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THE PRACTICALITIES AND PROBABILITY OF NORMALISING INDUSTRIAL RELATIONS IN SOUTH AFRICAN AGRICULTURE

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Abstract

Few, if any, farm workers view their relationship with farmers as unproblematic. Their rightlessness, subordination and poverty prevents them from openly expressing their views, let alone acting to redress them in a way which will not be to their disadvantage. Farmers, for the most part, confuse this silence born of inequality as harmony and that is why it is so elusive. Normalising relations in the sector has to be based on a common set of assumptions which take as their premise equal rights for all. Only the smallest beginnings have been made to getting to that starting point.

1. Introduction

The point of departure for normalising industrial relations in commercial agriculture are the social conditions we inherit in the sector. Generally, these can be described as both backward (in relation to other sectors of the economy) and uneven (within the sector). If agriculture is going to be well placed in the economy to contribute to national development, relations between capital and labour have to be set on a footing which begins to redress the many negative outcomes that unevenness within and the general backwardness of the sector have generated. This suggests that the idea of "normalising industrial relations" implies much more than simply standardising or "professionalising" the very unequal relations that exist between farmers and workers, with or without minor accommodations to labour. Rather, it requires a fundamental change in the terms of the exchange, one which starts from an assumption of basic and equal rights for all.

It also requires a significant shift in perspective away from the century old legacy which has formulated and implemented policy to suit the particularist interests of white farmers. Although farmers and workers are interdependent, theirs is not an equal relation. This is especially so in South Africa given the barrage of legislation that has directed and controlled the lives of Africans. To date the state has been partisan in the extreme - and it still continues to formulate policy with an ear for the "special interests" of white farmers rather than an eye for agricultural and national development. The parlous state of industrial relations in the sector - which is part of the more general crisis in the sector - can in large measure be ascribed to this shortsightedness.

Against this background, it would seem to be both reasonable and advisable to identify the practicalities and problems of normalising industrial relations in the sector from a perspective which takes particular account of the interests of workers. It is not my intention to simply list all the issues that need to be addressed. Rather, I want to engage with the debates around some which have been identified as central.

2. What's the problem?

If we start with the question "what's the problem" we immediately confront the primary issue, namely, identifying what is in contention when we consider the way capital and labour conduct themselves in relation to each other in the sector. In a context where industrial relations have been made prominent by debate around the extension of existing labour related legislation to commercial agriculture, what is clear is that there is divergence - divergence between capital, the state and labour and divergence within capital.

2.1 Farming capital divided

Amongst farmers, there are those who still do not acknowledge that there is a problem - at least there is no problem which arises from general relations in the sector. And certainly there is nothing which cannot be resolved by the farmer on the farm. In fact, there is a common myth amongst and expressed by farmers - reinforced by the state - that good relations exist between themselves and farm workers. For example, according to Mr C du Toit, president of the Western Cape Agricultural Union "peaceful labour relations on farms was not a coincidence. ...Unregulated relationships worked ideally in agriculture and held advantages for good labour relationships" (Farmers Weekly, 1991a).

From this perspective the very suggestion that certain minimal protective legislation be introduced to the sector is construed as destabilising. To wit, Thinus Hartman, president of the East Cape Agricultural Union argued at his annual congress that this was one of several factors which "fanned the flames of confusion and uncertainty" (Farmers Weekly, 1991b) and at its annual congress, the Transvaal Agricultural Union instructed its general council and its manpower committee to "try and prevent any further inroads into the current peaceful labour relations on farms" (Farmers Weekly, 1991a).

For those farmers who do acknowledge the need for industrial relations, most view the problem through the prism of "managing labour". Their primary concern is to raise productivity given the relatively low levels that the negative terms of employment on the farms has generated amongst workers. For most this means being prepared to begin to consider redressing some of the basic conditions of employment in the sector. As I shall argue later, this acceptance and the content imputed to basic conditions has been forcefully contested. Moreover, what has been conceded has been conceded reluctantly and I would argue, within a narrow, minimalist frame, clearly evidenced by a categorical opposition to the extension of the Wage Act to farm workers. Nevertheless, it represents an advance on dominant former practices. It does not break, however, from the mould of paternalism that has characterised power brokerage in the sector. These farmers reject the establishment of industrial relations machinery in the sector which would place employers and employees on a more equal footing. Any structures which may be created must be created and controlled by them to serve their ends only. Thus, for example, the resolution on "human resources" adopted unanimously at the Western Cape Agricultural Union's congress specified that "structures be created with regard to employers and employees which would coordinate, in a professional way, transfer of knowledge, training and extension and that better manpower management practices should be promoted" (Farmers Weekly, 1991a).

It would be fair to say that the overwhelming majority of farmers fall within the two sections of rural capital identified thus far. This is clearly evidenced by the tensions within the South African Agricultural Union and its affiliates and the resolutions and election outcomes at the various agricultural union congresses.

There is a third, influential section of farming capital which is prepared to go considerably further. They are fewer in number than the other two segments and although they are powerful, their hegemony amongst those who rule the countryside is uncertain. Their perspective largely coincides with that advanced by the Minister of Manpower, Mr Eli Louw, himself a sheep farmer.

Their starting point is the crisis in agriculture, the inability of the sector to sustain itself in the medium to long term as it is presently constructed, and the possibly devastating consequences this will have for whole economy. This crisis, as we know, has been largely generated by an aggressive state-sponsored promotion of capital intensification which has gone in blind pursuit of the class and colour interests of white farmers, disregarding labour and any rational development strategy. It is now recognised that further extensive capital investment on its own is no solution. As Louw recently explained (*Farmers Weekly*, 1991c) even though labour productivity in agriculture is low, the productivity of capital investment is even lower. Therefore, he concludes "a judicious capital investment programme in conjunction with the appropriate training and a balanced employee/employer relationship offer the best solution".

The positions of what might be termed this "advanced" section of capital are also greatly influenced by important social and political changes and trends in the wider society. Having observed or participated in the establishment of industrial relations machinery for mining and secondary industry (given the backward linkages between industry and agriculture), they realise that in certain conditions their interests can be best served by formal regulation which exercises controls over workers at the same time as it establishes their basic rights.

2.2 State reforms

Whilst all three perspectives are likely to be represented within the state, the dominant argument presently being advanced seems to coincide with and reflect the position of the more advanced sections of agricultural capital. In recognising the right of workers to basic conditions, to associate, to bargain collectively, to withhold labour, to protection and to development, the Minister of Manpower for example, argues for legislation to regulate trade union actions to ensure that there are procedures and mechanisms in place to resolve disputes (*Farmers Weekly*, 1991b). This approach to industrial relations is quite consistent with the general direction of present state policy reforms in agriculture, particularly its adoption of "a more business-like approach" to credit and supports to farmers based on market-orientated criteria.

Whilst the reforming elements seem dominant, there are major tensions within the state over land and agrarian policy. This reflects the divisions in the white farming community which I have already indicated. For the majority of farmers, the state's case for the extension of labour legislation to the sector is, in the words of Carl Havinga, "just one more nail in the coffin of friendly cooperation between state and farmer which we've been fortunate to have had these past 45 years". For reformers within the state, the absence of support is a problem. It makes it very difficult to arrive at a sufficient consensus to pass legislation, and even if extensively moderated laws are passed, these reduce the point of consensus to the lowest possible common denominator which means that the laws unlikely to either promote productivity or reduce conflict because they do not establish the basic rights of workers.

3. The perspective of agricultural labourers

"I get R5 a day. I start work at 6 in the morning and finish at 5 in the afternoon. I work seven days a week from Monday to Sunday. There are no meal intervals where I work and I don't get a ration. When I try to negotiate my rations with the farmer he simply refuses to meet with me. The farmers don't like us blacks to have good things in life.

We were born on this farm. Our parents were also born on this farm ... but when a new farmer comes he tells us to leave our places of birth. Most of us have built these homes ourselves. ... I am being paid R5 per day and if I am told to leave and go somewhere else where can I get money to build a new house?

I am not registered and I cannot claim compensation for injuries sustained at the work place. We don't get leave. If you are ill for a long time it is certain you will get evicted from the farm.

If the farmer hears that we have joined a trade union you are automatically evicted from the farm. The reason why we are afraid to join a trade union is because of victimisation and intimidation. When you try to confront them with problems they dismiss you because they think you cause problems. Most farmers don't want peace, they don't want us to have rights."

I have quoted extensively from a Richmond farm worker because she very concisely raises almost all aspects of the problem with the relation between labour and capital on the farms as far as farm workers are concerned. For them, it clearly centres on the combination of bad pay and working conditions, a dearth of elementary social facilities and an absence of all manner of basic rights. It also extends to the denial and deprivation of Africans of land. Although each of these can be considered and even addressed separately, it is the fact that they work in combination which makes the issues so acute for labour in the sector.

After intensive negotiations between organised farmers, the state and the trade union movement a general consensus seems to have been arrived at regarding the extension of the Unemployment Insurance Act (UIA) and an amended Basic Conditions of Employment Act (BCEA) to farm workers.

The BCEA addresses some of the concerns of farm workers specifically, the length of the working day (including spreadover and overtime), meal intervals and Sunday working, annual leave and sick leave, how wages are calculated in terms of both form (money and payments in kind) and exceptional hours (overtime and working on public holidays), child labour, procedure to terminate contracts, victimisation, protection against discrimination, and enforcement of the law (Government Gazette, 1990).

In terms of protective legislation, the operative concept of the Basic Conditions of Employment Act is the term basic - that is, it is a law which is intended to secure absolute minimum standards only. There is no room for complacency. This is because there are major problems both with the process of getting the law in place and applied and the limitations of its content.

4. A slow and painful process

It would seem that farmers and the state have yielded every reform, no matter how minor, as if it were a major concession. They have been hesitant, reluctant and the process has been made painfully slowly. The demand for workers to be protected by labour legislation is decades old. In 1981 the Wiehahn Commission proposed the extension of labour law to cover farm workers but the government chose to refer this recommendation back to the National Manpower Committee for "consultation". It drew up a report which was then submitted to the South African Agricultural Union.

The Centre for Rural Legal Studies reports that:

"Our information is that the NMC report argued that farm workers should in principle be entitled to the same protection as other workers and that the Basic Conditions of Employment Act should apply to all workers. The SAAU's response to this was that there should be no maximum working hours per week, overtime pay, public holidays, maximum spread over or prohibition of Sunday work. The NMC report was never released." (CRLS, 1990).

Only in 1990, after an evident shift in the NP's political power base and in the face of pressure from international sanctions and internal trade union demands, did the state accept that, in principle, the BCEA and UIA would apply to farm workers. It instructed the NMC to look into how the acts could be applied to farm workers. The workings of the specially constituted "technical committee" produced a report which, despite attempts to thwart and distort its content, has now been translated into bills for parliamentary consideration. These are scheduled to come before parliament in 1992 and if adopted they will be "phased in over 12 months" (Farmers Weekly, 1991d).

The process of arriving at this minimal legislation has been extraordinarily protracted, which does not augur well for the speed at which it will be implemented. This concern is further underlined by the fragility of the consensus that has been established.

The state, for example, initially gazetted proposals on amendments to the BCEA which, on very spurious grounds, substantially changed even consensus recommendations made by the NMC and which took absolutely no heed of a very detailed and well-motivated submission presented by COSATU and other organisations. The state was forced to review its position in the face of strong protest from the democratic trade union movement, other interested organisations and the NMC.

It is, perhaps, against this failed manoeuvre, amongst other things, that one should read the decision which the Transvaal Agricultural Union took at its 1991 annual congress to withdraw support for the BCEA. The chairman of the TAU's manpower committee told congress that the amendments were no longer acceptable because there were "problems with details such as emergency labour, the locking out of workers during a dispute, work distribution and working hours, Sunday work, sick leave, child labour and victimisation" (Farmers Weekly, 1991b).

The BCEA falls into the category of "paternalistic legislation" because "the state is imposing its standards in the private employment relationship in order to protect the employee against the superior bargaining power of, and exploitation by, the employer" (CRLS, 1990).

In a context where many farmers will be reluctant to act unless forced to do so, a state which is feeble or even neutral in its commitment to this legislation suggests that its application is unlikely to be extensive, uniform or speedy. The consequences of this absence of purposiveness and commitment are detrimental both for farm workers and for a more even sectoral development strategy.

5. The limits of the law's content

The fact that the law is about establishing minimum standards in the sector suggests two things. Firstly, that these are largely absent and secondly, that as far as workers are concerned, what is put in place will only go a small part of the way to addressing the basic problems workers face, even when these issues have begun to be dealt with by the law. This becomes apparent when we look in detail at most of the conditions of employment covered by the act. For the purposes of this paper I will only

look at two - child labour and determining what constitutes the wage in a context where there is a general problem with wage levels in the sector.

5.1 Child labour

There is an unbroken record of the use and abuse of child labour in commercial agriculture. The pressures which drive children to work on the farms range from direct force to the compulsion of abject poverty and hunger. They come into the sector as part of the "labour package" that is a condition of being a member of a worker's family resident on the farm. Or their free labour is a condition of continued labour tenancy. Or they are directly recruited as individual "sellers of labour" from the many labour pools in the "homelands" and in the small rural towns to do 'casual' work on a daily, weekly or seasonal basis. Even rural schools - the very existence of which largely depends on the good will of farmers - become labour pools to service their needs and interests when they deem it necessary.

If children work in the sector out of compulsion, why do farmers employ child labour? There are two arguments most commonly advanced. On the one hand, farmers vigorously defend child labour on the grounds of "character building". This seems somewhat out of place in the context of South African commercial agriculture where many believe that even elementary education is inappropriate for Africans. It is, however, quite in keeping with their racial paradigm of an African. Moreover, the mundane, dull and invariably arduous physical labour that children have to perform offers very little support for arguments of psychological and social upliftment.

On the other hand, a case is made for generating a "work ethic" and "financial well-being" as argued by the SAAU in the NMC Technical Committee (Government Gazette, 1990). This contention is hardly founded on firmer ground, given the very low and even absent "wage" that children earn. What children earn might be the only thing that keeps them alive, but it keeps them alive at a minimal level of existence almost despite rather than because of their labour.

It would seem that farmers enduring commitment to and extensive use of child labour rests unequivocally on the fact that it is one of the cheapest forms of labour. Moreover, child labour serves to hold down wages in the sector. And, of course, children are more controllable and open to manipulation.

In sharp contrast to farmers, farm workers consider child labour one of the most bitter aspects of farm life. This is not only because of the depressing effects it has on their wages and chances of work but mostly because it drastically curtails their children's life chances. It deprives them of schooling and therefore of a way out, an escape route from what many workers believe to be their bondage. Farm workers also object to the fact that their children are often abused psychologically, physically and sexually.

Within existing industrial legislation children under 15 may not work anywhere, except on a farm. The Government Gazette (1990) proposes:

"After a long discussion on this sensitive subject, the NMC accepted an amended section 17 (1) in terms of which children from 12 - 15 years of age may be employed with the consent of their parents to work according to the times set out in section 17 (2) and the provisos to that section.

The NMC decided that an employer who employs (sic) persons from the ages of 12 to 15 should be registered with the DMP. The Minister of Manpower may, in his discretion, refuse or withdraw such registration. During the NMC's discussion of section 17 COSATU indicated that it was opposed in principle to any form of child labour and it stands by a general prohibition thereof."

The problem is that no matter how many safeguards and "provisos" are put in place they will, by and large, only carry the weight of the paper they are written on because of the very way child labour is exploited in the sector. Children's basic rights can only be established by forbidding this form of labour completely.

Moreover, such a prohibition is a precondition for normalising labour relations in the sector, given the tendency of agricultural capital to seek out the labour of the cheapest and most vulnerable sections of the working class. In the absence of an unconditional ban, the BCEA does not establish an elementary basic right.

5.2 Wages

The problem with wages in the sector is that they are too low.

"Sometimes I have problems with definitions. We are called workers, which we are not. I think someone who should be called a worker is someone who gets paid at the end of the day" (Five Freedoms Forum, 1991).

This bitter observation of a Swart Umsfolozi farm worker expresses the common experience of farm workers - that they are generally paid extremely low wages, they are often paid irregularly and erratically, and sometimes not at all. Wages are so low in the sector that poverty levels for farm workers - that is, amongst people who are employed - are even lower than in the homelands (Urban Foundation, 1991) where the overwhelming majority of people are unemployed and survive on state pensions and migrant remittances.

According to the 1988 Agricultural Survey (CSS Report, 1988) the average "cash wages, salaries and cash bonuses" paid to all "paid employees" was R95 a month. If whites are excluded from this calculation the average monthly wage in cash drops to R79.

Wages in the sector range considerably, there are extreme differences between the earnings of men and women and their are also regional and sectoral differences. Some of these differences have been brought out by various studies. For example, in a comparative study of farm labour in the magisterial districts of Lions River (Natal Midlands), Lower Tugela (Natal North Coast) and Elliot (Eastern Cape) Robertson (1988) found that monthly cash wages for male farm workers in 1987 ranged from as little as R18 on farms in Elliot District to as much as R450 in the Lower Tugela. The range of wages for wives of farm workers spread from a minimum of R10 to a maximum of R100.

Farmers are quick to point out that the cash wage is only part of the payment to farm workers. Workers also receive payments in kind. Employers, however, vacillate as to whether this is an actual payment. When they fill in their agricultural census forms they submit a cash equivalent for payments in kind, for example. However, they also quaintly express these payments not as payments but as "other sociological advantages enjoyed by the farm worker. (These) include(s) housing, availability of water and firewood, being within walking distance from schools, security and the advantage of living in a rural community." (NAUNLU, 1990)

Without going into changes in and problems with payment in kind here, there are a few points which need to be made. Firstly, although payment in kind continues to feature in the calculation of farm workers' income and often makes up a substantial part of the wage, its significance as a wage form has been and is declining. Fewer and fewer workers enjoy either access to grazing land or the right to keep livestock. In Natal Midlands, for example, whereas 52 per cent of labourers were allowed to run cattle in 1984, by 1988 this proportion had dropped to 29 per cent (Robertson, 1988). Many who do run stock have to pay farmers for grazing. Likewise with housing.

Often no accommodation is provided workers, and where it is, some farmers have begun to deduct rent for the accommodation they provide.

Secondly, although many farmers attribute farm workers' need for access to land or the right to run cattle as something "cultural" - meaning "traditional", irrational or indeed "Native" - for most farm workers it is the last remaining protection against absolute poverty. In the words of a labour tenant and a full-time farm worker:

"We used the land for grazing purposes and also to grow crops. We have never had a ration from our previous employers. Although we don't like this way of living we have got used to it." and "We are not permitted to use the land to grow crops; we are not allowed to keep stock but when we go to the shops to buy food we are expected to pay the same amount for groceries like people who get a salary at the end of the month" (Five Freedoms Forum, 1991).

Robertson (1988:67) calculated that the sale of one 7 month weaner calf in the district of Elliot, where 48 per cent of male farm workers owned one or more cows, brought in R450 in 1987, or the average annual cash wage of a labourer in that district.

Thirdly, farm workers generally favour a shift to a full payment in cash. But they have learnt through bitter experience that where this has occurred it has invariably meant a drop in actual income. In other words, farmers have changed over to cash only payments in order to cut labour costs.

In this context that the proposed amendments to the BCEA regarding wage calculations are important. By stipulating working hours and the terms of employment for Sunday and public holidays the BCEA establishes that there are normal working hours and extra working hours and that these extra hours have to be paid for at a special rate of compensation.

Similarly, the decision by the NMC that wages should be calculated on the basis of cash plus the value of accommodation, land use and food, rations and other consumer goods has a direct positive bearing on both overtime and unemployment pay. It also serves as a block on the increasingly widespread practice of charging workers' rent for accommodation or the use of land. It is not surprising then that the SAAU strongly opposed the inclusion of housing and land use as a payment in kind (Government Gazette, 1991).

The NMC also proposed to add a new section to the Act to regulate piecework. "This section 16A means that when piece work is performed a minimum wage is paid that is not less than a wage of a permanent worker who performs the same type of work" (Government Gazette, 1991).

It is clear, therefore, that an amended BCEA creates some important parameters for setting basic minimum standards but it does not actually establish them. To do so with respect to wages it would be necessary to create a base line below which wages would not be allowed to drop. The BCEA does not specify wages and therefore does not establish a base line.

It might be argued that this is not the purpose of the BCEA, that there is other legislation - specifically the Wage Act - which is supposed to address this problem. This may well be the case but it does not detract from the argument. Rather, it underscores both how limited are the provisions of the BCEA in addressing one of the primary problems which face agricultural labour and how far relations in the sector have to change for conditions to "normalise". Suggestions that the Wage Act should be extended to apply to commercial agriculture has "been summarily rejected by SAAU and its affiliates" allegedly in view of the disruption that it might generate (Farmers Weekly, 1991e).

For the purposes of this paper I want to concentrate on one aspect of the debate around minimum wages, i.e. what the intention and purpose of the Wage Act is and how it has functioned historically in South Africa.

The Wage Act (5 of 1957) is a piece of legislation which is designed to operate in industries or sectors which are either unorganised or where one organised party refuses to cooperate with another. It merely sets procedures and structures in place which can be used by agriculture. It can not establish a national minimum wage. As the Act presently reads it is only at the request of the Minister that an investigation can be made by the Wage Board. And the Wage Board is appointed by and is accountable to the Minister, and thereby the government. The Minister makes a determination, should he so decide, on the basis of Wage Board recommendations.

Historically, the state has used the Wage Act primarily to set minimum wages in situations where these might serve to curb worker militancy. This seems still to be one of the underlying motives behind present state support for its extension to the sector.

Moreover, determinations have largely been made without prejudice to business interests. A SALDRU analysis of Wage Board activities between 1978 and 1988, for example, concluded that:

".. minimum wages set by the Wage Board are very low, and in 1988 were only about 56 per cent of wages set by Industrial Councils;

.. real wages of workers paid according to the Wage Board's minimum wages have declined steadily in this period;

.. wages in small towns are set far below those set in metropolitan areas, and in many small towns workers remain unprotected."

It would seem that rather than being a radical dispensation in favour of farm workers, the extension of the Act could be read as a very conservative force - at least under the prevailing balance of power between capital, the state and labour in agriculture. This, however, is not an argument against extending wage fixing machinery into the sector. Pay levels in the sector reveal just how vulnerable farm workers are to exploitation in the absence of protective legislation.

6. Conclusion

In both legal and social terms it is clear that the sector has a very long way to go before industrial relations in the sector are normalised. In terms of legal protection, only the BCEA is presently set to become law in the not too distant future. The Wage Act and the Labour Relations Act are still in the limbo of "debate". The balance between agrarian capital and labour remains remarkably distorted in favour of farmers. And the state's commitment to fundamental reform is half-hearted and equivocal. This is a major obstacle. In conditions where only 1 per cent of farm workers are organised compared to extensive farm worker organisation, any effort to normalise relations requires an almost unconditional commitment on the part of the state to establishing equal rights for all.

I have concentrated on the law and its limits with respect to child labour and poor pay and conditions on the farms. But there are other major issues - particularly education and training, employment and personal security, and land rights - which the normalisation of relations in agriculture must be predicated upon.

There is a clear interrelationship between the issues that farm workers raise about the problem with their relation with capital. As Mike Madlala of FAWU explains with respect to debates about extending labour legislation to farm workers: "It

is clear to me that one set of laws which is dependent on the other cannot be applicable unless there is a mechanism which complements the other act.

...If people are complaining about wages certainly the Wage Act is required. If people are complaining about unfair labour practices which are taking place certainly the Labour Relations Act is required. If people do not have the minimum standards certainly the BCEA is required. Farmers have indicated in the past that there is mutual trust and respect between themselves and their employees. If that is true and they want fair and equitable relationships between themselves, I would doubt that they would object to any form of Labour Relations Act or legislation that regulated their relationship to their employees."

Few, if any, farm workers view their relationship with farmers as unproblematic. Their rightlessness, subordination and poverty prevents them from openly expressing their views, let alone acting to redress them in a way which will not be to their disadvantage. Farmers, for the most part, confuse this silence born of inequality as harmony and that is why it is so elusive. Normalising relations in the sector has to be based on a common set of assumptions which take as their premise equal rights for all. Only the smallest beginnings have been made to getting to that starting point.

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