be seen. If farmers are forced to pay all workers an equal minimum wage, it is submitted that women are likely to face even greater pre-employment discrimination. Farmers are likely to give preference to men rather than women if they are required to pay them both the same minimum wages.

Moreover, minimum wages that are not regularly reviewed may lead to even greater exploitation of workers, in light of the fact that most sectors covered by wage determinations do not experience enterprise level collective bargaining. As long as farmers are paying the minimum wage, there may be little incentive to pay more than this. Moreover, minimum wage determinations may result in farmworker trade unions not attempting to organise workers in certain sub-sectors.

To sum up, centralised bargaining in any form is unlikely in the next few years, owing to low levels of organisation in rural areas, and the way in which trade unions have gone about organising workers. However, union membership in areas where unions are more accessible is likely to grow considerably in the future, owing to the advantages which this may bring, and it is possible that unions could muster sufficient support in certain sectors to achieve centralised bargaining, depending on their commitment to widespread organisation, the availability of financial resources, and the way in which sectors are delineated. In the meantime, and until trade unions have the power to bargain on a centralised level on behalf of agricultural workers from all the different agricultural sectors (to the extent that this will ever be possible), legislative intervention is necessary, in order to ensure wage equity and empowerment and development of farmworkers. Trade unions engaged in the agricultural sector have an important role to play in ensuring that the interests of their members are advanced through the mechanism of wage determinations in different sub-sectors of agriculture.

3.5 THE LRA AND ITS IMPACT ON TRADE UNION ORGANISATION ON FARMS IN THE WESTERN CAPE

a) What happens to non-unionised farmworkers?

All the previously mentioned benefits of the LRA accrue either to trade union members only, or are more likely to be exercised on farms which are unionised. It is for this reason that union membership is imperative if workers hope to further their interests in the face of employer opposition to their demands. Although the right to strike attaches to all workers, it is more likely to be utilised on farms which are organised, as workers on these farms are, on the whole, empowered to enter into negotiations with their employers, and are aware of the procedures and strategies to be followed in order to ensure a legal and successful strike.

The difficulty which farmworker unions experience in organising workers as a result of logistical and financial difficulties will inevitably mean that that they are not able to reach all agricultural sectors. The trade union bias of the act however makes it virtually imperative for farmworkers to become organised if they hope to be able to advance their interests within the workplace, and to enjoy the full spectrum of rights afforded to them in terms of the legislation.

In the meantime, and in the light of the strong trade union bias of the legislation, what is going to happen to those workers who are not organised? One is perhaps able to understand that the interests of many non-unionised workers are not going to be advanced until such time as they have access to trade unions. However, the problem is more grave than this. In terms of the LRA, even when it comes to addressing certain rights disputes, membership of a trade union is essential. Section 140 of the LRA allows workers to be represented by fellow employees and trade union representatives in cases before the CCMA. Legal representation is only allowed under certain conditions. In terms of section 140(1)(b), the Commissioner is given the power to allow legal representation in cases of dismissal for misconduct or incapacity where this is requested by either of the parties. In making this decision, the Commissioner would have to consider the legal questions raised by the dispute, the complexity of the

dispute, the public interest and the comparative ability of the parties or their representatives to cope with the arbitration, and whether or not it would be unreasonable to expect a party to proceed without legal representation.

The problem with the above section, is that it allows for the exception of legal representation only. This may not be a problem in the urban areas, where labour lawyers with an interest in representing labour exist in abundance. This is not the case in the rural areas, where attorneys with an interest in labour law are few, and where they are prepared to do labour litigation, it is invariably for the farmer and not the farmworker.

In terms of the Agricultural Labour Act, there was no restriction on the parties who could represent farm workers in the exercise of their rights. In most cases, farmworkers sought assistance from their local advice offices when they wished to challenge an unfair labour practice, and not from the unions, in light of the weak union presence in most of the rural areas. Nor did they seek assistance from attorneys in the rural areas, in the light of the fact that in most cases, attorneys were perceived as being there for the farmer, and not the worker.

> "One of the major strengths of advice offices is that they are institutions that mediate or broker legal knowledge and literacies of the state. Their location within rural communities and the fact that advice office workers often come from similar class, socio-cultural and educational backgrounds as their clients allows them to be seen by ordinary residents as accessible and user friendly institutions. They do not exhibit the intimidating and alienating aspects of state bureaucracies. Advice office workers in many instances come from activist backgrounds and can identify socially and culturally with their clients." (Du Toit & Robins 1996: 31)

Between January 1994 and December 1995, more than 60 percent of the cases referred to the Agricultural Labour Court where referred by advice offices, 28 percent where referred to the court by trade unions in the Western Cape, 6 percent by legal practitioners (all from NGO's, not attorneys in private practice), and 1 percent by a labour consultant. In 5 percent of the cases, there was no representative listed.[93] (Westgarth-Taylor: 1996)

Under no circumstances may paralegals assist workers with the presentation of their case in terms of the present LRA. The upshot of this provision is that most farm workers are going to be unrepresented in labour law proceedings.

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[93] Between January 1994 and December 1995, the facilitator at the Dept of Labour in Cape Town has referred over 60 cases to the ALC. A study of the representatives chosen by the farmworker applicants in the ALC 1 forms reveals that only 4 applicants were represented by attorneys (all of whom worked for NGO's, and not in private practice). In 35 out of the 60 cases, the applicant was represented by an advice office paralegal. In 17 cases, the applicant was represented by a farmworker trade union, and in one case, the applicant was represented by a labour consultant. Three farmworker applicants had no representative listed in their ALC 1 form.

The inordinate imbalance of power between employer and employee in the agricultural sector, based on differing educational levels, skills in articulation, access to and control of information, an understanding of the legal process, and, in many cases, a history of paternalist labour relations in which workers are unused to challenging the authority figure of the farmer and expressing their grievances openly, places the fairness of this legislative provision in question.

Du Toit and others (1996: 313) argue that

> "in our view the exclusion of representatives who are not legal practitioners is unwarranted. Although it is arguable that representatives who are not legal practitioners (paralegals and labour consultants) may sometimes hinder rather than help the process, the investigative powers of the commissioner are sufficient to manage the process and control abuse. The commissioner may trigger contempt proceedings in the Labour Court [s 142(9)], may subpoena any person [s 142(1)(a) to (d)] and may award costs if a representative acts in a frivolous or vexatious manner, in its conduct during arbitration proceedings [s 139(1)]. It is for all these reasons there is little justification for excluding any representative as a class, especially if this class of representatives is one on which the most disadvantaged employees would rely"

It is this provision, more than any other in the LRA, that has prompted workers in rural areas which have been neglected by the trade unions thus far, to start organising themselves, with the assistance of advice offices in their areas.

Some advice offices and other forms of worker organisations (which are not part of the traditional farm worker union movement) are starting to register as unions (in the Western Cape at any rate), mainly in areas where there is an absence of any other union presence. In most cases, this is happening merely because these organisations are concerned about the lack of assistance available to farmworkers who wish to challenge unfair dismissals or who wish to address unfair labour practices at work.

The first advice office to register as a trade union was the General Workers Advice Service based in Athlone. Most of their clients work for small and medium business enterprises in the Western Cape, the majority of which are not organised by any of the existing unions, as the numbers at each workplace are too small. The advantage in registering as a union, is that the staff at this organisation (all of whom have extensive experience in representing workers in negotiations with employers) are able to assist these workers in unorganised sectors with the enforcement of their rights, and, where the union qualifies for the organisational rights, the staff are able to gain access to the workplace in order to conduct labour law education and training for workers.

This route is being considered by a number of advice offices in rural areas who are becoming increasingly frustrated with the agricultural unions' inability to organise and /or service workers in their areas.

b) The struggle for effective organisation - the Hex Valley case study

This was demonstrated recently in the Hexvalley. Here, most of the farmers produce table grapes for export purposes. Table grapes are presently overtaking apples as the biggest, and most lucrative, deciduous fruit export crop (de Klerk : 1994). Although farmers have done well in this area over the past few years, on the whole, workers in this valley have not benefited much from the fortunes of their employers.

Until the beginning of 1996, there was no union presence in this valley. More recently, however, the valley has become a hive of contention for different unions, hoping to organise workers in this area. Initially, the advice office in De Doorns approached SAAPAWU when workers in the area approached them for assistance in improving their wages and working conditions. SAAPAWU expressed interest in organising workers in this area, but did not have any organisers to spare, and therefore decided to appoint one of the advice office workers as a volunteer organiser for the union. This volunteer organiser soon withdrew as an organiser in the absence of any support or training from SAAPAWU.

Thereafter FFRWSA was approached to organise workers in the area. They also failed to provide support to the advice office, who were recruiting members on their behalf, and the advice office therefore contemplated forming an independent union in terms of the LRA, in order to continue to provide workers with the assistance which they were entitled to provide in the past.

At the same time, the Hexvallei Workers Forum, an initiative of farmworkers and a progressive farmer in the area, whose aim was to advance the interests of farmworkers through certain developmental projects in the area, has also decided to register as a union after they were denied the right to represent one of their members at a CCMA hearing. Although there are already unions recruiting workers in this area, the Forum was unhappy with the way in which the unions have been servicing workers whom they had recruited. It is for this reason that they have decided to form their own union, rather than to amalgamate with the other unions recruiting in the area. It would appear as if the advice office are going to join this union initiative in the area in order to ensure more effective service delivery to members of their community.

Although the act does not require registration of a union before its members have the right to represent its members in conciliation and arbitration proceedings, these organisations are registering as trade unions in light of the numerous other advantages which registration brings.[94]

Moreover, registration in terms of the LRA is a relatively simple procedure. Any trade union may apply for registration, provided that it has adopted a constitution which complies with the provisions of section 95 of the act, its name is original, and not so

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[94] See s 27(1), s 39(2), ss 23 to 26 (as read with s 213), s 115(3), s 115(3), s 158(1)(e), s 200(1)&(2), ss 11-21, s 78, s 69(1), s 77(1), s 189(1)(c).

similar to the name of another union that this may cause confusion, it is independent, and has an address within South Africa.[95]

c) Does union size matter?

The question which we need to ask is whether the evolvement of these small, specialised unions in agriculture is desirable or not, in light of the preference which the LRA has clearly shown towards bigger, stronger unions.

According to Macun (1996),

> "to ensure that collective bargaining [without state intervention] can act as an effective regulatory mechanism, strong bargaining partners are required, and the implicit assumption in the LRA is that fewer, larger unions will be more effective representatives of workers interests in the collective bargaining process. In its attempt to promote larger, more representative unions, the LRA, whether intentionally or unintentionally, places the rationalisation of union structure firmly on the agenda. The issues raised by this involve not only changes to current arrangements in the number of unions and the workers over whom they have jurisdiction, but also changing the way that unions operate so as to make them more effective and efficient in relation to how they organise, represent and mobilise wage earners. These are matters which go to the heart of union goals and strategies in any society, and they take on particular urgency in the context of the rapid macroeconomic and political changes being experienced in South Africa since the demise of apartheid".

Macun refers to a number of key assumptions which are made about the size of unions. Firstly he states that small unions are thought to be inefficient as they are unable to cope with the costs of running an organisation, are not able to service their members properly and are often dependent on idiosyncratic individual leadership. Secondly, it is assumed that larger unions are more powerful by virtue of numbers and their ability to make gains in the collective bargaining process. Thirdly it is assumed that rationalising union jurisdiction will reduce disputes between unions, enable them to establish coherent wage policies and engage in industrial policy formulation at industry or sectoral level.

> "The notion that bigger is better has been questioned on a number of grounds. Small unions are not necessarily inefficient, particularly where they negotiate a limited number of collective agreements or where they represent specialised groups of workers in particular geographical areas. Small unions in these examples may have the advantage of being able to maintain a high level of service to members and good lines of communication and participation. Moreover, small unions working with specialised groups of workers in particular geographic areas are better able to mobilise members to act in support of demands."

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[95] See section 95

Until the larger farmworker unions have the capacity and resources to organise farmworkers on all farms throughout the Western Cape, an array of different specialised and localised unions that are able to access farms that are ripe for unionisation, in sectors which have been ignored by the larger unions, is better than no organisation of farmworkers on these farms at all. In most cases, these small unions are not yet competing with the bigger unions for members. Moreover, they provide an important educational function for workers in their areas, and an essential service for farmworkers who wish to challenge unlawful actions by their employers, but do not have the confidence to do this on their own.

The alternative is for the current farmworker trade unions, who want to strengthen their power base, to work with these smaller rural organisations intending to assist workers with the enforcement of their rights, and not in competition with them. A network of advice offices in smaller towns could be used very effectively to organise from. These organisations (on the whole) have strong connections with farmworkers in their areas, are trusted by farmworkers, and are more likely able to recruit workers in the area to any union movement (be it their own, or any other). Although SAAPAWU envisages one strong farmworker union, incorporating the present independent unions, this vision is not shared by the independent unions. Moreover, until the bigger unions are able to provide the advice offices and other smaller union initiatives with the support, training and direction that they require in order to function efficiently in the rural areas, these initiatives are unlikely to amalgamate with the bigger unions.

3.6 SUMMARY AND CONCLUSIONS

Conditions for workers in the agricultural sector lag way behind conditions for workers in industry. Despite South Africa's political transition, nothing much has changed for the average farmworker. Paternalism is rife on farms, and workers' dependence on the farmer for every aspect of their livelihood has served to disempower farmworkers completely.

The only way that farmworkers are going to be able to gain control of their lives in the absence of employer initiatives to empower workers, is through organisation, collective bargaining, and where necessary, collective action to bring about change on farms.

The new LRA provides workers, particularly organised workers with a number of new rights. These rights have the potential of altering labour relations on farms, in some cases without workers even having to resort to strike action to affect these changes.

However, trade unions are going to have to operate very strategically in the agricultural sector if they want to ensure effective organisation for their members on farms. Where unions do target farms for unionisation purposes, they are going to have to ensure that they are able to achieve majority representation. Without majority representation, unions are going to find it extremely difficult to advance the interests of their members effectively. Where trade unions do manage to achieve majority representivity, it would be in their members interests to make full use of the organisational rights afforded to them, in particular the right to disclosure of information for the purposes of collective bargaining.

Unions are furthermore going to have to consider ways in which to empower their members, so that their dependence does not shift from the employer to the union. One of the ways in which unions could empower workers, is through the establishment of workplace forums, where workers are given an opportunity to learn more about the business, and an opportunity to give input with regard to decision making. Union attendance at workplace forums could lead to untold benefits for the union itself, not only for the purposes of gaining a greater understanding about the business, but for the purpose of collective bargaining as well. Trade unions should ensure that members on forums receive sufficient training and education in order to empower them to contribute meaningfully to the process of decision making. Should workplace forums prove to be an effective means of changing paternalist labour relations on farms, unions should consider the establishment of negotiated, non-statutory workplace forums on farms where there are fewer than 100 workers, through strike action, if this is necessary.

Of all the rights provided for in the legislation, the right to strike is probably going to have the most significant impact on labour relations on farms, owing to the seasonal nature of the work, and the destructive nature of well-timed strike action. The threat of strike action may well prompt employers to restructure employment on the farm in order to lessen the impact of strike action (e.g. through the use of more temporary labour), or to restructure labour relations on the farm (e.g. through more democratic processes) in order to avoid strike action. Unions are going to have to consider strategies to cater for both these eventualities on farms, in order to advance the best interests of their members, and to ensure their survival as a union.

In order to achieve the above, organisers and shop stewards are going to require extensive training on the provisions of the LRA, and how the above-mentioned rights can be used to the best advantage of their members. Without effective training of organisers and shop stewards, the potential benefits of the LRA will be lost, farmworkers will remain disempowered and alienated from the means of production, and labour relations on farms are not going to change fundamentally.

Unions should consider centralised bargaining as a means of increasing their impact in the agricultural sector. Statutory centralised bargaining will not be possible in any of the agricultural sectors, unless unions seek to focus their attention on the organisation of particular sub-sectors of agriculture, in order to achieve representivity for the purpose of establishing a bargaining or statutory council in that sub-sector. In deciding on sub-sectors, unions are going to have to consider only those sub-sectors of agriculture which are labour intensive, easily accessible, profitable, confined to small geographical areas, and where employers are organised. The only sectors of agriculture in the Western Cape where these criteria may be met in the future are the wine industry, and the deciduous fruit industry (or sub-sectors thereof). Moreover, the unions are going to have to target the larger employers in these sectors in order to achieve representivity at the least cost to the union.

In light of the present financial and logistical restraints of unions, the above-mentioned option may be out of the reach of agricultural unions. If this is the case, trade unions are going to have to attempt to make a greater impact in the agricultural sector by

lobbying for employment standards to be set in the different agricultural sectors. Where this is achieved, trade unions should play an active role in the negotiations surrounding the setting of wage determinations and minimum conditions for particular sub-sectors of agriculture.

Until such time as the larger farmworker unions have the capacity and the resources to organise farmworkers, and to assist them with the implementation of their rights, throughout the Western Cape, the proliferation of small and specialised union movements in the rural areas is inevitable, in light of the trade union bias of the LRA. Should the traditional trade union movement want to bolster its position in the rural areas, they would be best advised to work with these organisations, rather than in competition with them. The only way that unions are going to be able to bring these smaller initiatives on board, is if they provide them with effective support and assistance.

The fragmented union movements in the rural areas will hopefully only be a short term solution to short comings on the part of the larger union movements to effectively organise workers in the rural areas. It is imperative in the long term that all agricultural trade unions put their differences aside, and work together to ensure more strategic and effective organisation of agricultural workers.

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1) Grant Twigg (General Secretary of FFRWSA),
2) Edward Jackson (Regional organiser of SAAPAWU),
3) Eric Yanta (volunteer organiser for SAAPAWU & FFRWSA),
4) Vicky Zimri (Organiser for FAWU)
5) Joseph Benjamin (Vice President of SAAPAWU),
6) Manie Damon (Regional Secretary of SAAPAWU),
7) Adam Gallant, Hansie, "Oubaas" and Bennie (SAAPAWU shop stewards on farms in the Grabouw area),
8) Rodney Calvert (human resources manager, Molteno Trust),
9) John Wolfaardt (owner of Skaaprivier Farm),
10) Jacob Saunders and Freddy Speelman (De Doorns Advice Office)