
FARM WORKER LEGISLATION: INTEREST GROUPS AND DEVELOPMENTS

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Plaasarbeidswetgewing: Belangegroep en ontwikkelinge

Die Laboria minuut van September 1990 het gelei tot konsensus dat wetgewing oor arbeidsverhoudinge nie haalbaar is tensy breedvoerige konsultasie met die belangrikste partye in die arbeidsarena gevoer word nie. Belangegroep in landbou-arbeidsverhoudinge is geïdentifiseer deur gebruik te maak van die publieke-keuse-teorie. Wetgewing wat hieruit voortvloei weerspieël die relatiewe politieke gewig van hierdie belangegroep binne die huidige instellingstrukture. 'n Verandering in hierdie strukture sal 'n verandering in die relatiewe politieke gewig van hierdie belangegroep asook die wetgewing wat die sterkste politieke belange verteenwoordig, veroorsaak. Die jongste verwikkelinge in landbou-arbeidsverhoudinge en beleidsimplikasies word ook bespreek.

Abstract

The Laboria Minute of September 1990 resulted in an agreement that legislation on labour relations cannot work unless there has been extensive consultation with at least the major parties in the labour relations arena. Interest groups involved in the agricultural labour relations framework are identified using the tools of public choice theory. Resulting legislation reflects the relative political weight of these interest groups within the existing institutional structure. A change in this structure will result in a different weighting of the various groups along with new legislation reflecting the most politically powerful interests. An update on what has transpired in the agricultural labour relations arena is given along with policy implications and conclusions.

1. Introduction

Farm workers are currently only protected under common law, hence the development of farm worker legislation is an important issue on the agenda of the South African Agricultural Union (SAAU), the provincial agricultural unions and various trade union movements. In this paper, the private interest theory of public choice is used to explain procedures for making collective choices. In particular, emphasis is placed on a contractarian framework which includes the rules, processes and institutions used for making collective choices. This paper highlights the divergence between the use of voluntary contracts to solve disputes which is consistent with the Coase theory on allocative efficiency, and the use of involuntary-participation methods such as favourable legislation which is a form of coercion. The existence of such legislation is imperative to the success of COSATU in the agricultural sector. Thus the contractarian approach explains why COSATU must control the 'rules' to ensure its effectiveness and this is consistent with the private interest theory.

The contractarian approach is pertinent to the South African context where history is reflective of the lack of total political authority and hence power over the legislature - an ideal climate for rent-seeking activities by groups supportive of the *status quo*. The state has one

basic resource and that is the power to coerce. This power provides the possibilities for the utilization of the state by an industry to increase its profitability (Stigler, 1971). Competitive rent seeking results in a divergence between the private and social costs of certain activities (Krueger, 1974). With the changing political climate, new interest groups have emerged with an increasing ability to acquire rents, which has important policy implications. This paper also deals with the interest groups involved in formulating farm worker legislation in South Africa, and the latest developments in this field.

2. Relevant economic theory

Public choice can be defined as the economic study of non-market decision-making, or the application of economics to political science where the methodology of public choice is that of economics. The basic behavioural postulate of public choice, as far as economics is concerned, is that man is an egoistic, rational utility-maximiser (Mueller, 1979:1). According to Pasour (1990:35), political events can best be explained by focusing on the actions of individual participants rather than on the actions of groups, because 'groups, as groups, do not act'. Private interests are seen as the response of rational individuals attempting to improve their welfare (Stigler, 1975).

Buchanan's (1986:20) approach to economics is that of 'exchanges'. A natural extension would be to look at politics and/or the political process in terms of the exchange paradigm, called the contractarian approach. Politics can therefore be seen as analogous to the market, but it is not constrained to ensure that individual values are separately maximised (Buchanan, 1986:90). The contractarian (Austrian-Wicksellian) approach to the Coase theorem suggests that free exchange among individuals will guarantee that resources remain in their most highly valued uses. However, in political trades, resources need not be moving toward their most highly valued uses because, under the decision rules of the political order, persons may be permitted to effectuate resource transfers without the voluntary agreement, explicit or implicit, of all affected parties (Buchanan, 1986:104, Hardin, 1982).

The constitutional perspective emerges naturally from the politics-as-exchange paradigm. Therefore, according to Buchanan (1986:22), to improve politics it is necessary to improve or reform the rules, or the framework within which the game of politics is played. An agreement to exchange is a form of constitutional contract establishing the property rights and behavioural constraints of each individual. The existence of these rights is a necessary precondition for the creation of the post-constitutional contracts (Mueller, 1979:12). According to Johansson (1991:1), a function of the government is to establish and maintain property rights, since the establishment of individual rights to initial endowments and to the gains of trading these endowments is a necessary condition for the efficient use of markets.

The constitutional contractarian position is important as far as policy choice is concerned. It rests on the hypothesis that an institution is legitimized or justified, at least conceptually, if it can be thought of as having been approved in a hypothetical contract in which all persons participate but when no person is fully able to identify his or her own role or position under the operation of the institution so approved (Buchanan, 1988:10).

3. Interest groups in farm labour legislation

Buchanan and Tullock (1965:286) view interest group activity, measured in terms of organisational costs, as a direct function of the benefits expected from the political process by functional groups. The organized pressure group thus arises because of expected differential advantages secured through the political process.

Olson (1965) states that although all of the members of a group may have a common interest in obtaining a collective benefit, they have no common interest in paying the cost of providing the collective good. Each would prefer that the others pay the entire cost while they still benefited from the good (*ibid*:21). The concepts of transaction costs and the free-rider problem help to explain why organized representations by consumers and taxpayers to offset special interest group pressure are both rare and underfunded (Veeman, 1990). The free rider proposition asserts that in a wide range of situations, individuals will fail to participate in collectively profitable activities in the absence of coercion or individually appropriable inducements (Stigler, 1974). The transaction costs for collective action for some groups are smaller than for others. Groups already organised for other purposes or brought together by some other collective good would have an economic advantage in producing influence. Unionized workers would be expected to devote more resources to political influence

than non-unionized workers (Shaffer, 1979). This is because unions secure benefits through the political process.

With reference to farm worker legislation in South Africa, the following interest groups are involved:

- SACCOLA (The South African Consultative Committee on Labour Affairs)

SACCOLA represents all the major employers' associations, the South African Chamber of Business and numerous large employers on an individual basis. It is not a collective bargaining association, but will obtain a mandate from its members when deciding on major policy issues. Part of its policies are to formulate policies in relation to such labour affairs as may be deemed to have a bearing on the interests of employers in South Africa, as well as to liaise with government as regards labour matters (Bendix, 1992:399). The Minister of Manpower was influenced to look into labour legislation after COSATU's countrywide campaign of protest (Mdlala, 1992). SACCOLA approached the trade union federations on behalf of the employers and the government with a view to establishing their main grievances and putting forward the employers' viewpoint (Bendix, 1992:399). This started the investigation into legislation as regards agricultural labour.

- COSATU (Congress of South African Trade Unions)

From the outset, COSATU set itself a dual economic and political role (Bendix, 1992:382). In 1990, after the unbanning of political organisations, COSATU formed an alliance with the ANC and SACP with a view to influencing the negotiation process. This has strengthened its position.

COSATU's policy rests on the principle of trade union democracy, with maximum participation from members and equality of membership and decision-making from the bottom upwards. Fulltime paid officials have no vote, and negotiations are supposed to be conducted by shop stewards with the assistance of union officials. The president of a union must be a shop steward, and each steward is accountable to his own constituency. Within COSATU, which comprises various local and regional committees, each committee has a worker majority. The unions within COSATU are autonomous and only on major issues, such as a collective bargaining campaign, are they ruled by general COSATU policy (Bendix, 1992:374,375). According to Olson (1965), when a decision is made by a 'meeting' rather than by an individual, the decisions of the meeting become public goods to the participants and the contribution that each participant will make toward achieving or improving these public goods will become smaller as the meeting becomes larger. Olson (1965:53) maintains that it is for these reasons, among others, that organisations so often turn to the small group. Committees, subcommittees and small leadership groups are created, and once created they tend to play a crucial role.

Only paid fulltime office bearers are prohibited from occupying positions in political organisations. This issue is a controversial one amongst union leaders. Certain observers believe that the federation's membership is near saturation point within the industrial and commercial sectors, particularly in the urban sectors, and that COSATU will in the future concentrate on organizing public sector employees and workers in the rural areas,

including those in the agricultural sector. This is seen also as a political strategy to gain mass support (Bendix, 1992:386).

- **FAWU (Food and Allied Workers' Union)**

This is an affiliate of COSATU and is seen as the union most able to launch an agricultural workers' union because it is already involved in agribusinesses such as poultry and timber. They do hope to eventually launch an independent agricultural workers' union. FAWU is attempting to organise farm workers on behalf of COSATU.

- **NACTU (National Council of Trade Unions)**

Because of its policy of non-alignment and its relatively small size, NACTU has not played as significant a role in the sociopolitical arena as COSATU. NACTU has a black consciousness sector which stresses black exclusivity and is black nationalist (Bendix, 1992:389). About 15000 farm workers belong to the National Union of Farm Workers which is an affiliate of NACTU.

- **Farm workers**

There are about 1,3 million farm workers employed in the commercial agricultural sector. Seasonal, contractual and household employees comprised almost 50 percent of the total labour force employed in agriculture during 1987. The following information is of interest:

- 52 percent of the farming units on average employed five permanent employees or less per farm;
- 73,6 percent of farmers employed ten permanent employees or less;
- 89,9 percent employed 20 or less; and
- only 1,9 percent employed 51 or more employees (NMC, 1991:2,3).

COSATU and NACTU have minimal membership in the farming sector and consequently have little bargaining power with farmers. This has been reflected in their patient and conciliatory approach to the SAAU (Weekly Mail, 1992). Agriculture is a difficult sector to organise owing to reasons such as the spatially-dispersed nature of farms and lack of specialized skills among farm workers. There have also been few attempts by farm workers to organise themselves. The perceived costs are larger than the perceived benefits.

Even if all of the individuals in a large group are rational and self-interested, and would gain if, as a group, they acted to achieve their common interest or objective, they will still not act voluntarily to achieve that common or group interest, nor will such large groups form organisations to further their common goals (Olson, 1965:1,2). The free rider proposition asserts that in a wide range of situations, individuals will fail to participate in collectively profitable activities in the absence of coercion or individually appropriable inducements (Stigler, 1974).

- **SAAU (South African Agricultural Union)**

The SAAU represents organised commercial agriculture in South Africa. The 1991 congress of provincial agricultural unions rejected the idea of labour legislation being extended to agriculture. An informational campaign has changed attitudes in most provinces, but the Free State agricultural union still rejects the idea of labour legisla-

tion in agriculture. Most provincial unions have recommended measures, such as labour contracts, to preempt labour unions (Kleynhans, 1992). The SAAU is funded from three sources: Firstly, from rental income derived from the building in which they are housed; secondly, the cooperatives pay direct membership fees; and lastly by a 0.02% levy on all agricultural products handled by the control boards. The levies are collected in terms of the Marketing Act. The control boards pay the levies into what is called a Ministers' Fund. The SAAU submits a budget and can then withdraw from this fund (Kleynhans, 1992). The SAAU is therefore a powerful political force with finance thereof being statutorily enforced. Many of the employees of the SAAU are farm owners themselves and therefore have a personal interest in the welfare of farmers. The SAAU has a vested interest in maintaining the cooperatives as well as the control boards and has an interest in maintaining the status quo power of the present government along with the favourable legislation that has resulted.

The political success of a farm programme depends on the fact that costs are spread over many taxpayers and consumers (Abler, 1989). A common, though not universal conclusion has evolved that, as between the two main contending interests in regulatory processes, the producer interest tends to prevail over the consumer interest (Peltzman, 1976).

- **NMC (National Manpower Commission)**

Until recently the government had implemented labour legislation sometimes without sufficient consultation with major participants and in particular the trade union movement. This has been exacerbated by the fact that in the past NACTU and COSATU have refused to deal with a government which they regarded as 'illegitimate', and to participate in any official bodies such as the National Manpower Commission, the Unemployment Insurance Board and the Pension Board. The union position has since changed as a result of the political reforms (Bendix, 1992:402).

The Labour Relations Amendment act of 1979 provided for the National Manpower Commission, which is a standing body, intended to review labour requirements, to conduct research into labour issues and to provide advice to government and labour affairs. The 1988 amendments to the Act did away with fulltime officials such as the chairman and deputy chairman, as well as representatives from various government, employer and employee bodies. The number of persons finally appointed is determined by the Minister of Manpower, who will also determine the period for which members are to be appointed. Over the last two years the structure and functions of the NMC have been subjected to continual debate. Previously the appointment of members of the NMC was largely subject to the discretion of the Minister of Manpower with the result that many members were not representative of particular employer or employee parties but were officials from State bureaucracies or academics who were supposed to have some expertise in the field of labour relations (Bendix, 1991:403). The recommendations as such must have been biased or reflective of special interests as confirmed by legislation in favour of producers and the lack thereof in favour of farm workers. The technical subcommittee is formed by the NMC to investigate specific legislation and is representative of all interest groups. Such a committee was formed to investigate labour legislation as regards agriculture.

Bendix (1992) states that the Laboria Minute of September 1990 led to various organisations being invited to participate in a working committee aimed at recommending changes to the Commission. These recommendations were published in a Government Gazette in 1991. COSATU later withdrew from the NMC over alleged delays in implementing the Laboria Minute and the fact that the NMC or another joint employer-union committee would not be given direct input into economic planning. COSATU was also not happy about the fact that the NMC would not have more direct decision making powers and be able to bypass the Minister of Manpower in presenting proposed legislation to Parliament. In November 1991 the Minister of Manpower announced that new proposals had been made for the restructuring of the NMC, such that the commission would be restructured to incorporate organisations such as COSATU and SACCOLA. Furthermore the Commission would negotiate policy and, once consensus had been achieved, would make recommendations to the Minister and to the government. However, these recommendations would not be binding on himself or the government (*ibid*:403, 404, 405). The government is therefore the ultimate interest group.

The NMC is still trying to restructure. Kleynhans (1992) contends that COSATU is waiting to see the outcome before making any decisions whether to attend the NMC or not.

- Department of Manpower

This is a government organisation which has the power to reject or change the recommendations made by the NMC. There is consequently often tension between the NMC and the Department of Manpower. This was the case with the Basic Conditions of Employment Act (BCEA), where eventually the NMC and COSATU decided to meet separately with the Minister. The Minister gave certain concessions to both the NMC and COSATU.

5. Events to date

The Basic Conditions of Employment Act (BCEA) and Unemployment Insurance Act (UIA) went through the consultative process and were passed by parliament on 5 June 1992. These Acts were supposed to have gone through in 1991 but were held back because of other priority issues. In 1992 COSATU expressed concern at the lack of progress and the Bills were subsequently pushed through parliament (Mdlala, 1992). The order in which terms come up for vote in a legislative body is important. Control of the agenda is an important property right. Coalitions of groups form around the basic idea that is first put forward. Another method is to add features to a legislative bill until the necessary majority is reached. The persons who can control this sequence have a great impact on what emerges since in many situations more than one set of coalitions is possible (*ibid*:159, 160).

The Minister of Manpower has not issued a promulgation date yet. These Bills are the result of negotiations, and while the Bills were being passed through parliament, the SAAU was still lobbying for the BCEA to be held back. They are now lobbying for the promulgation date to be held back and are having discussions with the Minister in this regard (Mdlala, 1992). The SAAU contends that the BCEA and the LRA are too complicated to apply in their present form to small businesses and thus also to agriculture. It recommends making the legislation as simple as

possible so that the farmer and the labourer may understand, and recommends the implementation of a separate Act for agriculture which incorporates the principles of all three acts, namely the LRA, the Wage Act and the BCEA (Kleynhans, 1992). According to the SAAU the BCEA is too prescriptive while the structures created in the LRA are expensive and not easily accessible (*ibid*).

The Labour Relations Act (LRA) and the Wage Act went as far as the NMC which then made a series of recommendations. The SAAU felt that two of the 'neutral' people were heavily representative of the trade unions since they are both labour lawyers and work for the 'Centre for Legal Studies' in Stellenbosch (Kleynhans, 1992). COSATU withdrew from the NMC because the Department of Manpower was changing the agreements reached by consensus at NMC level.

The SAAU then came up with a new strategy of negotiating one act to encompass all three acts. COSATU contends that it could not ignore these new recommendations and so commenced with negotiations separate from the NMC (Mdlala, 1992). The negotiations that have taken place have been outside the process of consultation as described above but under the auspices of the Department of Manpower. COSATU withdrew from the June 1992 negotiations because they felt that the SAAU was using negotiations as a delaying tactic, trapping them in negotiations while challenging issues on even basic rights which they thought they had reached consensus on. They will return once the BCEA and the UIA have been promulgated.

The Department of Manpower is supposed to draft the Bill for the Wage Act, but has not done so yet. The reason given by the Department is that the recommendations offer such differing viewpoints that they are not able to draft the Bill. But Mdlala (1992) maintains the Department can, even if the Bill is not to COSATU's liking, or that of the SAAU. COSATU feels that the stalling of the drafting of the Bill is supportive of the SAAU who want the Bill held back.

The NMC in its present form no longer exists. If the parties reach consensus the Bills will either go through a restructured NMC or directly to the Department of Manpower. The Minister holds the ultimate power. As the Minister and the Department are in power because of the present government, they would have a strong interest in the *status quo*, which may explain the length of time taken to implement the new bills. When a new government comes into power the Department of Manpower and the Minister will probably change and a new set of interest groups will gain political power.

Even though the talks have come to a halt, there are many issues on which the SAAU and COSATU have agreed. An important one is the formation of a Small Labour Court, within the Industrial Court structure, to be made available to all major centres in the country, possibly on a circulating basis. It would not be a court of appeal and no professional representation would be allowed; the intention is for it to be simple and quick. This would also not be a court of record. The complainant should have a choice to go to the Industrial Court where legal representation is allowed and appeal would be possible. The NMC meeting felt that the Small Labour Court should mainly deal with disputes of rights. COSATU felt that the size of dispute should be limited. Also a mechanism should be available for parties to complain about the competence of presiding officers (NMC, 1991:32,33). These courts will allow access to

the legal system for all parts of the agricultural sector. The advantage is that the Small Labour Court is cheap and quick for both parties. The major cost will be to the state in implementing this institution, and a codification of unfair labour practices would be necessary. This institution is therefore consistent with the contractarian approach in that transaction costs will be reduced and allocative efficiency will increase. A major goal for policy makers in this case is to achieve an equitable solution (ie farm workers being able to have access to institutions and information pertaining to their rights in a similar way as the generally more educated industrial worker) at the least cost.

The fact that COSATU has supported the implementation of the Small Labour Court seems inconsistent with private interest theory since this structure will undermine a union's position with farm workers by negating the benefit of union representation. On the one hand, unions support the contractarian approach in which transaction costs are minimized, while at the same time they are trying to increase the demand for union membership among farm workers. A reason for this apparent dichotomy could be the cost involved in utilizing the Industrial Court. The SAAU feels that the complainant should not have such a degree of choice over which court to use as it contends that a union will always utilise the Industrial Court. However, unions deny this and maintain that they do not have the funds available to approach the Industrial Court and would prefer to utilise the Small Labour Court. It will only pay unions to use the Industrial Court when the benefits (including exposure) outweigh the costs. Since unions support a Small Labour Court, the issue of when unions become involved becomes important.

The major parties diverge on the issue of when a farm workers' union should get involved in a dispute. The SAAU feels that the union should only become involved after all possible methods have been employed by the employer and employee to settle the matter. COSATU feels that it should be able to enter from the start. The SAAU will therefore opt for strategies such that the unions will not be involved and can thus deem them redundant in the agricultural sector. The unions feel they need to be involved from the beginning or they will be of no use since the complainant will not need the union to approach the Small Claims Court and it would be cheaper for him/her not to involve the union. The union therefore needs its role to be secured from the beginning in order to maintain its position in the agricultural sector. In other words, the 'rules' need to be changed to safeguard a union's presence in agriculture.

If the dispute cannot be settled by discussions internally (whether this means trade union involvement or not), the dispute should go to either an Industrial Council with jurisdiction, a conciliation board, or if the parties agree, mediation or arbitration. These procedures will then be compulsory before resorting to a strike, lock-out or reference to the Industrial Court (NMC, 1991:31).

COSATU is and has been trying to unionize areas in agriculture where the benefits accruing to them outweigh the costs of organizing. These benefits and costs would be difficult to measure because, as COSATU has political as well as economic goals, the benefits and costs contain a subjective component. However COSATU is already aiming at the larger company type commercial farms, preferably closer to the cities. The implication is that the family farmer can minimise the effect of the forthcoming legislation and that of unions by utilising the

information provided by the provincial unions on contracts and labour conditions.

6. Policy implications and conclusions

A policy implication of the contractarian approach is the emphasis of the importance of rules of policy choice in determining actual policy outcomes. Concentrating on this aspect may therefore be more productive than focusing on actual policy outcomes. Martin (1990) explains that individuals are likely to be uncertain about the effects of such 'rules' on their direct interests, and hence tend to support the approach which is likely to be 'best' in a wide range of contexts, and over a sequence of time periods. This extension remains within the rational utility maximising assumptions of the private interest models. Different policy choices may therefore emerge when utilizing the private interest framework (Martin, 1990). For example, parties might not support legislation that will reduce overall employment but might support a minimum wage in their industry.

In the South African context this is important because, with the changing political climate, alternative interests may carry more weight in the future and rents will as a result be transferred. This could be part of the reason for the SAAU entering negotiations while they carry so much political weight. South Africa will undergo constitutional changes in the future, also involving the inclusion of a Bill of Rights. The process in which these changes will take place will be important, the result having a direct effect on property rights and hence the resulting political and economic behaviour. The same methods used by parties acquiring rents through the political process, as a direct result of the rules and institutions in existence, may be used to transfer the rents acquired to other parties. It might be prudent, therefore, to change the existing institutional structures such that policy choices would be consistent with the contractarian approach to policy implementation. Resources are consumed in the rent-seeking process and this can be alleviated to some extent by assigning property rights implicitly or explicitly to ill-defined rents that are transferred through different policies. This is occurring to some extent with the extension of legislation to farm workers, although this is not to say that this legislation is 'efficient' in terms of resource allocation. It is reflective though of the changing underlying values of South African society or, more correctly, changes in the relative weights of different values in South Africa. Perhaps if workers were protected at the Constitutional level (for example, through adherence to International Labour Organisation standards as well as the right to economic freedom) there would be no need to achieve goals through participation in the market for legislation. There would be no incentive to support groups lobbying for this kind of legislation. An economically efficient method in use already is the use of contracting in which rents accruing to the union are erased. This explains the opposition of unions to this activity.

Providing information could also diminish the ability of parties to acquire rents and reduce the number of resources used up in this process. Reducing the difference among interest groups in terms of their ability to obtain information will reduce the relative strength of interest groups (Martin, 1990). Information to agricultural workers concerning their rights and accessible legal procedures is important. That is, transaction costs are reduced. There is no point in introducing legislation to protect workers when they are not educated to its existence and use thereof. Added to this is the fact that