FACSIMILE/FAKSIMILEE

NATIONAL MANPOWER COMMISSION NASIONALE MANNEKRAGKOMMISSIE



Private Bag/Privaatsak X316 PRETORIA 0001

TEL: (012) 310 6911 FAX: (012) 320 0792

Date/Datum: ./993-//- 09
TEL: (012) 310 6.337
FAX NO: (011) 397 - 22 1
OSKAP
PAGES:! + 3-



Verwysing • Reference: NMK 10/2/4
Datum • Date: NMK 8/6/3

Navrae • Enquiries: Tel direk • direct:

Ms H Bendeman

3106-337

Fax (012) 320 0792

Dr Theuns Eloff MULTIPARTY NEGOTIATING PROCESS

MINUTE TO BE FORWARDED TO THE MULTIPARTY NEGOTIATING PROCESS CONCERNING CLAUSES 27 AND 34(5) OF THE BILL OF RIGHTS

I refer to your discussion earlier today with Prof Louise Tager, Acting Chair of the NMC iro the abovementioned.

Herewith the suggestions tabled at the NMC meeting on 3 and 8 November 1993 concerning clauses 27 and 34(5) of the Bill of Rights.

H BENDEMAN

SECRETARY: NMC

NATIONAL MANPOWER COMMISSION

NMK 2/3/1 NMK 10/2/4

1993-11-08

MINUTE TO BE FORWARDED TO THE MULTIPARTY NEGOTIATING PROCESS CONCERNING CLAUSES 27 AND 34(5) OF THE BILL OF RIGHTS

- 1. At the NMC meeting on Wednesday 3 November 1993 the independent members tabled the following suggestion:
 - That the last part of the sentence of clause 27(3):

 "... and employers shall have the right to lock-out workers." be deleted, and that the following wording be added to clause 34(5) (limitations clause) after "legislature" "..., provided that any amendment or repeal to the lock-out provisions in the relevant legislation shall not be made save on the recommendation of the NMC".

The meeting adjourned to enable the employer and employee representatives to consider the suggested amendments.

The meeting reconvened on Monday, 8 November 1993.

- 2. The employers and employees agreed that the NMC should be the body where the precise parameters of labour relations/policy should be worked out.
- 3. The Chairman of the employer caucus gave the background to the restructuring of the NMC and referred to the Laboria Minute of 13 and 14 September 1990 whereby a new co-operative relationship between employers and unions was created.

The employers put forward the following proposal:

That clause 27(3) be deleted in toto and that clause 34(5) be amended to read as follows:

"The provisions of a law in force at the commencement of the Bill of Rights promoting fair employment practices, orderly and equitable collective bargaining and regulating of industrial action shall remain in full force and effect until repealed or amended by the legislature, after the legislation has been considered by the relevant statutory tripartite forum namely the National Manpower Commission or equivalent statutory body".

The employers contended that the rights embodied in subclauses (!) and (2) of clause 27 included by implication recourse to industrial action, including strike action.

The employers could not accept the amendment suggested by the independents on the grounds that it did not provide a reciprocal

basis for constructive dialogue, as it elevated the right to strike to a substantive right whereas the right to lock-out would employers in industrial action.

4. The labour representatives indicated that while not fully satisfied with the proposal of the independent members they would be prepared to accept it as a compromise. They also contended that the employers' proposals are based on the assumption that the right to strike is implied in clause 27(2). They further added that the issue is not only about deletion of lock-out or tilting of balance against employers but about ensuring equality.

They further stated that in their view:

"Employers presently have a full right to lock-out while workers only have the choice and freedom to strike, but there is no protection against dismissal and that in their view there were two ways of giving this right in the interim period:

(1) by including the right to strike in the Bill of

(2) by including it in the present LRA and ensuring that the amendments to both sections 65 and 79 go through constitutional package".

They then suggested the following wording to the LRA:

"The contract of employment shall not be terminated as a consequence of a strike in compliance with section 65 and shall only be suspended for the duration of the strike".

Although this is not the final wording it contains the principle underlying the unions' proposal.

- 5. The employers tabled an alternative proposal:
 - The retention of clause 27(1), the amendment of clause 27(2) to include the right to take industrial action, the deletion of clause 27(3) in toto and maintaining of the employers. The employees supported only the limitations clause as proposed by the employers.
- 6. The Commission was not able to reach consensus on this issue and it was decided that the abovementioned proposals should be conveyed to the Multiparty Negotiating Process for its consideration.

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