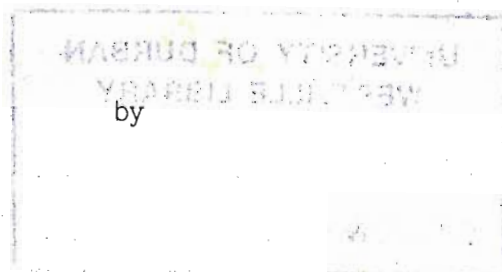


COLLECTIVE BARGAINING AT LOCAL GOVERNMENT LEVEL  
WITH PARTICULAR REFERENCE TO NATAL



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DISSERTATION

Submitted in part fulfilment of the requirements for the  
degree Master of Public Administration (MPA) in the  
Department of Public Administration in the Faculty  
of Commerce and Administration at the University  
of Durban-Westville

Supervisor : Prof. Dr. W.A.J. Coetzee

Date submitted : 18 December 1987



To my wife Lenie and children Deon,  
Ané, Liezel and the memory of Sanet.



### ACKNOWLEDGEMENTS

I Thank God for good health, insight and the ability to complete the dissertation.

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COLLECTIVE BARGAINING AT LOCAL GOVERNMENT LEVEL  
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COLLECTIVE BARGAINING AT LOCAL GOVERNMENT LEVEL  
WITH PARTICULAR REFERENCE TO NATAL

by

LEONARDUS DE WET

SUMMARY

Supervisor : Prof. Dr. W.A.J. Coetzee

Department : Public Administration

Degree : M.P.A. (Master of Public Administration)

University : University of Durban-Westville

This dissertation essentially investigates the nature of collective bargaining and the manner and extent to which collective bargaining is practiced at the local government level in Natal. The experience of local government is examined and analysed to determine likely trends and formulate recommendations to ensure stability and sound labour relations to meet the challenges offered by present day trade unionism.

Recent developments in the labour relations field indicate the importance of continued research into sound labour practices. In the public sector the personnel expenditure forms the largest portion of expenditure in the budget. Personnel administration with collective bargaining



as a support function is one of six generic administrative functions necessary to achieve any objective in the public sector. The public sector functions at two levels one being the central government and the other local government. The primary objective of local government is to improve the general well being of a community and to achieve this objective in a cost effective manner sound personnel administration is essential.

For many years collective bargaining at local government level has been dominated by the relationship between the South African Association of Municipal Employees, a trade union for Whites only, and individual local authorities. The changing statutory provisions within which local government is required to bargain collectively and the emerging Black trade unionism has given a new dimension to collective bargaining. This, together with the effect of the Municipal Employers Organisation which in 1986 extended its' activities to Natal has exerted a meaningful influence on collective bargaining in Natal requiring new perspective.

Collective bargaining in South Africa is unique and has been the subject of seminars, papers and publications. The approach has been mainly within the context of the private sector. Very little attention has been given to the differences that apply in the public sector and more particularly local government which is concerned with essential services where different rules apply. With the advent of unregistered



trade unions operating outside the scope of the collective bargaining mechanisms provided by legislation and to which local authorities have been accustomed, new facets of collective bargaining have been exposed.

Research and authoritative information on collective bargaining which focuses on local government can contribute to efficient municipal administration. The development of collective bargaining and the experience of local government in this field needs to be recorded, researched and analysed to determine possible trends and training needs. Contributions towards a better understanding and knowledge of the subject will be of practical value to all municipal councillors and officials. The Natal Municipal Association and the Municipal Employers Organisation who are at present engaged in establishing a presence in Natal, could also benefit from such study.

To establish a clear understanding of collective bargaining, the concept is explained and it is identified as one of the auxiliary activities of municipal personnel administration. Collective bargaining can be within the framework of legislation and also takes place outside the mechanisms created by law. Both statutory and non-statutory collective bargaining is discussed.

The main parties in collective bargaining are the employer and employee who organise into employer organisations and trade unions to bargain



collectively on behalf of their members. The trade unions and employer organisations active in local government in Natal are dealt with and their characteristics and trends considered.

To ascertain current practices in local government in Natal the results of a survey undertaken amongst local authorities in Natal is examined and conclusions are drawn. Existing collective bargaining models are considered and a futuristic approach pursued to anticipate new models.

From the investigation of current practices and trends, recommendations for consideration by local government are formulated. It is clear that the attention of trade unions will be focussed on local government to an increasing extent. Special efforts should therefore be made to create a greater awareness of the importance of collective bargaining in local government. This requires a knowledge of legislation relating to collective bargaining. It is further important that formal structures be established to facilitate the bargaining process and to ensure stability and labour peace. In the interest of workers and for meaningful collective bargaining it is urged that bargaining should be confined to matters within the scope and ability of the employer to resolve.



# COLLECTIVE BARGAINING AT LOCAL GOVERNMENT LEVEL WITH PARTICULAR

## REFERENCE TO NATAL

### CHAPTER 1

#### INTRODUCTION

Trade unions have been involved with the organisation of labour in South Africa over the years but during the last decade have concentrated their activities in the private sector. As labour in the private sector has become organised and collective bargaining has been well established the attention is being directed to the public sector which includes local government.

For many years collective bargaining at local government level has been dominated by the relationship between the South African Association of Municipal Employees, a trade union for Whites only, and individual local authorities. The changing statutory provisions within which local government is required to bargain collectively and the emerging Black trade unionism have given a new dimension to collective bargaining. This, together with the effect of the Municipal Employers Organisation, which in 1986 extended its activities to Natal, exerted a meaningful influence on collective bargaining in this province requiring new perspective.

#### 1. AREA OF STUDY

This dissertation is concerned with collective bargaining at the local government level with particular attention to the situation in Natal.



It endeavours to explain the concept of collective bargaining and its relationship with municipal personnel administration which is one of the six generic administrative activities necessary to achieve any public objective. The nature of collective bargaining is examined and it is identified as a support function of personnel administration.

Labour relations have been regulated by legislation in South Africa and have been influenced by various commissions which are discussed. Local government is subject to the legislature and has to conduct its labour relations within the ambit of statutory provisions which established mechanisms for collective bargaining. The provisions of legislation are examined to gain a clear understanding of the forums that have been created to encourage collective bargaining. Collective bargaining is, however, not confined to the procedures and forums established by law, but it also takes place outside the provisions of legislation. This is referred to as "non-statutory collective bargaining" and is taken into account as the emerging Black trade unions often display a preference to operate outside the framework for collective bargaining provided by legislation. Although local government is regarded as the lower level of government collective bargaining at that level of local government is closer to the situation that prevails in the private sector than that which is to be found in the Public Service. The differences that exists are dealt with so that trends that are to be found can be understood and future developments anticipated.

The focus is placed on current practices followed by local authorities in Natal having identified the parties that are mainly involved in



collective bargaining at the local government level. The organisational arrangements that exist and that are used in Natal are examined in detail to determine existing patterns and trends. This leads to the consideration of the question whether a need exists for a structured system and greater uniformity to facilitate and promote collective bargaining.

Collective bargaining is dynamic and is subject to continuous changes to legislation providing the framework for collective bargaining.

In explaining existing models for collective bargaining at the local government level, it should be borne in mind that collective bargaining is in a phase of development. The main attempt has been to be factual and to create an understanding of the collective bargaining process as it is practiced by local government. Future developments and new models for collective bargaining are considered and conclusions drawn.

## 2. DEFINITIONS AND TERMINOLOGY

Various terms and terminology are explained in the different chapters of this treatise dealing with different aspects of collective bargaining. Some clarification is, however, necessary at the initial stages to ensure the correct understanding of certain terms.

### Collective Bargaining at the Local Level and Central Level

Collective bargaining is practised at two levels viz. the local level and the central level. Collective bargaining at the local level refers



to bargaining at the level of a factory or specific undertaking or a particular local authority. Collective bargaining at the central level refers to collective bargaining at industry level where a trade union negotiates collectively with representatives of a number of employers on behalf of employees employed by various factories or undertakings in the same industry.<sup>1)</sup> An example of this would be a number of factories in the clothing industry who have a trade union representing employees at different factories in the clothing industry. Similarly negotiations on behalf of employers and employees in the local government industry also takes place at a central level.

In this treatise where reference is made to the local level and to the central level, it relates to the local level of collective bargaining and to the central level of collective bargaining. In the context of local government, collective bargaining at the local level means collective bargaining with an individual local authority. Collective bargaining at the central level is used to denote collective bargaining at the local government industry level i.e. collectively with the representatives of a number of local authorities.

#### Local Government

The term "local government" is commonly defined as -

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1. Peitchinis, S.G. : Issues in management ; labour relations in the 1990's, (London : MacMillan Press Ltd., 1985), p. 38.



"a decentralised, representative institution with general and specific powers devolved upon it by the central or regional government in respect of a restricted geographical area within a nation or state and in the exercise of which it is locally responsible and may to a certain degree act autonomously. This connotation suggests a local political process because the areas around which it revolves have a local character." <sup>2)</sup>

The governmental structures in South Africa provides for three levels of legislation and governmental institutions viz.

- (i) the central level with Parliament;
- (ii) the regional level consisting of four provinces; and
- (iii) the local level consisting of local and municipal councils.

In this treatise local government is used to denote the third level of government which is exercised by municipal councils constituted in terms of provincial ordinances.

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2. Vosloo, W.B., Kotze, D.A., and Jeppe, W.J.O. : Local government in Southern Africa, (Academica, Cape Town, 1974), p. 10.



### Local Authority

This term is derived from the definition contained in the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974) and means a city council, a town council, a town board or a health committee. The term is synonymous to municipal council.

### Management

According to Cloete, the word management is traditionally used in the private sector to refer to the functions/activities of the managers of businesses.

In the Public Service the word management is used to describe -

- (i) the activities of work study officers who provide management services in the institutions in which they are employed;
- (ii) higher placed officials who are said to be managers and members of the management echelon or management team who meet regularly in management meetings; and
- (iii) management training courses provided.



Thus the word management functions consist of the four basic tasks of planning, organising, directing and controlling together with five additional activities of decision-making, communicating, motivating, co-ordinating and discipline. It is seen that the management functions form part of the total administrative tasks performed by the public administrators. <sup>3)</sup>

### Organisation

The term organisation has more than one meaning. According to Millet <sup>4)</sup> an organisation is structural differentiation of an organic whole having interdependent parts. Organisation means systematic arrangement of parts.

According to Robbins an organisation is a structure made up of two or more people who accept co-ordinated direction to achieve certain goals. <sup>5)</sup> It is obvious, therefore, that various activities have to be exercised to obtain an organisation.

In this treatise where organisation is used in relation to the employer in labour relations it refers to the voluntary association of employers

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3. Cloete, J.J.N. : "Administrative and management functions in the public sector", Public Servant, June 1987, p.9.
  4. Millet, J.D. : Organisation for the Public Service, (Princeton: D. van Nostrand Co., Inc., 1966), p.6.
  5. Robbins, S.P. : Organisational behaviour : Concepts and controversies, (Englewood Cliffs, New Jersey : Prentice Hall, Inc. 1979), p. 6.



into an organisation to represent the interests of their members. The Labour Relations Act, 1956 (Act 28 of 1956) refers to such a voluntary association of employers as an employers organisation. Accordingly reference to an employers organisation is in accordance with the meaning of the term in the Labour Relations Act, 1956.

#### Public Sector

This term refers to the legislative councils and the various state departments, provincial and municipal authorities, state corporations and non-departmental institutions. <sup>6)</sup>

#### Public Service

The Public Service refers to the group of personnel working in government institutions or departments on a permanent or temporary basis aimed at achieving specific national goals. These employees are known as public officials, public or civil servants. <sup>7)</sup>

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6. Harwood, O.P.F. : Opening address, Eleventh Annual General Meeting of the South African Institute for Public Administration, SAIPA, Journal of Public Administration, vol. 9, no. 3, September 1974, p. 146.

7. Republic of South Africa : Public Service Act, 1984 (Act 111 of 1984).



## CHAPTER 2

### COLLECTIVE BARGAINING AS A FACET OF MUNICIPAL PERSONNEL ADMINISTRATION

#### 1. INTRODUCTION

Before proceeding with a study of collective bargaining, it is useful to consider the concept public administration and to appreciate the relationship with personnel administration, one of the administrative activities that have to be carried out to achieve any objective. It is further explained that personnel administration is carried out in the public sector, which includes the municipal level being a lower tier of government. The nature of collective bargaining is examined and its role as a support function of personnel administration is discussed. An understanding of these concepts serve as a useful background to the remaining chapters that deal with various facets of the subject of collective bargaining at local government level.

#### 2. RELATIONSHIP BETWEEN PUBLIC ADMINISTRATION AND PERSONNEL ADMINISTRATION

The term "administration" is used in a wide context. Administration is involved in practically every human activity where two or more people work together. "Administration is to be found wherever two



or more people take joint action to achieve an objective." <sup>1)</sup> According to White "... the art of administration is the direction, co-ordination and control of many persons to achieve some purpose or objective."<sup>2)</sup> Administration is a means to an end and is necessary to achieve an objective.

Administration can be approached in different ways depending upon the field of activity in which a particular person is engaged. According to Bain <sup>3)</sup> different view points have developed, viz :

constitutional law view;  
institutional view;  
business economic view;  
implementation view;  
comprehensive view;  
conventional view;  
management view; and  
generic view.

- 
1. Cloete, J.J.N. : Introduction to public administration, third edition (Pretoria : J.L. van Schaik, 1986), p.1.
  2. White, L.D. : Introduction to the study of public administration, fourth edition (New York : MacMillan Co., 1955), p.2.
  3. Hanekom, S.X., Rowland, R.W. and Bain, E.G. : Key aspects of public administration, (Johannesburg : MacMillan South Africa, Publishers, Pty. Ltd., 1985), p.12.



For academic purposes the generic view is favoured and will be the approach adopted in this dissertation. In accordance with the generic view administration is present in all group activities, "administration is viewed as an ever-present phenomenon encountered in any group activity." <sup>4)</sup> Administration includes a number of activities that have been grouped by Cloete <sup>5)</sup> as policy-making, organising, financing, staffing, work procedures and controlling. Each of these six main groups of activities have to be carried out in full to achieve any objective through joint action. <sup>6)</sup>

These activities are undertaken in public institutions and therefore public administration is "the application of organisational, decision-making and staffing theory and procedures to public problems." <sup>7)</sup> Public administration in ancient times had a restricted meaning as the citizens only expected their governments to provide security against external forces and internal law and order. As the needs of the public have increased and society become more complex the situation has changed. In present times the activities of the government effect practically every aspect of the individuals existence - "there is hardly

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4. Ibid., p.14.

5. Cloete, J.J.N. : Personnel administration, (Pretoria : J.L. van Schaik, 1985), p.1.

6. Cloete, Introduction ..., op. cit. p.2.

7. Vocino, T. and Rabin, J. : Contemporary public administration, (New York : Harcourt Bruce Javanovick Inc. 1981), p.4.



any activity of human life not being guarded, guided or influenced by governmental regulations, laws or even indirect interference".<sup>8)</sup>

Nigro and Nigro<sup>9)</sup> state "public administration :

- (i) is co-operative group effort in a public setting;
- (ii) covers all three branches - executive, legislative and judicial - and their interrelationships;
- (iii) has an important role in the formulation of public policy and is thus a part of the political process;
- (iv) is different in significant ways from private administration;
- (v) is closely associated with numerous private groups and individuals in providing services to the community."

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8. Rabie, A. : Training and development of municipal personnel in South Africa, unpublished D. Admin.-thesis (Durban : University of Durban/Westville, 1985), p.18.

9. Nigro, F.A. and Nigro, L.G. : Modern public administration, fifth edition (New York : Harper and Row, Publishers, Inc., 1980), p.14.



Public administration normally refers to the work carried out by executive institutions with the objective to promote the general welfare of society and is concisely described by Rabie <sup>10)</sup> as the "conscious directing of the activities undertaken by members of governmental institutions in pursuit of an agreed objective, which will contribute to the satisfaction of specific community needs and the betterment of the general welfare of the citizenry."

The administrative activities will always be accompanied by the functional and auxiliary activities which are concerned with the producing of goods or rendering of services. Cloete <sup>11)</sup> pictures the three groups of activities as follows :-

<u>Administrative activities</u>	<u>Functional activities</u>	<u>Auxiliary activities</u>
Policy-making	e.g.	Data-processing
Financing	Building roads	Public opinions
Organising	Nursing patients	surveys
Staffing (personnel administration)	Educating scholars	Analysing statistics
Determining and impro- ving work procedures	Providing postal services	Research
Controlling		Decision-making

---

10. Rabie, op. cit., p.19.

11. Cloete, Introduction ..., op. cit., p.2.



The administrative activities are linked to the functional activities of the various public institutions and all the administrative activities have to be undertaken in performing any given functional activity. Public personnel administration is one of the generic administrative activities that has to be carried out to achieve an objective. The administrative activities are extensive with the result that specialisation takes place in each field, such as financial administration and personnel administration. In the field of personnel administration the other generic administrative activities are undertaken to achieve any predetermined objective. A personnel policy has to be formulated and implemented in any institution, funds have to be made available for salaries and staff expenses, staff structures have to be established within which staff can work, staff have to be appointed to carry out the personnel function and work procedures are necessary for staff to work in an orderly manner, and all these functions and activities of staff have to be controlled to ensure that predetermined goals are achieved. <sup>12)</sup>

Various functions contribute towards personnel administration requiring specialists in each field of activity. Cloete <sup>13)</sup> classifies the functions contributing to personnel administration as reflected in Annexure.

A. If any of these constituent functions of personnel administration are neglected the whole process of personnel administration suffers.

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12. Cloete, Personnel administration, op. cit., p.5.

13. Ibid., p.8.



From the classification of the various functions that constitute personnel administration it will be noted that joint consultation and employer/employee relations are support functions of the functional activities of personnel administration. This survey will be concerned with the relationship of employer and employee being the parties involved in joint consultation and collective bargaining. Collective bargaining as a support function of public personnel administration will be dealt with in relation to personnel administration at the local government level, i.e. municipal personnel administration. This requires clarification of what is meant by local government level.

### 3. PERSONNEL ADMINISTRATION AT LOCAL GOVERNMENT LEVEL

In the public sector, public personnel administration is undertaken, inter alia, at the different levels of government. Governmental structures in South Africa for many years provided for three levels of governmental institutions viz.

- (i) the central government with Parliament at the top;
- (ii) the regional level consisting of four provinces;
- (iii) the local level consisting of local and municipal councils.



The Republic of South Africa Constitution Act, 1983 (Act 110 of 1983) provides that the legislative power vests in the State President and the Parliament of the Republic. The Parliament is the sovereign power and makes laws for peace and the good order and to ensure sound government.<sup>14)</sup> Previously provision was made in the Provincial Government Act, 1961 (Act 32 of 1961) for the appointment of provincial councils<sup>15)</sup> in each province with the authority to make ordinances in relation to municipal institutions.<sup>16)</sup> In all the provinces ordinances dealing with the establishment and operation of municipal authorities have been promulgated. At 30 June 1986 the provincial government level was phased out with the abolition of the provincial councils. The provincial administrations now function as administrative and executive arms of the central government. Now that provincial councils have been abolished the authority to legislate in respect of municipal authorities vests in Parliament.<sup>17)</sup> Most of the provisions of the Provincial Government Act, 1961 have been repealed by the Provincial Government Act, 1986 (Act 69 of 1986).

A municipal institution, or also known as a municipal authority, is, therefore, a creation of statute. "A municipal corporation is a form of universitas i.e. an aggregate of natural persons forming as a group

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14. Republic of South Africa : Republic of South Africa Constitution Act, 1983. (Act 110 of 1983), section 30.

15. Republic of South Africa : Provincial Government Act, 1961. (Act 32 of 1961), section 66.

16. Ibid., section 84.

17. Republic of South Africa : Provincial Government Act, 1986. (Act 69 of 1986), section 22.



a new subject of rights and duties, separate and distinct from the rights and duties of the individual persons who constitute the group. It is thus a legal abstraction or fiction by which law has created a new entity out of a group of natural persons and has endowed it with a distinct juristic personality, capable of functioning in various respects as a natural person." <sup>18)</sup> When a new municipality is to be established the procedure is stipulated in the Local Government Ordinance of the province in question. The Administrator assigns a name to it and it is published in the Provincial Gazette. This new body corporate is established with a defined area of jurisdiction. <sup>19)</sup> Municipal authorities are statutory bodies possessing no rights and powers except such as are either expressly or by necessary implication conferred upon them by a competent legislative authority. In South Africa municipal government has always been subservient government and the so called "autonomy" of local government was granted on the basis that it could be withdrawn at any stage. Municipal authorities are at the lowest rung of the hierarchy of governmental institutions and carry out their duties within a framework of prescriptions and restrictions which are set by higher authorities. <sup>20)</sup>

The municipal level of government relative to the central level of government can be illustrated as follows : <sup>21)</sup>

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18. Dönges, T.E. and van Winsen, L.de V. : Municipal Law, second edition, (Johannesburg : Juta and Co., 1953), p.1.

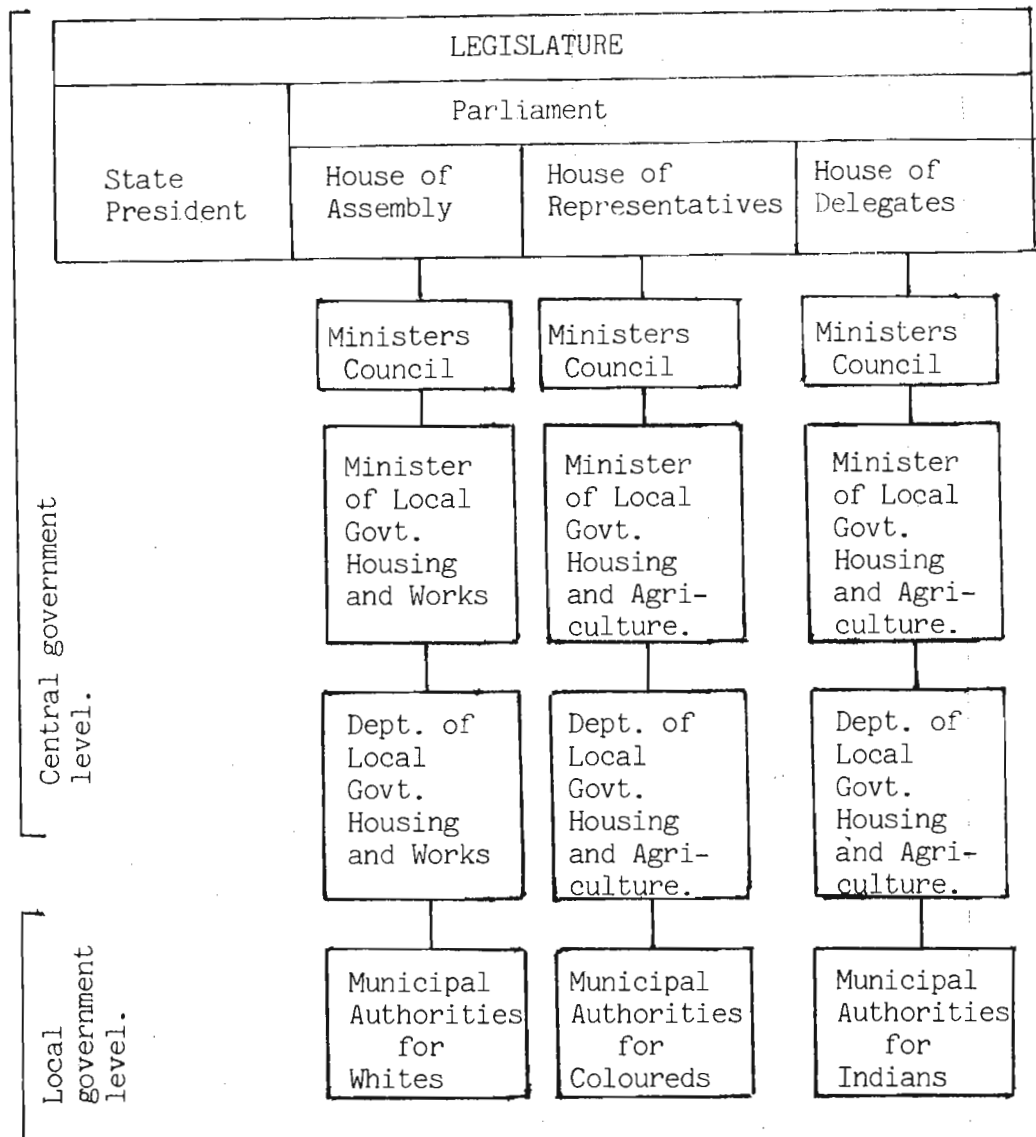
19. Ibid., p.3.

20. Hanekom, et. al., op. cit., p.118.

21. Cloete, Introduction ..., op. cit., p.111.



Figure 1. CENTRAL AND LOCAL LEVELS OF GOVERNMENT



Municipal authorities are established to govern a particular community. "Die vernaamste bestaansrede van munisipale en ander plaaslike regeringsinstellings is om die ingesetenes van die dorp, stad of ander plaaslike gebied die geleentheid te gee om self daardie aangeleenthede te behartig wat eie aan hulle besondere woongebied is, waardeur hulle lewens daaglik geraak word en wat tot hulle gerief en voordeel



strek." <sup>22)</sup> Common to all municipal authorities are the following characteristics :-

- being a juristic person with certain powers and duties governed by an elected body of councillors;
- established by provincial ordinance;
- a subordinate governmental institution to higher governmental authorities; and
- bound to a defined geographic area and dealing with the interests of the community within such area. <sup>23)</sup>

The activities of a municipal authority can be classified according to the following functions : -

- public works;
- trading activities;

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22. Cloete, J.J.N. : Sentrale, provinsiale en munisipale instellings van Suid-Afrika, (Pretoria : J.L. van Schaik, 1971), p.165.

23. Craythorne, D.L. : Municipal administration, (Cape Town : Juta & Co. Ltd., 1980), p.13 - 14.



health services;  
community development;  
protection services;  
town planning; and  
recreational and cultural activities. <sup>24)</sup>

To render these services and to administer the government of the local community the six generic administrative activities as well as the functional processes and the auxiliary processes have to be performed. To perform its work it requires, inter alia, the provision, utilisation, maintenance and training of personnel. To satisfy this need a number of activities, referred to as personnel administration, have to be carried out.

Personnel administration is an integral part of municipal administration and is indispensable in the endeavour to reach the objectives of municipal administration. <sup>25)</sup>

Within the scope of municipal personnel administration relationships between employer and employee have to be established and maintained. Within this relationship collective bargaining takes place as a support function of personnel administration.

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24. Kotze, H.J.N. : "Die teorie en praktyk van finansiële administrasie by munisipale owerhede in die Republiek van Suid-Afrika", Verslag van die Instituut van Sosiale en Ekonomiese Navorsing, Universiteit van die Oranje-Vrystaat, Bloemfontein, nr. 1 van 1976, p.106 - 117.

25. Rabie, op. cit., p.55.



#### 4. COLLECTIVE BARGAINING

##### 4.1. Definition of Collective Bargaining

The term collective bargaining was introduced by Beatrix Potter Webb in 1891 who held that "barter between individuals must be superceded by some form of negotiations, through authorised representatives and between groups of workers or customers. The product of individual exchange is collective bargaining." <sup>26)</sup>

Collective bargaining at the work place has gone through different phases as typified by the experience in America which was -

- (i) the foundation period 1790 to 1890 where the relationship between employers and unions was unilateral. The employees considered their demands as final whilst the employers had the same attitude. The outcome consequently depended on who was in the strongest position.
- (ii) the unilateral era was replaced by collective bargaining in the period 1890 to 1930 and trade agreements emerged. Collective bargaining became more acceptable and the relationship between employer and employee was seen as a partnership;

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26. Lombard, B.U. : "Collective bargaining by objectives - A practical negotiating model", Paper at seminar on labour relations and human resources planning, University of South Africa, Nov. 1977.



- (iii) legislation was adopted, regulating collective bargaining; and
- (iv) in the post war years from 1945 to 1962 collective bargaining was accepted as an institutional process. The efforts are now not directed at establishing the principle of collective bargaining but professionalising it. <sup>27)</sup>

In South Africa the development of collective bargaining has followed much the same pattern although perhaps not in the same time period.

In literature the terms bargaining, negotiating and consultation are often used in dealing with the relationship between the employer and the employee. These terms, where used in relation to labour relations, are not the same and the explanation by Burger and Kruger <sup>28)</sup> clearly illustrates the differences :-

"consultation - the process whereby management seeks the views of employees either directly or through their representatives prior to making a decision. The final decision is taken by management.

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27. Richardson, R.C. : Collective bargaining by objectives, (New Jersey : Prentice Hall Inc., 1977), p.37 - 45.

28. Burger, J. and Kruger, T. : Lecture notes on negotiations, Training course on strike handling, Durban, February 1986.



negotiation - the process whereby two independent parties seek to achieve mutually acceptable agreement over an area of conflict.

collective bargaining - the process whereby unions and employees (who have a mandate to represent their constituents) negotiate terms and conditions of employment with the employer or employers organisation or the varying or making of a procedure agreement with a view to reaching agreement."

In the labour market we are concerned with bargaining between employer and employee. This bargaining takes place collectively between a number of workers acting together, or their union and an employer or a group of employers. Collective bargaining takes place on a strength-in-number or knowledge basis. Far more is achieved by acting collectively than individually "a single employee confronting a single employer is like taking a watering-can to a Hiroshima fire." 29)

The International Labour Conference in 1981 defined collective bargaining as "extending to all negotiations which take place between

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29. Jenkins, C. and Sherman, B. : Collective bargaining, (London: Routledge and Kegan Paul Ltd., 1977), p.1.



an employer, a group of employees or one or more employer organisations, on the one hand, and one or more worker organisations on the other hand, for -

- (a) determining working conditions and terms of employment; and/or
- (b) negotiating relations between employers and workers; and/or
- (c) regulating relations between employers or their organisations and a worker organisation or workers organisations." 30)

Richardson <sup>31)</sup> maintains that collective bargaining in labour-management relations usually has reference to the negotiation of the terms of the agreement and the administration (contract administration) of the terms during the period that such agreement exists. He adds that a third facet, "resolving conflict", is vital to support the collective bargaining process.

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30. International Labour Office : Collective bargaining, a workers educational manual, second edition (Geneva : Publication by International Labour Office, 1986), p.1.

31. Richardson, op. cit., p.92.



The employer in bargaining collectively seeks to ensure that production or work should not be interrupted. Organised labour on their part seek to give effect to legitimate expectations that wages and other conditions of work should guarantee a stable and adequate form of existence and jobs should be reasonably secure.<sup>32)</sup>

One often finds a resistance on the part of management<sup>33)</sup> to give up unilateral decision-making on matters that relate to terms and conditions of employment. It is argued that it is in the interests of the institution not to consult or bargain with the employees. There is no evidence that this is correct or that efficiency in institutions where the collective bargaining process is relied upon, has in anyway impaired efficiency. Collective bargaining remains the superior alternative for the settlement of disputes and determining conditions of employment. "The possible alternatives, amongst which there are the unilateral decisions of employers still in effect where collective bargaining does not exist, compulsory arbitration, government decrees, all suffer greater weaknesses than the process of collective bargaining."<sup>34)</sup> Collective bargaining has decided advantages such as :-

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32. Brand, J. and Cassim, N.A. : "The duty to disclose - a pivotal aspect of collective bargaining," Industrial Law Journal, vol. 1, 1980.

33. Note : Management refers to the persons engaged in the administration of the business or institution.

34. Peitchinis, S.G. : Issues in management - labour relations in the 1990's, (London : MacMillan Press Ltd., 1985), p.13.



- (i) it contributes to industrial peace;
- (ii) workers participate and this contributes to industrial democracy;
- (iii) worker representation on a collective and organised basis is established; and
- (iv) unequal bargaining between employer and individual workers is avoided. <sup>35)</sup>

If the foregoing is achieved it establishes sound labour relations which in turn ensures a satisfied labour force. The stability and security thus created contributes towards productivity.

Collective bargaining really is the involvement of employees or their representatives in decisions affecting their conditions of employment and working conditions. To do so effectively requires certain conditions to be observed viz. :

- (i) both parties should recognise that each is motivated by self-interest being the institutional and employee interests respectively;
- (ii) accord of legitimacy by each party of the others position, regardless how unrealistic it may seem;

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35. Ibid., p.101



- (iii) no matter how wide the differences in the indicated positions discussions should be entered into with an open mind; and
- (iv) readiness to proceed in negotiations with full awareness and acceptance of the need for compromise and trade-offs. <sup>36)</sup>

If these conditions are respected meaningful collective bargaining can take place to the advantage of both employer and employee.

#### 4.2. Collective Bargaining at Two Levels

Collective bargaining does not necessarily take place between the individual employer or undertaking and the workers that is at the local level, but it also takes place at the national level where a trade union negotiates collectively on behalf of employees employed by a number of undertakings in the same type of industry such as the steel industry or the food industry or the "local government" industry. Bargaining at two levels has become a controversial issue particularly posing the question what the relationship should be between collective bargaining at industry level through the statutory institution of the industrial council and bargaining at the establishment level through the mechanisms of a recognition agreement. This will be discussed in more detail when

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36. Ibid., p.9.



considering existing models of collective bargaining in local government.

#### 4.3. Statutory and Non-statutory Collective Bargaining

In collective bargaining there are primarily two parties viz. the employer or his representative and the employee or the employees representatives. There is, however, a third party and that is the State. The State through legislation governs the negotiating process and establishes recognised forums for collective bargaining and in certain instances provide the arbitrator such as with the Industrial Court. Negotiations are left to the employers and employees with no interference by the State, the latter only provides the machinery for the settlement of disputes. <sup>37)</sup>

Local authorities being creatures of statute are required to function and execute municipal personnel administration within the parameters of legislation. A number of acts, ordinances and regulations have, therefore, to be observed. The framework within which employer and employee operates and within which they are required to bargain collectively, is also determined by legislation. This is referred to as statutory collective bargaining, whilst trade unions often prefer to operate outside the forums provided by legislation and opt for non-statutory collective bargaining where reliance is placed on agreements

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37. The Star, 1 September, 1987.



and the common law. The development of labour legislation will be examined to gain a clear understanding of statutory collective bargaining before dealing with non-statutory collective bargaining.

## 5. SUMMARY

The concept of public administration has been explained and the generic administrative approach used to indicate that any public institution has to perform six generic administrative functions viz. policy-making, organising, financing, staffing, work procedure and controlling to achieve any predetermined objective. In addition, to the generic functions the functional and auxiliary processes have also to be performed. All these functions have to be performed and are an integral part of public administration which is performed at the level of the central government and at local government level. Municipal personnel administration in itself requires the six generic administrative functions to be performed and is always accompanied by functional and auxiliary activities. One of the auxiliary functions that have to be carried out in support of personnel administration is collective bargaining.

Municipal personnel administration is an umbrella term used to describe all activities and functions relating to the use of employees to achieve the objectives of a local authority. Collective bargaining is an integral part of municipal personnel administration. It is the means by which the employer and employee determine their working relationship to their mutual satisfaction. Where collective bargaining is practiced it will promote sound relationships and contribute to effectiveness and efficiency.



The term collective bargaining has been discussed from which it is clear that it embraces the relationship between employer and employee in which the employer or an organisation representing a group of employers determine conditions of service and conditions relating to the work by bargaining collectively with the employees or representatives of the employees or a group of employees. This process of collective bargaining takes place at two levels viz. the central level for particular types of industry or it can be at the local level that is individual undertaking or enterprise level. A distinction is further made between statutory collective bargaining which takes place within the framework provided by legislation and non-statutory collective bargaining where reliance is placed on the contractual relationship based on principles of common law.



### CHAPTER 3

#### LABOUR LEGISLATION IN SOUTH AFRICA

##### 1. INTRODUCTION

In this chapter the development of legislation providing the framework for collective bargaining in the South African context is studied. Collective bargaining is inextricably linked to the attitude and the relations that exist between labour and management. Consequently the cultural differences and history of South Africa have exercised a marked influence on labour relations and the legislation governing collective bargaining. These characteristics are examined so that the current practices and mechanisms established by legislation for collective bargaining can be seen in the correct perspective.

The development of trade unions in South Africa is considered and the differences between registered and unregistered trade unions are explained. The grouping of trade unions and recent trends in the trade union movement are also discussed. This is necessary as local authorities are being exposed to trade unions to an increasing extent and should appreciate their characteristics and likely approaches. Finally, attention is given to employers organisations and the role that they play in the relationship of employer and employee in collective bargaining.



## 2. LEGISLATION DETERMINING COLLECTIVE BARGAINING

### 2.1. Development of Labour Legislation

In South Africa the labour laws in force in the colonies were designed to protect the employers against desertion by their labourers and domestic servants. Trade unions were not prohibited at any time. The first legislation that dealt with industrial disputes was the Industrial Disputes Prevention Act introduced in the Transvaal Colony in 1909. <sup>1)</sup> In 1913 a serious strike occurred on the Witwatersrand and a commission was appointed by the Government. The Commission emphasised the advantages of joint consultation and suggested a system of registering trade unions. Before any legislation to this effect could be passed a series of strikes in various provinces took place and martial law was proclaimed which was followed by the 1914 - 1918 war. Trade unions were passive during these years. In 1922 the miners on the Witwatersrand went on strike and because of the extent of the demonstrations martial law was once again resorted to and military power used to subdue the disturbances. <sup>2)</sup>

The Government then adopted the Industrial Conciliation Act, 1924 (Act 11 of 1924). This Act was aimed at making provision for the prevention and settlement of disputes between workers and employers following the strike and disturbances by miners in 1922. <sup>3)</sup> This Act recog-

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1. Ringrose, H.G. : The law and practice of employment, (Cape Town: Juta and Co., Ltd., 1976), p.6.
  2. Loc. cit.
  3. Jones, R.A. : Collective bargaining in South Africa, second edition, (Johannesburg: MacMillan South Africa



nised trade unions and provided for their registration and introduced provisions for the settlement of disputes by voluntary or compulsory conciliation. This act was amended in 1937 and later again by the Industrial Conciliation Act, 1956 (Act 28 of 1956) but basically still provides the legal framework for collective bargaining in South Africa. The mechanisms for collective bargaining created by this legislation has been essentially retained in the existing Labour Relations Act, 1956 which is an amended version of Act 28 of 1956.

Three commissions <sup>4)</sup> of enquiry since 1930 have shaped the legal framework of the existing system of labour relations. Firstly the Van Reenen Commission was concerned with the effect on employment of the Industrial Conciliation Act, 1924 (Act 11 of 1924) and the Wage Act, 1925 (Act 27 of 1925) Other aspects dealt with were the disparity of wages between men and women, skilled and unskilled workers and apprentices and journey men. Legislation that was published subsequent to the report and recommendations of the Van Reenen Commission included the Industrial Conciliation Act, 1937 (Act 36 of 1937), the Wage Act, 1937 (Act 44 of 1937) and the Shops and Offices Act, 1939 (Act 41 of 1939). <sup>5)</sup>

This legislation did not recognise Black trade unions as the Blacks were not considered mature enough for trade unions. It was considered contrary to their interests and that of South Africa if they were to be included in the Industrial Conciliation Act, 1937 consequently Blacks could not become members of recognised trade unions. <sup>6)</sup> The

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4. de Kock, A. : Three commissions", Industrial Law Journal, vol. 1, Part 1, May 1980, p. 26 - 31.

5. Loc. cit.

6. du Toit, M.A. : South African trade unions, (Johannesburg : McGraw-Hill Book Company, 1976), p.44.



position regarding Blacks was unsatisfactory and once again a commission known as the Botha Commission <sup>7)</sup> was appointed in 1948 and produced its report in 1951. The Commission was directed to consider -

- (i) the operation of the four basic Acts (Industrial Conciliation, Wage, Shops and Offices and Factory, Machinery and Building Work Acts) with specific reference to the prevention and settlement of disputes, the closed shop practice and the functioning and control of employers' organisations and trade unions and the co-ordination of wages and conditions of employment;
- (ii) the desirability of recognising and regulating Black trade unions; and
- (iii) the setting up of machinery for the prevention and settlement of disputes involving Black workers.

The Commission recommended that Black trade unions be recognised under separate legislation and subject to control, also separate trade unions

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7. de Kock, op. cit., p.27.



for the different races was suggested. The Government rejected the recommendations for the recognition and registration of Black trade unions. It did, however, introduce separate legislation for the prevention and settlement of disputes where Black workers were involved. The Bantu Labour (Settlement of Disputes) Act, 1953 (Act 48 of 1953) that resulted made provision for workers and liaison committees operating in conjunction with regional Black labour committees and a central Black Labour Board. This Act introduced the concept of job reservation and provided for the prevention and settlement of labour disputes where Black workers were involved.<sup>8)</sup> The recommendations of the Commission also led to the Industrial Conciliation Act, 1956 (Act 28 of 1956) and the new Wage Act, 1957 (Act 5 of 1957).<sup>9)</sup> This entrenched the dual system of labour relations viz. industrial councils and arbitration procedures for non-Blacks in terms of the Industrial Conciliation Act, 1956 (Act 28 of 1956) and a consultative system for Black employees in terms of the Bantu Labour (Settlement of Disputes) Act, 1953 (Act 48 of 1953).

Workers working in the same work place, often in the same trade, were governed by different legislation with the result that procedures also differed. This gave rise to dissatisfaction. Labour unrest increased and in 1973 a spate of strikes occurred in Natal. The Bantu Labour Relations Regulations Amendment Act, 1973 (Act 70 of 1973) then followed.

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8. Ibid., p. 28.

9. Loc. cit.



This Act retained the basic provisions of the 1953 Act providing for the regulation of conditions of employment for Black workers, the prevention and settlement of disputes between Black workers and their employers and a procedure for setting up and functioning of a variety of committees consisting partly or entirely of Black workers. <sup>10)</sup>

To improve communication, employers developed systems of their own outside the scope of the legislation which had become outdated and did not cope with the increased demands of the labour force and more particularly the Blacks. <sup>11)</sup> It was considered necessary to review existing legislation relating to labour relations and the third major commission known as the Wiehahn Commission <sup>12)</sup> was appointed in 1977. The terms of reference of the Commission were to investigate and report on the :

- (i) adjustment of the existing system for the regulation of labour regulations in South Africa with the object of making it provide more effectively for the needs of our changing times;

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10. Du Toit, op. cit., p.45.

11. Swanepoel, J.P.A. : Introduction to labour law, (Johannesburg: MacGraw-Hill Book Co., 1984), p.95.

12. Republic of South Africa, Department of Labour and Mining : Report of the Commission of Enquiry into labour legislation, (Pretoria : Government Printer RP 47/1979).



- (ii) adjustment, if necessary, of the existing machinery for the prevention and settlement of disputes which changing needs may require;
- (iii) elimination of bottlenecks and other problems which are at present being experienced within the entire sphere of labour; and
- (iv) methods and means by which a foundation for the creation and expansion of sound labour relations may be laid for the future of South Africa. 13)

The report of the Wiehahn Commission was published in six parts between February 1979 and November 1980. The recommendations of the Commission led to the Industrial Conciliation Amendment Act, 1979 (Act 94 of 1979) which is considered to be the most important legislation in its field since 1924. The amendment Act of 1979 introduced the following changes in the industrial relations system :-

- (i) a National Manpower Commission was established to investigate and advise the Minister on labour matters and labour policy;

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13. Swanepoel, op. cit., p. 96.



- (ii) the members of the Commission are representative of the State, employers and employees;
- (iii) an Industrial Court was established with superior court status but confined to civil matters;
- (iv) statutory job reservation was abolished;
- (v) Blacks were included in the definition of employee, with the result that all workers irrespective of race and colour with the exception of migrant workers from other countries were included and could make use of the machinery of the Act;
- (vi) Black trade unions could now be recognised and registered;
- (vii) the concept of "unfair labour practice" was introduced;
- (viii) the Bantu Labour Relations Act, 1953 (Act 48 of 1953) was repealed. <sup>14)</sup>

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14. de Kock, op. cit., p. 30.



The Industrial Conciliation Amendment Act, 1979 does not discriminate on the grounds of race or sex. Certain categories of workers are, however, excluded from its operation viz.

those employed in farming operations;

those employed in domestic service in private households;

officers of Parliament;

chief administrative officers of local authorities;

those who work in charitable institutions with no remuneration;

those who work in connection with a university, college, school or other educational institutions maintained wholly or partly from public funds;

state employees are free to form or join trade unions to represent their interests but the rest of the Acts' provisions do not apply. <sup>15)</sup>

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15. Jones, op. cit., p. 24.



The main objective of the Labour Relations Act, 1956 (Act 28 of 1956), as the amended act is now named, is to maintain and promote labour peace by providing a framework within which the parties can operate to arrive at conditions of employment by means of collective agreement and to prevent and settle disputes. Registered employer and employee organisations are entitled to establish and operate industrial councils, to apply for the establishment of a conciliation board and to participate in such bodies. At the workshop or enterprise level provision is made for the establishment of works councils to improve communication. The Act provides various mechanisms for trade unions and employer organisations to settle disputes such as industrial councils, conciliation boards, mediation, arbitration and ultimately strikes and lock-outs under particular circumstances. The Industrial Court also plays an important role and provision is made for access to the Industrial Court. In terms of a later amendment to the Act in 1983, unregistered trade unions may in certain circumstances also apply for the establishment of a conciliation board.<sup>16)</sup> The mechanisms for collective bargaining provided by the Act and to settle disputes will be dealt with in more detail in the next chapter.<sup>17)</sup> The Labour Relations Act, 1956 makes no distinction as to population group, colour, creed or sex and covers most occupations.

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16. Republic of South Africa : National Manpower Commission, "Dispute settlement, levels of collective bargaining and related matters," (Pretoria : Government Printer RP 115/1986).

17. Infra., p. 63.



## 2.2. Dualism in Legislation

A characteristic in the development of labour legislation in South Africa has been a dualism in that different legislation applied to the Whites and Blacks. During the period 1924 to 1979 Whites, Coloureds and Asians could use the mechanisms provided by labour legislation and in terms thereof agreements at the industrial council were concluded with statutory status. Blacks were excluded from the system and trade unions for Blacks were not recognised. After the enactment of the Bantu Labour (Settlement of Disputes) Act, 1953<sup>18)</sup> arrangements existed for representation of Black workers at the work-place level in the form of works committees and liaison committees. No provision existed, however, for the participation of Black Trade Unions. The committees served mainly as communication and consultative channels. This discriminatory difference in legislation between Black and White workers was removed on the recommendation of the Wiehahn Commission. After 1979 all employees were included and could make use of the mechanisms of the Labour Relations Act, 1956 regardless of colour.

A different dualism now came to the fore with trade unions operating within and without the ambit of the Labour Relations Act, 1956.<sup>19)</sup>

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18. Note : The Bantu Labour (Settlement of Disputes) Act, 1953 (Act 48 of 1953) was later known as the Black Labour Relations Registration Act, 1953.

19. National Manpower Commission, "Dispute ...", op. cit., p. 6.



The dualism was statutory and non-statutory collective bargaining. The Black unregistered trade unions displayed a preference to operate outside the Act and relied mainly on recognition agreements with individual employees.

When one considers labour legislation in the homelands one finds a continued dualism as different labour relations exist in the homelands than in the Republic of South Africa. <sup>20)</sup> Minimum wages, for example, do not exist in the homelands as they have attempted to attract industry with cheaper labour. The homeland authorities do not favour trade unions and have attempted to isolate employee organisations in the homelands or have rejected collective bargaining altogether. <sup>21)</sup> An exposition of the labour laws that apply in the homelands is a formidable task "for even the legally trained the task of unravelling the tangle of homeland labour laws is daunting." <sup>22)</sup> As this dissertation is mainly concerned with the position in Natal a basic understanding of the differences that exist in kwaZulu is required.

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20. Homelands refer to independent states such as Transkei, Ciskei and self governing states that are not independent but have their own legislative assembly and legislate for such state such as kwaZulu in Natal.

21. Whiteside, A.W. and Haysom, N. : "A separate development ; Labour legislation in the homelands", Industrial Law Journal, vol. 5, Part 4, 1984, p. 252.

22. Loc. cit.



kwaZulu was granted "legislative assembly" status on the 1st April 1972 and became a self governing state on 1 February 1977.<sup>23)</sup> The kwaZulu Apprenticeship Act, 1978 (Act 9 of 1978) which is basically the Apprenticeship Act of the Republic of South Africa as at 1977, and the Industrial Conciliation Amendment Act, 1981 (Act 10 of 1981) have been adopted by the kwaZulu Legislative Assembly. The amended Industrial Conciliation Act of kwaZulu differs from the present Labour Relations Act of the Republic of South Africa in that it allows for trade union affiliation to a political party and furthermore it allows for provisional registration. Apart from the foregoing all other labour legislation applicable in the Republic of South Africa was taken over by kwaZulu on the date of self government viz. 1 February 1977. This means that the following Acts relating to labour as they existed at 1 February 1977 apply in kwaZulu :-

Shops and Offices Act, 1964 (Act 75 of 1964). In the Republic of South Africa (RSA) this has been replaced by the Basic Conditions of Employment Act, 1983 (Act 3 of 1983);

Mines and Works Act, 1956 (Act 27 of 1956) and Factories, Machinery and Building Works Act, 1941 (Act 22 of 1941). Both these Acts have been replaced by the Machinery and Occupational Safety Act, 1983 (Act 6 of 1983) in the RSA;

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23. Ibid., p. 269.



Black Labour Relations Regulations Act, 1973 (Act 70 of 1973). In the RSA this Act has been replaced by the Labour Relations Act, 1956 (Act 28 of 1956);

Electrical Wireman and Contractors Act, 1939 (Act 20 of 1939), Training of Artisans Act, 1951 (Act 38 of 1951) and the Black Employees In Service Training Act, 1976 (Act 86 of 1976). These acts have been replaced by the Manpower Training Act, 1981 (Act 56 of 1981) in the RSA;

Wage Act, 1957 (Act 5 of 1957);

Unemployment Insurance Act, 1966 (Act 30 of 1966);

Workmens Compensation Act, 1941 (Act 30 of 1941).

The last three Acts are still the same in the RSA with minor amendments which do not apply to kwaZulu.<sup>24)</sup>

The fact that the above laws apply in kwaZulu does not imply that they are implemented or that the machinery provided by such legislation exists.

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24. Ibid., p. 270 - 271.



This dualism that exists in the RSA where labour relations are conducted within (statutory) or outside (non-statutory) the scope of labour legislation and the difference between legislation within the RSA and that which applies in kwaZulu complicates labour relations in Natal. This dissertation concentrates on the labour legislation prevailing in the Republic of South Africa.

### 2.3. Main Features of Current Labour Legislation

The Labour Relations Act, 1956 (Act 28 of 1956) is the general act regulating labour relations. In the Public Service labour relations are governed by the Public Service Act, 1984 (Act 111 of 1984) and in the case of the South African Transport Services by the Conditions of Employment Act, (SATS), 1983 (Act 16 of 1983).<sup>25)</sup> The Labour Relations Act, 1956 provides official machinery for collective bargaining between employers and employees who are organised into employer organisations and trade unions with official procedures for the settlement of labour disputes. Provision is made for the registration and regulation of employers organisations, trade unions and industrial councils, for prevention and settlement of disputes between employers and employees, for regulation of conditions of employment by agreement and arbitration and for control of private employment regarding registry offices.<sup>26)</sup>

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25. van der Merwe, P.J. : "Gesonde arbeidsverhoudinge", SAIPA, Journal of Public Administration, vol. 22, no. 2, June 1987.

26. Lombaard, B.U. : "Collective bargaining by objectives, a practical negotiating model", Paper at seminar on labour relations and human resources planning, University of South Africa, November, 1977.



Initially there was hostility between employers and trade unions but the Labour Relations Act, 1956 forces both employer and employee to co-operate. The majority of employers accept the unions and bargaining collectively within the framework of the Labour Relations Act, 1956. Provision further exists for the establishment of works councils for improved communication and negotiation between employer and employee at enterprise level. An effort has been made to move away from control and employers and employees are permitted to structure their own relationship. The Director-General of the Department of Manpower said "in a democratic society which believes in the free enterprise system, government cannot legislate for successful collective bargaining or industrial peace. What it can, and should do, is first of all to provide a legal framework within which employer and employee parties can get on with the job." <sup>27)</sup> There are, therefore, three parties determining labour relations and influencing collective bargaining. On the one hand we find the employee and trade unions and on the other hand employer or employers organisations. The third party providing the framework within which collective bargaining takes place and in certain cases the arbitrator by way of legislation, is the State.

### 3. TRADE UNIONS

#### 3.1. Development of Trade Unions

A trade union is an association of workers who have a common interest.

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27. Financial Mail, Manpower/Industrial relations supplement, 16 September, 1983.



The common interest can be that they are employed by the same employer or engaged in the same occupation or craft. A trade union is primarily concerned in presenting a united front to employers when conditions of employment are negotiated.

In the eighteenth century in Britain many peasants could no longer earn a living on farms and moved to the towns and cities to find employment. They had to accept the conditions of employment determined by the employers who demanded long hours of work and paid low wages. In these circumstances trade unions were found initially being restricted to individual trades.<sup>28)</sup> Workers who migrated to South Africa had been accustomed to trade unions that were found around particular crafts and they organised themselves into local branches of unions to which they had belonged in their home countries.<sup>29)</sup> In this manner the Amalgamated Society of Joiners and Carpenters (of Great Britain) acquired branches in Cape Town in 1881 and in Durban in 1882.<sup>30)</sup>

The growth of trade unions was slow as the Dutch who settled in South Africa had no industrial traditions. The skilled mineworkers and artisans that came to South Africa during the latter half of the 19th century had been accustomed to protecting their particular work and exclusiveness and restricting their unions to a particular class or craft. They considered Black workers as unskilled labour that could be used to undermine their job security. Blacks were, therefore, excluded

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28. Ringrose, op. cit., p. 4 - 5.

29. Loc. cit.

30. Loc. cit.



from the unions which they established in South Africa. Many incidents of industrial unrest before 1924 was caused by White workers who reacted to attempts to introduce cheaper Black labour into their skills. This culminated in the 1922 Rand Rebellion. <sup>31)</sup>

The first Black trade union, the Industrial Workers of Africa was established in 1917 but faded away in 1920. The Industrial and Commercial Workers Union which was established in 1918 increased its' membership to about 200 000 in 1928. As a result of internal strife it dissappeared in the early thirties. <sup>32)</sup> It should be remembered that Black trade unions were not recognised and that Blacks were excluded from the definition of "employee" in the Industrial Conciliation Act, 1924. Only Whites and Coloureds were permitted to join and form registered trade unions. This situation prevailed until 1979. Despite the fact that Black trade unions were not recognised such unions existed and increased in numbers together with the White trade unions. Subsequent to 1979 Black trade unions are able to register and the main difference is now between registered and unregistered trade unions. By 1985 there was 196 registered trade unions in South Africa grouped as follows :- <sup>33)</sup>

Whites only ..... 46 trade unions;

Coloured and Asians ..... 24 trade unions;

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31. Jones, op. cit., p. 26.

32. Department of Labour and Mining : Commission of Enquiry into labour legislation, (Wiehahn Commission), op. cit., p. 12.

33. Official Trade Union Directory 1986 - 1987 : Published by the Trade Union Council of South Africa, Johannesburg.



Blacks only ..... 26 trade unions;  
Multi-racial ..... 88 trade unions;  
Unspecified ..... 12 trade unions.

### 3.2. The Nature of Trade Unions

A trade union can be defined as "any number of employees in any particular undertaking, industry, trade or occupation associated primarily for the purpose of regulating relations in that undertaking, industry, trade or occupation between themselves or some of them and their employers or some of their employers".<sup>34)</sup> The purpose of a trade union is to negotiate relations between employers and employees - they negotiate for conditions of service and to settle disputes on a collective rather than an individual basis. Established trade unions also provide additional benefits to its' members such as death benefits, burial schemes, personal loans, holiday benefits, group insurance. Members of trade unions are also given legal assistance in cases resulting from the work situation.

Trade unions in South Africa are classified in registered trade unions and unregistered trade unions. The Labour Relations Act, 1956 requires trade unions, if they wish to use the mechanisms provided by the Act, to register. A registered trade union can officially only represent those interests for the areas for which it is registered. Registration

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34. Boshoff, T.R. : "Public servants association - should it become a trade union?", SAIPA, Journal of Public Administration, vol. 15, no. 4, December 1983.



of a trade union brings about obligations in regard to its' constitution to ensure that it functions democratically, it calls for the keeping of proper books and accounts, register of members and other prescribed commitments. Affiliation with a political party is not permissible or the grant of financial or any other assistance nor may it influence its members with the object of assisting any political party or the election of any person to any public office, political party or legislative body. <sup>35)</sup> The intention of the legislature is to prevent the exploitation of the labour relations system for political gain on the basis that labour relations only concerns the relation between the parties in the work context.

The benefits of registration are :-

- (i) only registered unions can object against the registration application of any other union and in this way a union that is already operative in a specific industry and sufficiently representative, can prevent another union of coming into the same field;
- (ii) the effect of registration is that the union becomes a legal entity;

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35. Jones, op. cit., p. 40.



- (iii) registered unions have automatic access to the machinery and procedures provided by the Labour Relations Act, 1956;
- (iv) registered unions are able to become a party to an industrial council and it can participate in the negotiation of legal binding wages and working conditions of its members and settle disputes involving its' members;
- (v) registered unions can obtain stop order facilities from employers for membership fees from their members. <sup>36)</sup>

Notwithstanding these benefits many unions, particularly Black trade unions, prefer to operate as unregistered trade unions. Since the strikes in Natal in 1973 and subsequent to the 1976 Soweto disturbances unregistered trade unions enjoyed recognition to an increasing extent. <sup>37)</sup> At the time they could not register in terms of the legislation that applied. Subsequent to the Wiehahn Commission and the consequential amendments to the Labour Relations Act, 1956 which provided for the registration of Black trade unions, the tendency still exists for Black trade unions not to register. Many of these unions do not wish to be hampered by the restrictions that goes with registration. Unregistered unions are for instance not restricted to operate

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36. Ibid., p. 39.

37. Ibid., p. 29.



in a specific geographical area or in a specific class of workers or industry. They can, therefore, organise and move into areas already covered by registered trade unions. This ability to poach where and when they please has caused antagonism in the relations with the established trade unions who claimed that it disrupts the whole labour system. Their constitution does not have to comply with the requirements prescribed by the Act and their funds are not subject to the same scrutiny. Unregistered trade unions do, however, have to comply with certain formalities such as furnishing a copy of the constitution within six months of establishment, the address and the names of its' officials and office bearers. These unions are not controlled and can do as they please. <sup>38)</sup> Unregistered trade unions are not legal entities and do not have the right to be admitted to an industrial council and are also denied access to industrial conciliation machinery provided by the Labour Relations Act, 1956. They do, however, have access to conciliation boards. <sup>39)</sup>

Trade unions have grouped together and display certain tendencies that need to be examined.

### 3.3. Tendencies of Trade Unions

In South Africa four broad types of trade unions are found : craft, industrial, general and white collar. <sup>40)</sup> Racial issues complicate

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38. Ibid., p.46.

39. Official Trade Union Directory, op. cit., p.26.

40. Suchard, H. : "South African unique collective bargaining system", Africa Insight, vol. 13, no. 3, 1983.



the distinction. The White unions have favoured the craft and White collar unions. The Black unions have favoured industrial and to a lesser extent general unions. In 1986 there were the following major groupings of trade unions :- <sup>41)</sup>

- (i) T.U.C.S.A. (Trade Union Council of South Africa);
- (ii) S.A.C.O.L. (South African Confederation of Labour);
- (iii) C.O.S.A.T.U. (Congress of South African Trade Unions);
- (iv) C.U.S.A. (Council of Unions of South Africa);
- (v) A.Z.A.C.T.U. (Azanian Confederation of Trade Union);
- (vi) B.A.W.U. (Black Allied Workers Union);
- (vii) U.W.U.S.A. (United Workers Union of South Africa). <sup>42)</sup>

The vast majority of trade unions are affiliated to one of the above federations of trade unions. A trade union need not necessarily seek

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41. Official Trade Union Directory, op. cit., p. 163 - 177.

42. The abbreviated form such as TUCSA, COSATU and UWUSA will be used in referring to these unions hereafter.



affiliation and many trade unions are unaffiliated. According to the 1986 annual report of the Department of Manpower 1 698 157 employees were members of registered trade unions and an estimated 368 894 employees belong to unregistered unions. This indicates that 34,6% of the economic active population are members of trade unions. It is further reported that an appreciable increase of membership of trade unions particularly amongst Black workers was evident. The number of trade unions that opened membership to all race groups, also increased. During 1986 T.U.C.S.A. one of the leading trade union federations disbanded.<sup>43)</sup> If one compares the 34,6% percentage of the economically active population that are now unionised with the 11% of 1977 it is clear that the growth of trade unions have been dramatic and is almost unequalled in the Free World this century.<sup>44)</sup> With this clear tendency it can be expected that union activities to which local authorities are exposed will also increase.

The registered trade unions for the municipal sector with an indication of their affiliation are reflected in Annexure "B". Apart from the registered unions many unregistered trade unions are also active in the local government field. According to a questionnaire<sup>45)</sup> sent to all local authorities trade unions listed in Annexure "C" are active

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43. Beeld, 23 June, 1987.

44. Levy, A. : "The realities concerning labour relations with special reference to local government", Paper presented to the Institute of Municipal Personnel Practitioners of Southern Africa, Cape Town, 23 April 1987.

45. Infra., p 141.



in local government in Natal. From this list it will be noted that a variety of trade unions, some of whom are not registered trade unions, are active in local government in Natal and further that many unions not true to local government but operative in completely removed industries have also involved themselves with local government.

Certain of these trade unions have entered the political arena such as COSATU promoting sanctions against South Africa and with their own political aspirations.<sup>46)</sup> In newspapers, reports of violence and intimidation where trade unions are involved, have become daily news. In historical terms current Black worker militancy dwarfs both in scale and intensity South Africa's two major periods of industrial unrest - the 1922 Rand Revolt and the 1946 strikes.<sup>47)</sup> Many trade unions seem to be more concerned with political aspirations than with the interests of the worker. Intimidation and strikes and increasing labour unrest are regular occurrences. In 1986 1,3 million man-days were lost as a result of labour unrest and in the six months of 1987 already 88,5% of the 1,3 million man-days have been lost with Black trade unions mainly involved.<sup>48)</sup> The fact that Blacks do not have the forums to express their political aspirations is a contributing factor to trade unions being used to further political aims. "Politieke bewussyn kan nie afgedruk word nie. Al sou vakbonde wou kan hulle

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46. Rapport, 23 November, 1986.

47. The Natal Mercury, 27 May, 1987.

48. Finansies en Tegniek, 14 August, 1987.



nie uit die politieke arena bly nie. Die gemeenskapstaak word op nywerheidsbetrekkinge afgedwing omdat vakbonde vanweë hulle georganiseerdheid en ekonomiese mag invloed het. Dit is Swartmense se enigste politieke uitlaatklep." <sup>49)</sup> According to Prof. Nic Wiehahn it can also be expected that this tendency will increase. "ANC <sup>50)</sup> leiers het gesê hulle gaan hulle vanjaar op vakbonde toespits omdat hulle dit as die belangrikste korttermyn instrument vir die skepping van 'n revolusionêre klimaat beskou. Die temperatuur sal vanjaar dus aansienlik styg. Hoewel 'n mens dit nie kan voorkom nie en ander politieke strukture moet skep, is dit die Regering se plig om teen onregmatige politieke vakbondoptrede op te tree. Dit kan gedoen word deur byvoorbeeld die definisie van 'n onbillike arbeidspraktyk so aan te pas dat die skade wat werkgewers weens die politieke bedrywighede van vakbondely, van vakbonde verhaal kan word." <sup>51)</sup>

In the early thirties Black trade unionism dwindled because of the political aspirations and involvement of their leaders. The Black trade unions that are using their members and organisations to further their political aims should be careful not to take matters too far. It has already become evident that in many cases intimidation of workers takes place. In the long run the workers pay the price and loose their work. Cases in point are the strikes at General Motors, Port Elizabeth in 1986, <sup>52)</sup> Secunda, the South African Transport Services and Postal

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49. Loc. cit.

50. ANC is the abbreviation for African National Congress a banned marxist organisation in South Africa.

51. Finansies en Tegniek, 14 August, 1987.

52. Rapport, 23 November, 1986.



Services strike in July and August 1987. It was reported that the Postal Services terminated the services of 14 000 workers.<sup>53)</sup> In August 1987 the National Union of Mineworkers also organised a massive strike involving 340 000 workers in which the services of 8 000 workers was ultimately terminated.<sup>54)</sup> Violence and intimidation can cause considerable damage to the South African labour system which is working well.

If trade unions use the mechanisms provided by the Labour Relations Act, 1956 and negotiate with the employer or employers organisation, the interests of the worker will be better served. The trade unions' leaders are not able to control their members or withhold them from violence and intimidation which will destroy not only the system but militates against the interests of the worker.

In the same way that employees organise themselves into a union to be able to bargain collectively, the employer is able to organise in employers organisations.

#### 4. EMPLOYERS ORGANISATIONS

The whole system of collective bargaining depends on the voluntary association of employees and employers into organisations that are

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53. Newsbulletin, South African Broadcasting Corporation, August 1987.

54. The Natal Mercury, 17 August, 1987 and 24 August, 1987.



able to represent the interests of their members. As trade unions have access to the machinery of the Labour Relations Act, 1956 so registered employers organisations represent their members in industrial councils, conciliation boards and various other bodies created by legislation for collective bargaining. In the same way that an industrial worker can join a trade union to have it act as its spokesman and negotiate, protect and represent its' interests, so an individual employer can join an employers organisation.<sup>55)</sup> Employers also form their organisations on the basis of common interests mainly aligned to a particular trade such as the steel industry, the textile or confectionary trade.

The constitution of a registered employers organisation has to comply with requirements stipulated by legislation. An employers organisation by registration becomes a legal entity or body corporate in terms of the Labour Relations Act, 1956 capable of suing and being sued and of owning fixed property. To gain registration an employers organisation is required to submit proof that it is sufficiently representative. What is required of registered trade unions also apply to registered employers organisations.

In the local government industry the following employer organisations were registered in 1986 :-<sup>56)</sup>

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55. Jones, op. cit., p. 57.

56. Official Trade Union Directory, op. cit., p. 206.



Cape Province Local Authorities Employers Association,  
with 180 members and 15 000 employees;

Municipal Employers Organisation, with 135 members  
and 61 000 employees;

Ontwikkelingsrade Werkgewersvereniging; and

Vrystaatse Goudveld-streek Munisipale Werkgewersorga-  
nisasie, with 6 members and 3 012 employees.

## 5. SUMMARY

The labour legislation in South Africa has developed along with the historical and cultural background of the country. The concept of trade unions was first introduced by immigrants who were accustomed to organise in groups according to crafts and skills. In the South African context, skills were initially with the Whites and the protection of their skills acquired a racial connotation. Blacks were consequently not party to the collective bargaining machinery provided by legislation. Even with their inclusion, separate legislation catered for the Black worker, establishing a dualism in labour legislation unique to South Africa.

In considering the development of labour legislation, the dualism providing one set of rules for collective bargaining for the White, Coloured and Asian and a different set of rules for Blacks, was abolished on



the recommendation of the Wiehahn Commission which was a watershed in labour relations in South Africa. The amended Labour Relations Act, 1956 (Act 28 of 1956) that resulted still forms the basic legislation providing the framework for collective bargaining. A different kind of dualism has developed viz. collective bargaining by registered trade unions and employers organisations within the framework of the Labour Relations Act, 1956 and collective bargaining mainly by unregistered trade unions outside the provisions of the Act. Differences exist in legislation governing labour relations within the Republic of South Africa and the homelands due to different laws that apply.

In collective bargaining the two main parties are the employer and employee. Both the employee and the employer organise into associations to bargain collectively on their behalf. The development of trade unions and the essence of a trade union was discussed from which it is clear that trade unions negotiate for conditions of service and settle disputes on a collective rather than an individual basis. Recent trends in trade unionism indicate a considerable growth in the membership and in the numbers of particularly Black trade unions. Trade unions are also becoming increasingly active in the political sphere and unfortunately the workers are paying the price for the political aspirations of their leaders.

Employer organisations are the employers who just like the employees seek the interests of employers engaged in similar trades on a collective basis. Both the employer, through employer organisations,



and the employee, through trade unions, have access to the mechanisms provided by the Labour Relations Act, 1956 for collective bargaining and to settle disputes.

Labour legislation in South Africa has been adapted to meet changing needs and presently the discrimination between Blacks and Whites have been removed. This has been a watershed in labour legislation. The inclusion of trade unions for Blacks in the collective bargaining processes is a positive step. The present differences between registered and unregistered trade unions operating inside and outside the legislative framework respectively does present difficulties and complicates collective bargaining. This dualism is referred to as statutory and non-statutory collective bargaining.



## CHAPTER 4

### STATUTORY COLLECTIVE BARGAINING IN SOUTH AFRICA

#### 1. INTRODUCTION

Collective bargaining within the framework provided by the Labour Relations Act, 1956 (Act 28 of 1956) is referred to as statutory collective bargaining. In this chapter the mechanisms provided by the Labour Relations Act, 1956 for collective bargaining and to resolve disputes, are examined. The mechanisms provided by the Act are works councils for better communication at the enterprise level between employer and employee. Provision is further made for industrial councils, conciliation boards, mediation, arbitration and the Industrial Court for the settlement of disputes in labour relations.

Apart from the mechanisms provided to settle disputes, certain terms and functions of the Industrial Courts are of importance such as status quo orders and unfair labour practices. An understanding of these terms is essential to anyone involved in labour relations and these concepts are clarified.

Strikes are occurring with increased frequency. The necessity for provision to be made for strikes in the collective bargaining process is explained. The consequences of strikes are far-reaching and strikes have become daily occurrences and have dominated the news during 1987.



Strikes are, therefore, discussed at some length particularly in view of the involvement of local authorities with essential services.

The chapter concludes with a reference to proposed new legislation to provide for labour courts.

## 2. MECHANISMS FOR COLLECTIVE BARGAINING

The Labour Relations Act, 1956 provides specific procedures that have to be followed in the event of a dispute between an employee and employer in their working relationship. If the prescribed channels for settling disputes are not followed, any action by the trade union or employer in the form of a strike or lock-out is illegal and a criminal offence. <sup>1)</sup> The mechanisms provided are industrial councils, conciliation boards, mediation, arbitration and the Industrial Court. <sup>2)</sup>

Disputes that affect legal rights such as an employer who refuses to pay a wage which has been agreed upon by the industrial council and duly promulgated, should be referred to a court of law. The employee in such a case already possesses such a right. A dispute can, however, also arise because differences exist affecting the interests of staff. It is a case that the rightful wage or an acceptable condition of service has still to be determined. These types of disputes (a dispute of interest) are dealt with by the dispute settling mechanisms of the Labour Relations Act, 1956.

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1. Jones, R.A. : Collective bargaining in South Africa, second edition, (Johannesburg : MacMillan South Africa (Publishers) (Pty) Ltd., 1984), p.69.

2. *Supra*... n. 40.



Before dealing with these mechanisms individually, the works council should be considered as it fulfills a useful function at enterprise level to improve communication between employer and employee.

## 2.1. Works Councils

Blacks were excluded from the provisions of the labour legislation that provided the framework for collective bargaining before 1979. An alternate system of bargaining was created for the Black worker by the Bantu Labour (Settlement of Disputes) Act, 1953 (Act 48 of 1953) which Act was later amended and known as the Black Labour Relations Amendment Act, 1973 (Act 70 of 1973).<sup>3)</sup> This system was the liaison committee system which was a consultative committee. The committee functioned at plant level and consisted of an equal number of representatives of management and Black workers. These committees were initiated and controlled by management and trade unions were not involved. Many local authorities appointed liaison committees and negotiated with the representatives of workers on such committees.<sup>4)</sup>

With the amendment of the Industrial Relations Act, 1956 in 1979 Black membership of registered trade unions became possible. Consequently the liaison committee system was no longer necessary as Blacks could now also participate in industrial councils. The new Act, however,

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3. Ibid., p. 61 - 63.

4. Loc. cit.



provides for negotiations at the work place level in the form of works councils. <sup>5)</sup> These works councils are multi-racial and can be used for the settlement of grievances at the work place level and for negotiating wages and working conditions. The works council is an in-house arrangement and not responsible to a trade union. Trade unions, therefore, are restricted to negotiating at industrial council level. <sup>6)</sup> Most of the old liaison committees established in terms of the now repealed Black Labour Relations Regulations Act, 1973, have continued to exist as works councils and serve a useful purpose in promoting communication and discussion between the employers and employees. <sup>7)</sup>

A works council can be formed with some or all of the employees. It is, therefore, possible for an employer to establish a works council for Blacks only, or to have separate works councils for different races or to have multi-racial works councils.

## 2.2. Industrial Councils

An industrial council is a forum within which registered trade unions and employers meet and bargain collectively regarding conditions of

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5. Republic of South Africa : Labour Relations Act, 1956 (Act 28 of 1956), section 34 A.

6. Jones, op. cit., p. 63.

7. Republic of South Africa : Report of the National Manpower Commission for the period 1 January 1983 to 31 December 1983, (Pretoria : Government Printer RP 41/1984), p. 176.



employment and wages.<sup>8)</sup> Industrial councils have been established for specific industries such as clothing, mining, metal workers, local government. Bargaining has, therefore, been with the employers representatives industry wide and the trade unions within a specific region. An industrial council is established voluntarily by the unions and employer organisations active in a specific industry, occupation or trade. Such an industrial council has jurisdiction of a specified industry for the whole country or a specified region or geographic area. An industrial council will not be approved if there is already an industrial council in existence for such industry in the same geographic region.<sup>9)</sup> If an industrial council for a specific industry in a particular region reaches agreement on minimum wages for instance, all similar industries in such region are subject to the agreement even if they have not been party to the agreement.<sup>10)</sup>

An industrial council is set up voluntarily by the parties concerned and provided the requirements of the Labour Relations Act, 1956 are met, will be registered. The parties to an industrial council are half members appointed by registered trade unions and half by employer

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8. Official Trade Union Directory 1986 - 1987 : Published by the Trade Union Council of South Africa, Johannesburg, p.29.

9. Jones, op. cit., p. 58.

10. Loc. cit.



organisations. The representatives of the trade unions negotiate as a unified front for all the workers and similarly the employers negotiate in the interest of the different employers they represent. Only registered trade unions have access to industrial councils.<sup>11)</sup>

The primary function of an industrial council is to maintain industrial peace. By negotiating agreements disputes are prevented within its' area of jurisdiction.<sup>12)</sup> The prevention role is exercised mainly through the establishment of labour agreements and the regulation of its application. If the parties to the industrial council fail to negotiate the settlement of any matter they might declare a dispute and resort to mediation, arbitration or the Industrial Court as a means to settle the dispute.<sup>13)</sup>

Industrial councils normally negotiate minimum requirements so that the individual employers have the ability to negotiate with the trade unions at undertaking or enterprise level on conditions to suit their particular circumstances. An agreement reached by an industrial council is submitted to the Minister of Manpower<sup>14)</sup> who publishes such agreement in the Government Gazette. Such agreement is then binding on all parties. Any contravention of such an agreement is a criminal offence. Such an agreement amounts to a form of domestic legislation.

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11. Official Trade Union Directory, op. cit., p. 29.

12. Republic of South Africa : National Manpower Commission, "Dispute settlement, levels of collective bargaining and related matters", (Pretoria : Government Printer RP 115/1986), p. 59.

13. Loc. cit.

14. Minister of Manpower is used in this treatise to denote the Minister of Manpower and of Public Works and Land Affairs.



All employers and employees in the particular industry and geographic area covered by such an agreement, are included and have to observe the provisions of the agreement whether they are represented in the council or not. The agreement is binding on non-parties only if the council is sufficiently representative of the employers and employees of a particular industry in the area.

An industrial council is obliged to consider any dispute that occurs within its area of jurisdiction whether the parties to the dispute are parties to the industrial council or not. Where there is no industrial council a labour dispute can be referred to a conciliation board.

### 2.3. Conciliation Boards

A conciliation board is an ad hoc body consisting of an equal number of employer and employee representatives. Such a conciliation board is constituted by the Minister of Manpower where no industrial council exists to resolve a particular dispute. The Minister has a discretion whether he is prepared to set up a conciliation board. In the case of an unfair labour practice, however, he has to approve the establishment of a conciliation board where no industrial council exists. <sup>15)</sup> Similarly if the request for a conciliation board comes from a local authority that renders essential services, then the

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15. Republic of South Africa : Labour Relations Act, 1956 (Act 28 of 1956), section 35 - 42.



Minister has no discretion and is obliged to establish a conciliation board. In cases where one of the parties is an unregistered trade union or unregistered employers organisation who do not have access to industrial councils, a conciliation board can be set up. A conciliation board is in fact a temporary body performing the same functions as an industrial council. <sup>16)</sup> It is an ad hoc body set up for the specific purpose of resolving the dispute in question and it ceases to exist when the dispute is settled or alternative action is sought.

Any one party to a dispute can apply to the Minister to set up a conciliation board. Application can be made by one or more employees or one or more trade unions (registered or unregistered). In the case of an unregistered trade union or unregistered employers organisation, prescribed conditions have to be met such as submitting a copy of the constitution, names of office bearers and officials and provided they keep proper books and accounts and a register of members.

The Minister has to satisfy himself that a dispute exists and that it is not a matter of law. If it is a question of law the matter should be dealt with by a court of law. The applicant is required to be sufficiently representative of the workers or employers affected. Furthermore, there should be no industrial council having jurisdiction,

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16. Jones, op. cit., p. 70.



no legal agreement binding on the parties. If the Minister is of the opinion that it would be in the public interest he may set up a conciliation board on his own initiative. <sup>17)</sup> A conciliation board consists of so many members as the Minister determines, half are appointed by employer and half by employee parties. The representatives, at least half on both sides, are to be connected with the industry concerned with the dispute.

If the board settles the dispute it submits a report to the Minister. To make such an agreement reached legally binding, it has to be published in the Government Gazette. On the finalisation of the agreement, the board is disbanded. If it is unable to settle the dispute, it reports to the Minister who discharges the board. <sup>18)</sup>

Failure by a conciliation board to settle a dispute can open the door to a legal strike after prescribed procedures have been followed. The parties to the dispute may, however, choose to refer the dispute to mediation or arbitration. If the conciliation board fails to resolve a dispute concerning an unfair labour practice within 30 days, the matter has to be referred to the Industrial Court. <sup>19)</sup>

Conciliation boards are often used by trade unions to compel employers to negotiate. It creates the realisation that if the parties do not

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17. Ibid., p. 71.

18. Jones, op. cit., p. 71 - 72.

19. Official Trade Union Directory, op. cit., p. 30.



deal with the dispute someone else will. Furthermore, both parties know that if the matter is not resolved a legal strike or court hearing can follow.

#### 2.4. Mediation

Where an industrial council or conciliation board cannot resolve a dispute, provision is made in the Labour Relations Act, 1956, to involve a mediator to assist in resolving the dispute. The industrial council or conciliation board can apply to the Minister for the appointment of a mediator. The Minister may also appoint a mediator on his own initiative if he is of the opinion that it will help in the settlement of a dispute. In appointing a mediator the Minister should appoint someone who is acceptable to all the parties concerned.<sup>20)</sup>

"Mediation involves the intervention of a third party in a dispute who by his good offices, credibility, trustworthiness, to both parties, or simply because of his skill in negotiating, generates movement between the disputants in an attempt to close the gap or break the deadlock in negotiations."<sup>21)</sup> The mediator introduces new ideas, uses persuasion and with a lot of coercion brings the parties to a settlement.

Mediation promotes collective bargaining and relationships as the matter remains with the parties to resolve, unlike in arbitration,

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20. National Manpower Commission, "Dispute ...", op. cit., p. 56.

21. Editorial : Industrial Relations Data, vol. 5, no. 5, Dec., 1985.



where they have to accept the decision of a third party. A mediator only has persuasive powers, but has no authority to decide or expect compliance to a particular point of view.<sup>22)</sup> He only acts as chairman and has no vote.

Outside the Act a number of industrial councils have established mediation facilities which are reported to be successful. Mediation procedures are also contained in many recognition agreements between trade unions and employers, outside the statutory system. A private mediation service has been established in South Africa which is known as the Independent Mediation Service of South Africa (Imsa).<sup>23)</sup>

If mediation does not resolve the dispute the matter is submitted to arbitration.

## 2.5. Arbitration

The parties to an industrial council or a conciliation board may voluntarily decide to refer a dispute to arbitration. This is voluntary arbitration. If, however, a deadlock is reached at an industrial council or conciliation board the parties can legally strike or proceed with a lock-out. Those engaged in essential services may, however, not strike, but are obliged to proceed with arbitration proceedings (compulsory arbitration.)<sup>24)</sup> In the case of local authorities or any employer

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22. Loc. cit.

23. Financial Mail : 16 September, 1983.

24. Swanepoel, J.P.A. : Introduction to Labour Law, (Johannesburg) McCraw-Hill Book Co., 1984), p. 66.



responsible for the provision of essential services such as lights, power, water, sanitation, passenger transportation and fire service, it is obligatory that disputes be submitted to an industrial council or conciliation board and if not resolved, to arbitration.

In the case of parties that negotiate outside the provisions of the Labour Relations Act, 1956 arbitration can also be used if the parties jointly so decide. In such event the arbitrator is appointed in terms of the Arbitration Act, 1965 (Act 42 of 1965).

Arbitration can be arranged with either a single arbitrator, or an even number of arbitrators plus an umpire, or the Industrial Court can be used to arbitrate. The parties requesting arbitration indicate which of the three alternatives is to be followed. If the parties cannot agree on an arbitrator the Industrial Court is appointed as arbitrator. <sup>25)</sup>

Whenever a dispute concerns the remuneration of a head of department of a local authority or the town clerk, the arbitration has to be conducted by the Industrial Court. <sup>26)</sup> The decision of the arbitrator is binding on the parties concerned. Arbitration provides a quick way of resolving a dispute and has the advantage that neither party loses face as they have to accept the award made by the arbitrator.

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25. Republic of South Africa : Labour Relations Act, 1956 (Act 28 of 1956), sections 45 - 47.

26. Swanepoel, op. cit., p. 67.



## 2.6. Industrial Courts

The Wiehahn Commission found that the procedures in the civil courts in South Africa were too costly and cumbersome for resolving labour disputes. It, therefore, recommended an industrial court with less formal procedures to which access was easy and not expensive. The Industrial Court was established on the 21st June 1979 and replaced the former industrial tribunal.<sup>27)</sup> The court consists of a President and Deputy President and such number of members determined and appointed by the Minister. The functions of the Court are :

- (i) to decide in issues of conflicts of interests or rights (labour disputes);
- (ii) to determine whether a labour practice in a specific instance is fair or not;
- (iii) to enquire into and report back on any matters referred to it by the Minister of Manpower regarding the objects of the Labour Relations Act, 1956; and
- (iv) generally to deal with all other matters entrusted to it by labour legislation.<sup>28)</sup>

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27. Brassey, M.S.M. : "The new industrial court", : Industrial Law Journal, vol. 1, Part 2, 1980, p.79.

28. Official Trade Union Directory, op. cit., p. 34.



The latter includes arbitration, industrial demarcations, status quo orders, appeals from registered trade unions denied admission to industrial councils and all the functions a court of law may perform in regard to a dispute arising out of the process of laws administered by the Department of Manpower, but this does not include the adjudication of alleged offences. It has been ruled that disputes arising from agreements do not fall within the jurisdiction of the court, only disputes arising from the application of acts administered by the Department of Manpower.<sup>29)</sup> The Court was not given the jurisdiction to decide labour disputes of a legal nature which the general courts would ordinarily decide. It also does not have the status of a superior court. The Court has been described as a quasi-judicial tribunal. One of its' important functions is to adjudicate in cases of alleged unfair labour practice where the dispute has been referred to the applicable industrial council or conciliation board unless both parties agree to bypass this first step. Like an arbitration award or unfair labour practice determination, a decision has the force of law and a breach of it constitutes a criminal offence.<sup>30)</sup> Another important function is to make status quo orders.

#### 2.6.1 Status Quo Orders

The Industrial Court is empowered to grant a status quo order in terms

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29. Jones, op. cit., p. 83.

30. Brassey, M., Cameron, E., Cheadle, H. and Oliver, M. : The new labour law, (Cape Town : Juta and Co., Ltd. 1987), p. 11.



of section 43 of the Labour Relations Act, 1956. When a dispute arises over a change or a proposed change in the status of an employee such as the termination or suspension of his services or when there is a dispute over an alleged unfair labour practice, a status quo order can be asked from the Industrial Court. The intention with a status quo order is to retain the position prior to the change until the statutory procedures have been exhausted. <sup>31)</sup> If such an order is granted the other party is compelled to restore the position that existed before the dispute. Such an order is valid for a maximum period of 90 days to allow an opportunity for agreement or an award to be made in terms of conciliatory machinery.

#### 2.6.2. Unfair Labour Practice

The implications of what constitutes unfair labour practice and the various cases decided by the Industrial Court is a study of its own outside the scope of this dissertation. Suffice to realise the influence this concept has on collective bargaining and the role that the Industrial Court plays in resolving disputes of this nature.

Unfair labour practice is defined as :

- "(a) any labour practice or any change in any labour practice, other than a strike or lock-out which has or may have the effect that :

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31. Pretorius, P. : "Status quo relief and the Industrial Court : The sacred cow tethered", Industrial Law Journal, vol. 4, Part 3, 1983.



- any employee or class of employee is or may be unfairly effected, or that his (or their employment opportunities, work security or physical, economic, moral or social welfare is or may be prejudiced or jeopardised thereby;
  - the business of any employer or class of employers is or may be unfairly affected or disrupted thereby;
  - labour unrest is or may be created or promoted thereby;
  - the relationship between employer and employee is or may be detrimentally effected thereby; or
- (b) any other labour practice or any other change in any labour practice which has or may have an effect which is similar or related to any effect mentioned in paragraph (a)." 32)



It is an extremely wide definition and is open to interpretation for every party who wishes to use it. The Industrial Court has a difficult task and not only considers the legal aspects but all surrounding circumstances. The Wiehahn Commission anticipated that the Court would build up case law that could serve as a general guideline, but the Court has stressed that this is not its function and that the decisions are ad hoc.<sup>33)</sup>

In the case of an alleged unfair labour practice, it cannot be referred directly to the Industrial Court. Such a dispute has to be referred firstly to an industrial council or conciliation board and failing settlement, it is taken to the Industrial Court.<sup>34)</sup>

The various mechanisms provided by the Labour Relations Act, 1956, have been discussed from which it is clear that different courses can be followed to resolve disputes. Annexure "D" contains a diagram illustrating the course to be followed in different circumstances to resolve a dispute within the provisions of the Labour Relations Act, 1956.<sup>35)</sup> If the correct procedures are followed strikes can be legally called. In practice, however, illegal strikes frequently occur. The strike and its counterpart namely lock-outs, are tools in the collective bargaining process and warrant consideration.

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33. Brassey, et. al., op. cit., p. 14.

34. Jones, op. cit., p. 84.

35. Suchard, H. : "South African unique collective bargaining system", Africa Insight, vol. 13, no. 3, 1983.



3. STRIKES AND LOCK-OUTS

The strike is recognised as part of the bargaining process which is put into effect when all the other approaches fail to give the desired results. This holds true where the issue at stake is related to the relationship between employer and employee and the work itself.

The definition of a strike in the Labour Relations Act, 1956<sup>36)</sup> covers not only the conventional stoppage of work, for any time period, in order to enforce demands, but also other forms of organised industrial action such as an overtime ban, go-slow, work to rule, withdrawal of co-operation and sit-in. There are three elements present: action, purpose and agreement. These three elements have to be present simultaneously to meet the definition of strike in terms of the Act.<sup>37)</sup>

The lock-out is the employers equivalent of the strike, whereby the employer in an attempt to force his demands on workers "locks" them out. He locks them out by using any measure that prevents them from carrying on their work and denies them a livelihood.<sup>38)</sup>

Strikes and lock-outs are considered legal if the procedures for resolving disputes provided by the Labour Relations Act, 1956 have been

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36. Republic of South Africa : Labour Relations Act, 1956, (Act 28 of 1956), section 1(1) (xli).

37. Jones, op.cit., p. 77.

38. Ibid., p. 78.



followed and the dispute has not been resolved. Strikes and lock-outs are illegal under any one of the following circumstances : <sup>39)</sup>

- (i) during the period of any agreement, award or determination that is binding in terms of the Labour Relations Act, 1956 on the employers or employees concerned and deals with the matter giving occasion to the strike or lock-out;
- (ii) during the first year of operation of a wage determination in terms of the Wage Act, 1957 (Act 5 of 1957) which is binding on employers and employees concerned dealing with the matter in issue;
- (iii) in any essential service which includes local authorities or any employer responsible for the provision of lights, power, water, sanitation, passenger transportation and fire service.

If a dispute arises outside any of the foregoing situations, it has to be submitted to an industrial council where one exists. The council has 30 days to settle the dispute. If this does not happen a strike or lock-out would be legal. If the dispute is resolved and the settlement promulgated by the Minister of Manpower, it is binding on the parties. Where no industrial council exists, application has to

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39. Loc. cit.



be made for a conciliation board. If the Minister refuses the application or the conciliation board takes longer than 30 days to resolve after being established, the parties can strike or lock-out legally. It is also compulsory to provide in any industrial council agreement that before a strike is called a secret ballot is to be held amongst the members of the trade union or employers organisation and that a majority support of 75% of the members be obtained.<sup>40)</sup> It is important to note that whether strikes are legal or not relates only to the relationship between employer and employee. Sympathy strikes or political inspired strikes are illegal and cannot be taken care of within the dispute settling machinery of the Labour Relations Act, 1956.<sup>41)</sup>

Apart from the Labour Relations Act, 1956 other legislation determines that the following may not take strike action : teachers, staff of provincial authorities, local authorities, doctors, dentists, pharmacists and psychologists employed by the State, nurses and hospital staff.<sup>42)</sup>

If a strike is legal the Labour Relations Act, 1956<sup>43)</sup> protects registered trade unions from civil claims. The legality or not of a strike

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40. National Manpower Commission, "Dispute ...", op. cit., p. 70.

41. Jones, op. cit., p. 81.

42. Loc. cit.

43. Labour Relations Act, 1956, op. cit., section 79.



in terms of the Act does not alter the common law position of the striker. Under the common law if the striker breaches his contract the employer may dismiss him. Too much reliance should not be placed on this right of the employer as it has been materially affected by the introduction of the principle of unfair dismissal which in turn is part of the concept of unfair labour practice.

Virtually all strikes in the Republic of South Africa in the past five years have been illegal, though few have been prosecuted for such action.<sup>44)</sup> The fact that strikes are illegal has, therefore, not been much of a deterrent. The Industrial Court has, however, provided some protection for workers that have gone on strike legally and this has served to give some credibility to the "legal" strike.<sup>45)</sup> Therefore, the value of ensuring that a strike is legal, is the fact that workers are protected against dismissal.<sup>46)</sup>

Strikes are part of industrial action and an element of the process of negotiation. The right to strike places significant pressure on management and the unions to resolve their differences and make concessions as strikes can bring heavy losses to both sides. In the strike of the National Union of Mineworkers (NUM) during August 1987

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44. National Manpower Commission, "Dispute ...", op. cit., p. 70.

45. Loc. cit.

46. Brassey et.al., op. cit., p. 254.



workers lost more than R5 million a day in wages, 40 000 men lost their jobs, 9 died, 500 were injured and 400 detained while the mining industry lost R250 million. <sup>47)</sup> "Effective pressure on both parties to negotiate is the best known mechanism for resolving bargaining impasses with reasonable solutions for all concerned." <sup>48)</sup> Effective alternatives for the right to strike have not yet been developed but it should only be used as a last resort if all other attempts at arriving at an acceptable negotiated solution has failed. There is, therefore, reason to protect the rights of workers who strike legally as strikes are fundamental to collective bargaining and it also encourages trade unions to comply with the procedures of the legislation. <sup>49)</sup>

According to the Minister of Manpower the legislation is regarded as effective to handle strikes, in that negotiations are left to the employers and employees with no interference by the State - the latter only provides the machinery for settling disputes. <sup>50)</sup> The legislation is, however, constantly under review and proposals contained in draft legislation published in December 1986 envisage a new Labour Court. <sup>51)</sup>

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47. The Star, 1 September, 1987.

48. Brookshire, M.L. and Rogers, M.D. : Collective bargaining in public employment, (Toronto : Lexington Books, 1977), p. 14.

49. Brassey, et. al., op. cit., p. 261.

50. The Star, 1 September, 1987.

51. Beeld, 19 and 22 December, 1986.



4. PROPOSED LABOUR COURT

In draft legislation a special Labour Court that will resolve labour disputes in addition to the Industrial Court is proposed.<sup>52)</sup> The proposed court will form a sub-division of the Supreme Court and will have jurisdiction in all the provinces of the Republic of South Africa. A full bench of the court will consist of three judges and the president will be a judge of the Supreme Court. It will be used to hear appeals from decisions of the Industrial Court or to review decisions of the Industrial Court.<sup>53)</sup> At present appeals from the Industrial court have to be heard by the Appellate Division of the Supreme Court of South Africa.

These proposals have not yet been finalised but indicates developments that can be expected in the labour legislation.

5. SUMMARY

Statutory collective bargaining takes place within the framework of legislation provided by the State and is mainly contained in the Labour Relations Act, 1956 (Act 28 of 1956). To improve communication at the work place provision exists for works councils consisting of representatives of the workers and of the employer. Dispute settling

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52. Beeld, 19 December, 1986.

53. Beeld, 22 December, 1986.



machinery is provided by industrial councils, conciliation boards, mediation, arbitration and the Industrial Court. Industrial councils are forums set up voluntarily by registered trade unions and employers to bargain collectively and are established for specific industries. By the negotiation of agreements between representatives of employers and employees disputes are prevented. In the event of a dispute they resort to mediation, arbitration or the Industrial Court.

Where there is no industrial council a conciliation board is established on an ad hoc basis for a specific dispute. Conciliation boards serve the same purpose as industrial councils but cease to exist once the dispute has been resolved or an alternative action is sought. Conciliation boards are also set up where an unregistered trade union or employers organisation is concerned who do not have access to an industrial council. If the dispute is settled both in the case of the industrial council or conciliation board, the settlement to become legally binding, is submitted to the Minister of Manpower and published in the Government Gazette.

Failure to settle a dispute at the industrial council or at a conciliation board opens the door for a legal strike. The parties may, however, choose to proceed to mediation or arbitration. With mediation the matter still remains with the parties to resolve with the mediator coaching or leading the parties to a settlement. If the mediation does not succeed it can still proceed to arbitration. Disputing parties can elect not to mediate but to proceed directly to arbitration.



A distinction is made between voluntary arbitration where the parties agree and compulsory arbitration in the case of essential services where the parties are obligated to proceed with arbitration.

The Industrial Court can also be used for arbitration. Apart from determining labour disputes, the court also adjudicates unfair labour practice and deals with the various duties entrusted to it in terms of the Labour Relations Act, 1956 such as status quo orders.

Labour legislation in South Africa functions effectively and permits the employer and employee to resolve their disputes without State intervention. The State merely provides the framework by way of the Labour Relations Act, 1956 within which collective bargaining mechanisms are provided. The mechanisms provided by legislation has contributed to the improvement of labour relations as it is possible to negotiate agreements to prevent disputes. Differences can be settled in an objective manner in the forums created by law. Statutory collective bargaining therefore contributes towards labour peace and stability.

Collective bargaining does, however, also take place outside the framework of the legislation and the various forums established to resolve disputes. This is referred to as non-statutory collective bargaining.



CHAPTER 5

NON-STATUTORY BARGAINING

1. INTRODUCTION

Many independent Black trade unions have rejected both the industrial council and work council system and prefer to enter into private agreements with employers, bypassing the industrial councils and without having to operate within the framework provided by legislation. Non-statutory collective bargaining relies mainly on a recognition agreement between a trade union and a particular employer.

All non-statutory collective bargaining is not totally estranged from the statutory system. It is possible that at the central level collective bargaining occurs within industrial councils, whilst at the local level trade unions seek to bargain with individual employers regarding local conditions by entering into recognition agreements. This difference of approach at the central and local level, the one being statutory collective bargaining and the other non-statutory, is discussed.

In the recognition agreement provision is often made for disciplinary procedures and grievance procedures. The nature of these agreements and procedures are considered as it determines the collective bargaining process between employer and employee and the mechanisms for the settling of disputes.



Collective bargaining in the Public Service takes place outside the provisions of the Labour Relations Act, 1956 (Act 28 of 1956). It is not a pure form of collective bargaining and is discussed to gain an understanding of the differences that exist between the public sector and the private enterprise as well as local government.

## 2. NEGOTIATING OUTSIDE THE STATUTORY SYSTEM

Collective bargaining regarding conditions of employment or to resolve disputes does not necessarily have to take place within structures such as industrial councils and conciliation boards provided by the Labour Relations Act, 1956 (Act 28 of 1956). Employers and employees are free to create their own structures and procedures outside the scope of the Labour Relations Act, 1956.

Notwithstanding the continued endeavours for recognition of Black trade unions since the first Black trade union was established in 1921 and the ultimate achievement of recognition in 1979, many Black trade unions do not register and are therefore not recognised.<sup>1)</sup>

The mechanisms provided by legislation for settling disputes is, therefore, not accessible to such unions. As an alternative to collective bargaining within the framework of the Labour Relations Act, 1956 unregistered trade unions use the recognition agreement and negotiate

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1. Pretorius, E. : "Erkenning van Vakverenigings in Suid-Afrika", Industrial Law Journal, vol. 4, Part 4, 1983, p. 237.



on a non-statutory basis. Non-statutory collective bargaining describes the predominant form of collective bargaining outside industrial councils and conciliation boards, in that it takes place in terms of procedures set out in recognition agreements. It should, however, be realised that negotiation also takes place outside the scope of the Labour Relations Act, 1956 and without any formal recognition agreement - all this is termed non-statutory collective bargaining.<sup>2)</sup> Recently collective bargaining outside the statutory bargaining bodies, has increased significantly, primarily because of the rapid growth in the number and size of the "newer" unions.<sup>3)</sup>

The fact that unregistered trade unions have to rely on recognition agreements to establish a relationship with an employer, does not imply that registered trade unions are all within the statutory system. Both registered and unregistered trade unions establish relationships with employers at the factory level (local level) by way of recognition agreements. It is quite feasible that collective bargaining at central level within an industrial council could be with a registered trade union whilst the registered trade unions and unregistered unions could conclude recognition agreements with individual employers at

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2. Republic of South Africa : National Manpower Commission, "Dispute settlement, levels of collective bargaining and related matters", (Pretoria : Government Printer RP. 115/1986), p.13.

3. Ibid, p. 12.



the local level. Collective bargaining outside the statutory system is mainly directed at the local level whilst collective bargaining within the system is directed at industry level.<sup>4)</sup> In practice employers already participating in industrial councils are being approached to enter into recognition agreements with a union to negotiate disciplinary and grievance procedures at the local level as well as terms not covered by the industrial agreements.

Different points of view exist regarding collective bargaining at the central and local level. If collective bargaining is permitted to develop at a central level and also at the local level, it is argued that one of the two will become obsolete. It is also difficult to demarcate exactly what is to be negotiated at central level and what is to be dealt with at the local level, unless it is accepted that whatever is not negotiated at the central level can be negotiated at the local level. By way of an example the minimum wages and conditions of service could be negotiated at the central level and the actual wages and conditions of service to meet the circumstances of a particular employer, could be negotiated at the local level.<sup>5)</sup> It is, however, possible that conflict could arise between the industrial council agreement and a recognition agreement which could complicate

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4. National Manpower Commission, "Dispute ...", op. cit., p. 15.

5. Ibid., p. 19.



matters and impair sound relations.

There are those who believe that the two systems could co-exist. The protagonists of this point of view maintain that recognition agreements could build up sound employer/employee relationships at the factory but the need for industry-wide and national minimum requirements is accepted. Recognition agreements could be additional to industrial council agreements covering matters not covered by the industrial council agreements.<sup>6)</sup> It is, however, implicit that the same matter cannot be negotiated at two levels and whatever is negotiated at the central level should not be dealt with at the local level.

The National Manpower Commission<sup>7)</sup> expressed the view that although it is feared in some circles that bargaining at the local level will replace bargaining at the central level, practical developments indicate that the two levels of bargaining are able to co-exist and complement each other. It was further found that most of the recognition agreements deal mainly with the procedures of liaison between the employer and representatives of the employee, with the basis on which recognition will take place, disciplinary and grievance procedures.

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6. Loc. cit.

7. Republic of South Africa : Report of the National Manpower for the period 1 Jan. 1983 to 31 Dec. 1983, (Pretoria : Government Printer RP 41/1984), p. 175.



It is further shown that more registered trade unions are involved with recognition agreements than unregistered trade unions and that such agreements are concluded regardless whether the employer is subject to an industrial council agreement. Such employers consider the agreements to have a positive effect on relations.<sup>8)</sup>

Many unions choose to operate outside the industrial council framework because they do not have a power base to operate effectively within an industrial council. Their power base is their membership needs at the shop floor.<sup>9)</sup> With so many new Black trade unions this is also to be expected and access to an individual factory is far easier than to an industrial council at industry level.

Non-statutory collective bargaining relies mainly on recognition agreements and such agreements require closer examination.

### 3. RECOGNITION AGREEMENTS

Employees are not obligated to be members of trade unions and no employer is compelled to be a member of an employers organisation. Employers and employees are further not forced to settle a dispute by using the mechanisms provided by the Labour Relations Act, 1956. Collective bargaining also takes place outside the framework of the Act.

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8. Ibid., p. 176.

9. Financial Mail, Manpower/Industrial relations supplement, 14 September, 1983.



The non-statutory collective bargaining is mainly achieved by way of the recognition agreement.

The essence of the recognition agreement is that the employer recognises the trade union as the negotiating agent of the employees in respect of their conditions of employment. <sup>10)</sup> The recognition agreement is a common law contract and the requirements for a legal contract have to be observed. A recognition agreement sets out a framework within which the employer and the trade union may conduct their future relationship regarding matters that affect the relationship of employees with the employer. Recognition involves not only the negotiation of a contract but it establishes a relationship and a commitment from both parties that they will endeavour to make a success of the relationship. <sup>11)</sup>

Recognition agreements normally deal with the following :-

- grievance procedures;
- procedures regarding the recognition, election  
and duties of shop stewards;
- status of the agreement;
- procedures for changing the agreement;
- access of trade union officials to the pre-  
mises of the employer;

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10. Pretorius, op. cit., p. 237.

11. Swanepoel, J.P.A. : Recognition agreements, (1985) 15 Business-  
man's Law, p. 25.



check-off facilities;  
facilities for trade union purposes;  
no-strike obligations ("peace clause");  
disciplinary procedures;  
retrenchment procedures;  
acceptance of principle of freedom of  
association;  
procedures regarding trade union/management  
meetings;  
the scope of collective bargaining;  
procedures for settling disputes; and  
definition of the level at which negotiation  
will take place. <sup>12)</sup>

Normally when a trade union is active at a factory and has procured a number of workers as members an approach is made to the management to recognise the union as the representative of its' members employed at the factory. Management's response could be between two extremes before recognising the union. On the one hand, it could insist on membership of all the employees or on the other hand it may be satisfied with evidence of tentative support. In practice a midline approach of requiring proof of at least fifty per cent membership is followed.

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12. National Manpower Commission, "Dispute ...", op.cit., p. 13.



This is merely a guide and one should be flexible. "If it feels the union is genuine and responsible with a sound administration and efficient leadership with whom management could develop a good working relation, then it should be prepared to give the union the benefit of the doubt."<sup>13)</sup> If management is unnecessarily rigid "it runs the risk of a non-recognition dispute in which the signed members organise industrial action (strike or work stoppage) because of managements refusal to recognise their union." <sup>14)</sup>

The situation can also arise that a particular union is already recognised by the employer and a new union seeks to gain recognition. It is generally considered undesirable to have a large number of unions negotiating on behalf of a small group. More than one union also gives rise to rivalry. The employer would be safe to ask for at least fifty per cent representation before considering recognition. Another possibility would be that different unions represent different classes of employees such as wage staff, salaried staff, professional staff as opposed to clerical staff. <sup>15)</sup> The fragmentation of existing collective bargaining arrangements should be avoided.

According to the Manpower Commission <sup>16)</sup> recognition agreements are

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13. Jones, op. cit., p. 12.

14. Loc. cit.

15. Ibid., p. 13.

16. National Manpower Commission, "Dispute ...", op. cit., p. 14.



- (i) usually concluded at the local (factory) level;
- (ii) it is normally the newer unions representing Black workers that approach employers to enter such agreements;
- (iii) the agreements usually cover the interests of workers in the unskilled and semi-skilled categories;
- (iv) arrangements and procedures are directed at specific conditions at the factory level.

The obligations that arise from a recognition agreement between an employer and employee at common law is enforceable like any other contract in civil proceedings. If in such a contract a trade union agrees not to strike unless prescribed procedures are followed and strikes without doing so, a court order can be obtained not to continue with the strike. The employer would also be able to sue for damages resulting from the strike.<sup>17)</sup> Such a contract at common law, however, presents a problem to the unregistered union seeking to enforce it as such a union does not have corporate personality and is not recog-

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17. Pretorius, op. cit., p. 244.



nised as a legal person. The ordinary courts of law do not recognise its' right to be heard before them. <sup>18)</sup> The Industrial Relations Act, 1956 limits the enforceability of agreements concluded with unregistered trade unions that do not comply with certain prescribed minimum requirements stipulated in the Act. Any agreement with an unregistered union that does not comply with these minimum requirements is not enforceable in either the Industrial Court or the ordinary courts of law. <sup>19)</sup>

With due regard to the situation of the unregistered trade union, it can be said that in general, if a recognition agreement has been breached, the following remedies exist :

- (i) the aggrieved party can take civil action by recourse to a court of law in that a legal binding contract has been breached;
- (ii) the aggrieved party can allege that the breach of the agreement constitutes an unfair labour practice in which event the normal dispute settling machinery would be used and ultimately the Industrial Court.

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18. Swanepoel, op. cit., p. 25.

19. Republic of South Africa : Industrial Relations Act, 1956 (Act 28 of 1956), section 31A.



Recognition agreements between employer and employee can co-exist with industrial council agreements but this can give rise to different situations. Industrial council agreements are binding on all parties and also on non-parties within the geographical area and specific industry to which an industrial council agreement applies. An industrial council agreement is a type of domestic legislation and non-compliance constitutes a criminal offence.<sup>20)</sup> Where both parties to a recognition agreement, the employer and the trade union, are parties to an industrial council agreement the recognition agreement can only be supplementary to the agreement entered into at industry level where recognition occurs. Where a recognition agreement is entered into between parties, one of whom is not party to an industrial council agreement, the industrial council agreement prevails and the parties cannot negotiate an agreement or conditions that are less favourable to those of the industrial agreement. The recognition agreement can include the conditions of the industrial agreement and supplementary conditions can be included as well. The aforesaid also applies where both parties are not members of an industrial council but one of the parties are subject to the provisions of an industrial council agreement.<sup>21)</sup> Recognition agreements are essentially supplementary and complementary to industrial council agreements as they operate at different levels and serve different needs.<sup>22)</sup>

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20. Pretorius, op. cit., p. 250.

21. Ibid., p. 251.

22. Ibid., p. 252.



Ineffective grievance and disciplinary action often impairs labour relations and triggers industrial strife. In many cases procedures to regulate the handling of grievances and disciplinary action are contained in a recognition agreement. The practice is also followed whereby separate agreements are negotiated and the grievance procedure and disciplinary procedure agreed to by the employer and employee through their trade union, are contained in written procedures.

#### 4. DISCIPLINARY AND GRIEVANCE PROCEDURES

Discipline is a matter which has in the past been arranged unilaterally by the employer. In local government vague provisions exist in staff regulations governing disciplinary matters and very little is prescribed regarding the handling of grievances. Such regulations often relate only to White staff and merely provide for the constitution of a disciplinary committee to which reports are made for consideration in cases of misconduct.<sup>23)</sup> In the case of Black employees of local authorities such regulations are often not in existence and discipline has been exercised in an arbitrary manner based on established practices at a particular local authority. With the introduction of the concept of unfair labour practice, fairness in dismissal of an employee is now of utmost importance. The employer no longer can rely solely on his rights in law but is required to ensure that there is substantive

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23. See Staff regulations of Newcastle municipality approved in terms of section 199(6) of the Local Authorities Ordinance (Natal), Ordinance 25 of 1974.



fairness and procedural fairness before terminating the services of an employee.<sup>24)</sup> The incorrect handling of any disciplinary action is a major cause for disrupting labour relations and has often given rise to strike action. The need for employers to develop a fair and consistent system for handling matters of discipline has, therefore, arisen.

A clear and definite disciplinary and grievance procedure has advantages in that both supervisors and sub-ordinates know their rights and what procedure is to be followed. A set and agreed procedure is likely to be fair and acceptable to both employer and employee. Prejudiced and biased actions can be avoided and in general sound relations are promoted.<sup>25)</sup>

The Industrial Court has indicated that the failure or refusal to discuss, negotiate and introduce a disciplinary code and grievance procedure in circumstances where a representative trade union has approached the employer with such a request, may constitute an unfair labour practice. Apart from the advantage of such procedures so that supervisors and sub-ordinates know how to act in such cases, it is important in view of the attitude of the Industrial Court to negotiate a disciplinary code.

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24. Levy, A. : Unfair dismissal, (Johannesburg : Divaris Stein Publishers, 1984), p. 51 - 65.

25. Rycroft, A. : "Between employment and dismissal : The disciplinary procedure", Industrial Law Journal, vol. 6, Part 4, 1985, p. 405.



In practice disciplinary procedures and grievance procedures are clearly divorced from each other; the one dealing with action to be taken against an employee who has erred and the other the procedure to be followed by an employee who feels aggrieved about some incident or situation in the work place. The principles that have to be applied in grievance and disciplinary handling are very much the same and have been dealt with very adequately by Poppleton in stating the policy of the Port Elizabeth Municipality as follows : 26)

- (i) grievance handling, disciplinary action and accountability are vested in line management, with problems solved at the lowest level at which this can be satisfactorily achieved;
- (ii) each employee must be given a fair hearing by his immediate supervisor or manager when he has a grievance or disciplinary problem;
- (iii) employees should not be at any disadvantage in handling their grievances or defending a disciplinary charge because of lack of skill in presenting their cases;

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26. Poppleton, J. : "Grievance and discipline handling", I.M.P. Forum, No. 7, May 1987.



- (iv) employees should be able to raise any grievance without fear of reprisal;
- (v) every employee has the right of appeal against a decision of his supervisor and the right to be accompanied by a representative on such appeal;
- (vi) whenever possible, discipline should be educational and corrective rather than punitive, recognising however that the particular circumstances and seriousness of some offences must of necessity call for punitive action; and
- (vii) all employees must have a full understanding of this policy and the procedures/code flowing from it. Communication of this knowledge is line management's responsibility and the Personnel Division is available to help management in this task.

He continues to point out that it is important in setting up procedures for handling grievances and for disciplinary action that the following should be clearly stated in the written procedures : <sup>27)</sup>

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27. Loc. cit.



- (i) the roles of the different parties and to what extent employees are entitled to representation;
- (ii) the various levels at which grievances are considered or disciplinary action taken and the authority vested at that level specified;
- (iii) the various stages of proceeding with a grievance or in taking disciplinary action;
- (iv) the avenues of appeal in each instance with a final stage at a top level to achieve a high degree of impartiality;
- (v) prompt investigation of any grievance or in a case calling for disciplinary action requiring time limits to be determined;
- (vi) hearing should be in private with clear reasons for disciplinary action;
- (vii) every endeavour should be made to ensure absolute fairness and adequate opportunity for an employee to state his case; and



- (viii) offences should be clearly classified and appropriate penalties described.

Regulating the relations between employer and employee is an integral part of collective bargaining and it is far better to use agreed procedures for the settlement of grievances than to consider each individual situation as it arises. It also ensures that all cases are handled with objectivity and that a uniform approach is followed which can only promote sound relations.

Non-statutory collective bargaining based on the recognition agreement has been discussed. Employees of the State whose conditions of employment are determined by the Public Service Act, 1984 (Act 111 of 1984) are excluded from the provisions of the Labour Relations Act, 1956. The collective bargaining between public servants and the State leans towards consultation rather than negotiation, but stronger emphasis is being placed on negotiation by the employee associations in the Public Service. The manner in which collective bargaining takes place and determines labour relations in the Public Service can therefore be seen as a form of non-statutory collective bargaining if statutory collective bargaining is related to the Labour Relations Act. This process is undertaken outside the provisions of the Labour Relations Act, 1956 and to place it in its correct perspective justifies consideration.



## 5. COLLECTIVE BARGAINING IN THE PUBLIC SERVICE

Personnel associations in the Public Service were established because of different reasons. Initially the Public Service Association was founded in July 1920 by a number of public employees who wished to organise themselves into a club in the form of a social club. <sup>28)</sup>

The situation is, therefore, that in the private sector employees have organised themselves in trade unions but in the Public Service there are associations. In some sections of government employment, artisan or tradesmen have over the years become members of trade unions, but this is the exception. An example is employees in the Government Printing Works who are members of the South African Typographical Union, a trade union. These members are also members of the Public Service Association. In general, however, public servants or members of personnel associations do not consider themselves as trade unions.

In South Africa public officials of central government and provincial government have not formed themselves into trade unions, but have the right to form associations with whom joint consultation with representatives of employers on conditions of service, has taken place. These associations have three characteristics :-

- (i) employees have the right to form associations  
in terms of legislation;

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28. Boshoff, T.R. : "Public servants associations - should it become a trade union?" SAIPA, Journal of Public Administration, vol. 15, no. 4, Dec. 1983.



- (ii) the associations have the right to nominate representatives to consult with employers; and
- (iii) specific associations are recognised as being representative of specific employee groups.  
It is considered representative if it has more than fifty per cent of any specific group as members. It could then be accepted that it was representative and had the necessary authority to speak on behalf of such group. 29)

In this relationship, the employer (government) has the final say in any agreement reached by consultation. This was considered essential as the employees could not decide finally on conditions of service that could add a burden on the taxpayer whom they serve. The main goal of an association established, was to liaise with employers and to achieve the most advantageous conditions of service and work environment for their members. 30)

The development of associations in the Public Service and the measure to which they gained recognition, requires some reflection. The post office clerks were the first public officials to establish their own association. In 1902 the Cape Postal and Telegraph Clerks Association

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29. Cloete, J.J.N. : Personnel administration, (Pretoria : J.L. van Schaik, 1985), p. 229.

30. Loc. cit.



was established which extended its members to postal officials in the other provinces. In 1913 it became known as the Postal and Telegraph Association and it still exists today. The postmen founded their own union, the South African Postal Association. A further association of employees in the engineering division of the post office was established in 1919 viz. the South African Telephone and Telegraph Association. The name was changed in 1955 to become the South African Telecommunication Association. In 1912 the Public Service Union was established in Pretoria and in 1917 the officials in the Cape Province established the Civil Service Association. The two amalgamated in 1920 to form the Public Servants Association of South Africa. 31)

These associations were at first not recognised by the authorities and all attempts before 1910 failed. Their endeavours were stifled as the Public Service and Pensions Act, 1912 (Act 29 of 1912) stipulated that any official who becomes a member of an association or union, the objects of which are to secure advantages to officers by the exercise of political or undue influence was guilty of misconduct. Mr. Morris Alexander, Member of Parliament for Cape Town Castle, was a champion for the cause of recognition of these associations. He ultimately succeeded in his campaign when on the 25th February, 1919, the House of Assembly adopted a motion he had submitted that "... in the opinion of the House official recognition of the Post and Tele-

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31. Ibid., p. 232 - 233.



graph Association by the Government, on the same terms as was granted to the British Postal Association in 1906, should no longer be withheld".<sup>32)</sup> With the adoption of this resolution the Association of Public Officials received official recognition.

Consideration was subsequently given to establishing advisory councils for civil servants consisting of an equal number of members elected by civil servants appointed by Government. The Graham Commission of Enquiry<sup>33)</sup> into the Public Service, undertook an in depth investigation. Its' recommendations for a national advisory council for public servants were not accepted. In 1922 the Public Service Commission drafted regulations for an advisory council which provided only for members representing the officials. In 1922 the Public Service Advisory Council with its members nominated by the Public Service Association was established. In 1927 the official side of three members nominated by the Public Service Association was added to the Public Service Advisory Council. In 1939 a representative of the Postmaster-General was also added. The public servants were not satisfied with the state of affairs and in 1944 the Centlivres Commission of Enquiry into the Public Service was appointed which recommended the establishment of a Public Service Advisory Council consisting of an official and staff

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32. Loc. cit.

33. Union of South Africa : Fifth Report of the Public Service Commission of Enquiry (Graham Commission), (Pretoria : Government Printer, 1920, U.G. 6-1921), p.17.



side.<sup>34)</sup> This resulted in the Public Service Joint Advisory Council appointed in 1947 with fourteen members :-

5 constituting official side,

8 constituting the members side, and

1 female official elected by female employees.<sup>35)</sup>

Further representations were submitted to the Public Service and in 1957 the right to joint consultation was confirmed in legislation. Over the years the Public Service Joint Advisory Council underwent changes. It is provided for in the Public Service Act, 1984 (Act 111 of 1984) and consists of :

(i) a prescribed number of officers nominated  
by the Commission; and

(ii) a prescribed number of officers representing  
officers in the Public Service.<sup>36)</sup>

Only in September 1985 the Commission was able to recognise an association at its discretion. In the Public Service there are four staff

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34. Union of South Africa : Fifth Report of the Public Service Enquiry Commission, (Centlivres Commission), Cape Town : Cape Town Ltd. 1974), U.G. 53 - 46.

35. Ibid., p. 234 - 238.

36. Republic of South Africa : Public Service Act, 1984 (Act 111 of 1984), section 33.



associations recognised by the Commission for Administration viz.<sup>37)</sup>

Public Servants Association (PSA) which consists  
of Whites;

Public Service League which consists of Coloured  
and Black members;

Public Service Union which consists of Indian members;

Institute of Public Servants which consists of Blacks.<sup>38)</sup>

These associations are able to negotiate on behalf of the members. Any association that represents the majority of personnel in a particular division of the Public Service can gain recognition. To avoid duplication the Commission for Administration has recognised any association which indicates what interest groups the association represents and the Commission indicates what interest group is considered to be represented. The present representation is according to population groups. This could change towards a basis of common interests. The four associations nominate eight members and the Commission has eight officers who serve on the Public Service Joint Advisory Council (PSJAC). The Joint Advisory Council is a forum where matters affecting the staff such as salaries, service bonus, grievances, housing and service conditions are discussed. Among the eight nominated by the administration, are officials from the various population groups to ensure a balanced representation. The staff associations make their recommendations to the Public Service Joint Advisory Council and the

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37. Van Niekerk, J. : "A finger in the pie", Publico, Feb. 1986.

38. Infra, p.111.



Commission consults the Council on proposed legislation and service conditions. This forum is, therefore, an opportunity for negotiation.<sup>39)</sup> Negotiating with different associations presents problems. A forum has, however, been created for co-ordinated negotiation with the establishment of the Federation of Recognised Personnel Associations in the Public Sector of South Africa.<sup>40)</sup> This Federation consists of the four<sup>41)</sup> staff organisations recognised by the Commission for Administration.

As the Labour Relations Act 1956 (Act 28 of 1956) does not apply to officials employed in the State departments, personnel associations to negotiate conditions of service and working conditions have to use the PSJAC (Public Service Joint Advisory Council). "It would seem that although the Public Service Joint Advisory Council has the right to joint consultation the right to collective bargaining (especially with regard to remuneration) has yet not been bestowed on it."<sup>42)</sup> The PSJAC is a forum for consultation and to this extent the employer bargains collectively with the employee. Legislation in South Africa stipulates, however, that the conditions of service of public servants shall be determined by the Commission. "Many of the opponents of the right for civil servants to bargain collectively maintain that the traditional concept of sovereignty asserted that government is and should be supreme, hence immune from contravening forces and pressures such as collective bargaining. Related to this is the concept of the

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39. Van Niekerk, op. cit.

40. Finansies en Tegniek, 22 May, 1987.

41. Supra, p. 110.



illegality of delegation of sovereign power. This asserted that public decision making could only be done by elected or appointed public officials whose exclusive and complete discretion was therefore unchallenged."<sup>43)</sup>

There is, therefore, not a pure form of collective bargaining between the State and its employees. The PSJAC has submitted proposals for improved remuneration but many of these have been turned down. The emphasis in the labour relations between Government and employee is, therefore, on joint consultation and not so much on an equal say in determining conditions of service and matters relating to remuneration and work place. The final say rests with the employer (Government). The employee does not have redress to the collective bargaining mechanisms which is available to the employee in the private sector and to local government which has been provided by legislation and more specifically the Labour Relations Act of 1956 (Act 28 of 1956). His position in regard to collective bargaining is regulated by the Public Service Act, 1984.

The public servant is ready for a greater bargaining power by the trade union of its' choice. The question has now been raised whether the Labour Relations Act, 1956 should be amended so that it also applies to the public sector and whether the negotiating processes in the public sector should merely be adjusted.<sup>44)</sup> The public sector cannot isolate itself from what is happening in the private sector and changes can be expected.

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<sup>43</sup>. Loc. cit.

<sup>44</sup>. Finansies en Tegniek, 22 May, 1987.



6. SUMMARY

Non-statutory collective bargaining takes place outside the provisions of the Labour Relations Act, 1956 which in general provides the framework for statutory collective bargaining. Such non-statutory collective bargaining can involve registered and unregistered trade unions. In general, registered trade unions are involved in collective bargaining at industry level (central level) as they have access to industrial councils. At the local level many unregistered unions are involved and they mainly rely on the recognition agreement to establish relations with the management of a factory that is at the local level. Although there is difference of opinion on the desirability of collective bargaining at the central and the local level, it is possible that the two systems can co-exist.

The recognition agreement is the basis on which the collective bargaining relationship is established by a trade union with an employer at the local level. The recognition agreement is not only a binding contract but it establishes a relationship between the employer and the trade union representing its employees. Certain obligations arise from a recognition agreement but this differs in the case of an unregistered trade union that does not comply with requirements prescribed by the Labour Relations Act, 1956 as such a trade union is not a legal person. In general, however, if a recognition agreement has been dishonoured civil proceedings can be taken and action instituted for breach of contract. Alternatively, the breach of contract construes an unfair labour practice and recourse can be taken to the Industrial Court.



Disciplinary procedures and grievance procedures are often an integral part of a recognition agreement but can also be separate written agreements. To maintain sound labour relations such agreements are not only desirable but essential. The advantage of such written agreements is that both supervisors and sub-ordinates know their rights and what procedure is to be followed. A procedure agreed upon between employer and employees is bound to be fair. Collective bargaining outside the provisions of the Labour Relations Act, 1956 does not only relate to trade unions relying on recognition agreements, but also to employers and trade unions that negotiate outside the provisions of the Act and also outside any form of recognition agreement.

Recognition agreements and non-statutory arrangements encourage unions to remain unregistered and to bargain outside the framework of legislation. It further promotes collective bargaining with a proliferation of unions at the local level in the same industry. Collective bargaining within the framework of legislation is preferred and more likely to contribute to labour stability.

Public servants are excluded from the Labour Relations Act, 1956 but their collective bargaining ability is regulated by the Public Service Act, 1984. They do not have a pure form of collective bargaining as they lean towards a basis of consultation with personnel associations. The negotiating body established by public servants is the Public Service Joint Advisory Council (PSJAC). The Public Service is influenced by the occurrences on the labour scene both in the public and private sector. It is, therefore, likely that changes can also be effected in the existing collective bargaining process in the public sector.



## CHAPTER 6

### EMPLOYER AND EMPLOYEE ORGANISATIONS AT LOCAL GOVERNMENT LEVEL IN NATAL

#### 1. INTRODUCTION

In studying the collective bargaining practices at local government level in Natal, it is necessary to know what parties are involved. The parties are the trade unions representing the employees and organisations representing the employers, being local authorities. Various trade unions are involved but for many years the South African Association of Municipal Employees dominated the scene. The origin and the development of this trade union which is restricted to White employees, are discussed. Other trade unions have become involved in local government, particularly since the recognition of Black trade unions. To an increasing extent Black trade unions both registered and unregistered, are displaying an interest in local government. The various trade unions involved in local government in Natal are identified and their relationships and characteristics considered.

Town clerks have for various reasons established their own trade union known as the Association of Chief Administrative Officers of Local Authorities in South Africa. The establishment and role of this trade union are placed in perspective.



The local authorities who are the employers, have been responding to the actions and demands of trade unions on an individual basis until the formation of the Municipal Employers Organisation of Transvaal. It has expanded its area of activity to the other provinces and many local authorities have joined this organisation to co-ordinate and strengthen their position in the collective bargaining process. The developments in this regard are also dealt with to complete the consideration of the main parties involved in collective bargaining at the local government level in Natal.

## 2. TRADE UNIONS IN LOCAL GOVERNMENT

In local government the South African Association of Municipal Employees has, since its' establishment, been practically the only trade union with which local government has had to contend. In isolated instances other trade unions true to local government have been active. Only in recent years with the advent of Black trade unions have these unions, not true to local government, extended their activities to municipal staff concentrating mainly on those involved in manual labour.

### 2.1. South African Association of Municipal Employees

At a meeting held at Johannesburg on the 6th December, 1917, representatives of various local municipal employee associations decided to establish a federation called "The Transvaal Municipal Employees Federation." The local associations involved were Johannesburg, Germiston, Benoni, Boksburg, Krugersdorp, Roodepoort-Maraisburg and



Springs. <sup>1)</sup> In 1919 the federation consisted of 10 Transvaal associations and a number of associations outside the province such as Port Elizabeth, East London, Oudtshoorn, Cape Town, Kimberley, Durban, Pietermaritzburg, Bloemfontein, Kroonstad, and Salisbury. The scope of the federation was extended and it was named "The South African Municipal Employees Federation." <sup>2)</sup> In 1920 the name was changed to the "South African Association of Municipal Employees." The first conference at which the constitution of the South African Association of Municipal Employees (SAAME) <sup>3)</sup> was adopted, was held in Port Elizabeth in March 1921. On the 27th November, 1924, SAAME was formerly registered as a trade union. <sup>4)</sup> SAAME was in essence a federation of local associations but over a period of time the associations became known as branches of SAAME. This was formalised in an amendment of the constitution in 1938 to provide for a head office in Pretoria and branches throughout the country. <sup>5)</sup>

SAAME expanded its membership so that in 1983 it had about 44 000 members and 234 branches and the association became one of the biggest trade unions in South Africa. <sup>6)</sup> Some local authorities have

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1. Calburn, R. : SAAME 5th Anniversary Publication from the records of the Head Office, Pretoria.
  2. Loc. cit.
  3. Note : Henceforth the abbreviation SAAME will be used to refer to the South African Association of Municipal Employees.
  4. Calburn, op. cit., p.6.
  5. Cloete, J.J.N. : Personnel administration, (Pretoria : J.L. van van Schaik, 1985), p. 248.
  6. Loc. cit.



added to the strength of SAAME by providing in their conditions of service that employees are to be members of SAAME. In this manner SAAME became an extremely strong trade union to which the smaller local authorities, who are the majority of all local authorities, were no match.

SAAME has displayed certain characteristics, in that it has been non-political and maintains an attitude of non-militancy. The association has been firm, yet non-aggressive. Settlements have been achieved in a spirit of compromise to achieve fairness and justice.<sup>7)</sup> It is well known policy of SAAME not to take up a case which has no merit, but on the other hand it is considered a worthy and tenacious opponent in negotiations on behalf of its' members in any case that has merit. SAAME can, therefore, be described as a moderate trade union that is not militant and non-political. Membership of SAAME is restricted to Whites only. Consequently the members of SAAME are mainly clerical workers, professional staff and technical and also White operational staff. SAAME has dominated collective bargaining at the local government level since its establishment. In the majority of local authorities it has been the only trade union to which they have been exposed.

## 2.2. Other Trade Unions

Employees do not necessarily have to be members of SAAME and have

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7. Calburn, op. cit.



formed other trade unions in local government. Particularly in the cities a variety of trade unions exist such as the Durban Municipal Employees Society, the Johannesburg Municipal Workers Union, the Johannesburg Municipal Transport Workers Union, the Durban Municipal Professional Staff Association, the Durban Municipal Transport Employees Union, the Johannesburg Municipal Water Works Mechanics Union, the East London Transport Workers Union, the Cape Town Municipal Workers Association, and the Durban Indian Municipal Employees Society. <sup>8)</sup>

All the above trade unions, like SAAME, are registered trade unions and, therefore, can make use of the machinery created by the Labour Relations Act, 1956 (Act 28 of 1956) for the settlement of disputes. The right to strike has been taken away from municipal employees as early as 1924. <sup>9)</sup> To compensate for the fact that they cannot strike, provision has been made for compulsory arbitration where a dispute related to conditions of service, arises. <sup>10)</sup>

With the recognition of Black trade unions many other trade unions, registered and non-registered, not true to local government, have extended their activities to local government. A survey <sup>11)</sup> carried out in Natal during June 1987 indicates that a host of these trade unions have become involved and display an interest to negotiate with

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8. Cloete, op. cit., p. 248.

9. Union of South Africa : Industrial Conciliation Act, 1924 (Act 11 of 1924).

10. Cloete, op. cit., p. 248.

11. Infra., p. 141.



individual local authorities. Unions are those reflected in Annexure C. <sup>12)</sup> These numbers are likely to increase particularly in view of the tendency of unregistered trade unions to concentrate on the local level and to procure recognition by way of a recognition agreement. This being the case, local authorities should take cognisance of the nature of trade unions and their activities. The behaviour and attitude of these trade unions should be studied as local authorities will, to an increasing extent, be confronted by these trade unions.

Although certain of the Black trade unions can be regarded as moderate, it is obvious that, in general, Black trade unions are politicised. The real organised political opposition to White party politics is the Black trade union movement. <sup>13)</sup> There are clear signs of greater co-operation between trade unions and political organisations. The greater involvement in politics is evident in statements by leaders of trade union movements who see trade unions as a mechanism to achieve political objectives. COSATU is launching a campaign for a living wage and at the same time is campaigning for the release of all detainees. In supporting the railway and postal workers strike, MWUSA supported the COSATU living wage campaign and also demanded

- the release of trade unionist, political detainees  
and prisoners;

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12. Note : The abbreviated form reflected in brackets in Annexure C will be used in referring to these unions furtheron.

13. Levy, A. : "The realities concerning labour relations with special reference to local government", Paper presented to the Institute of Municipal Personnel Practitioners of Southern Africa, Cape Town, 23 April 1987.



- upliftment of the state of emergency;
- unbanning of the African National Congress;
- return of the exiled;
- scrapping of all apartheid laws; and
- troops out of the townships. <sup>14)</sup>

Oliver Tambo, the leader of the African National Congress, has openly declared that far more attention is going to be given to the labour field in so far as the incitement of unrest is concerned. <sup>15)</sup> In a speech at the inauguration of UWUSA the Chief Minister of kwaZulu, M.G. Buthelezi, stated that COSATU had consultations in Lusaka with the leaders of the ANC. In a joint communique issued after the discussions it was, inter alia, said : "There was common understanding that the Pretoria regime and the ruling class of South Africa are powerless to provide any real and meaningful solutions to this general crisis, but lasting solutions can only emerge from the National Liberation Movement, headed by the ANC and the entire democratic forces of our country of which COSATU is an important and integral part." <sup>16)</sup>

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14. Letter to all municipalities from the General Secretary, Municipal Workers Union of South Africa, 7 April 1987.

15. Suid-Afrikaanse Oorsig : "Arbeidsonrus en stakings in Suid-Afrika", 24 April 1987.

16. Buthelezi, M.G. : Speech at the inauguration of the United Workers Union of South Africa, Durban, 1 May 1986.



These are but a few of the examples demonstrating the political interests of trade unions who use the organised structure of trade unions to further their political aspirations neglecting the interests of the worker at the work place. It is, therefore, clear that political aspirations are playing a major role and are influencing the actions of the trade unions.

A further characteristic of the militant trade unions, is intimidation of workers to ensure support. The strike of workers in the employ of the South African Transport Services during May 1987 became an open campaign of intimidation and terrorism against workers and the travelling public. <sup>17)</sup> Incitement and intimidation are sad developments in trade unionism and are detrimental to sound labour relations. It should be eradicated and be made punishable in law, as it militates against the interest of the worker who is used and pays dearly through loss of employment and earnings. A clear warning to workers against being used was given by Buthelezi at Durban. <sup>18)</sup>

"There are people who want to abuse workers by using them to further destabilise the economy ... Workers have now got machinery for negotiations with management right up to the Industrial Court. There is no reason today why workers should go on strike before they have exhausted all the channels there are now available for negotiations which were for instance

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17. Natal Mercury, 27 May, 1987.

18. Buthelezi, op. cit.



not available in 1973 ... workers must guard against being used by people who want to carry out their own political programmes by standing on the backs of Black workers."

It is essential for sound labour relations and if the collective bargaining process is to be meaningful politics should be excluded. After all, collective bargaining concerns the employer and employee regarding conditions of service at the work place. The trade unions cannot confront the employer with demands that have to be resolved with politicians and in regard to which the employer does not have any authority.

A major disadvantage of the present system of trade unions, not being required to register, is that they can pop up like mushrooms and disappear overnight.<sup>19)</sup> They also poach and interfere where registered trade unions have established sound labour relations and are committed to negotiating in good faith.

A last characteristic of which cognizance should be taken, is the grouping of trade unions under an umbrella group in pursuit of certain objectives by which powerful federations are formed. The object of negotiation is not the only goal. Union groupings have been established in South Africa on a more broadly based political and economic front and have been effected to achieve a common unity of purpose.<sup>20)</sup>

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19. Beeld, 9 July, 1987.

20. Jones, R.A. : Collective bargaining in South Africa, second edition, (Johannesburg : MacMillan South Africaa (Publishers) (Pty) Ltd., 1984), p. 6.



In this manner such major groupings as the Congress of South Africa Trade Unions (COSATU), the South African Confederation of Labour (SACOL), the Federation of South African Trade Unions (FOSATU) and the Council of Unions of South Africa (CUSA) have been established with the latest addition of the United Workers Union of South Africa (UWUSA). Such affiliation does not mean that a union loses its autonomy or identity. Each of these federations have their own aspirations and philosophy which influences the unions affiliated to them. This tendency should be noted as sympathy strikes are frequently arranged amongst affiliated unions.

Knowing the characteristics of these federations would also assist in determining the possible actions or reactions that can be expected in negotiations with one of their affiliated unions.

### 2.3. Association of Chief Administrative Officers of Local Authorities in South Africa

Municipal employees have been members of SAAME including town clerks (chief administrative and executive officers). This presented a difficult situation where the trade union (SAAME) negotiated with the employer at the local level. In such cases the trade union would in many cases be negotiating with the management of the local authority which invariably includes the town clerk who is a member of SAAME and at the same time is required to promote the interests of the employer being the municipal council. This gave rise to the exclusion of the



town clerk from the provisions of the Labour Relations Act, 1956. The salary of the town clerk was determined by the Administrator of the various provinces and in the event of a dispute regarding the dismissal of the town clerk he had recourse to the Administrator who could institute a commission of enquiry or the town clerk could approach a court of law. <sup>21)</sup>

The situation gave rise to representations by town clerks to be reinstated within the ambit of the Labour Relations Act, 1956. These representations ultimately found support on the condition that town clerks organise their own trade union. The main purpose with the establishment of a trade union was therefore to be included in the Labour Relations Act, 1956 and this gave rise to the establishment of the Association of Chief Administrative Officers of Local Authorities (ACAOLA). The association was formerly established at a meeting held in Pretoria on the 15th June, 1977. <sup>22)</sup> The town clerks were included in the Labour Relations Act, 1956 by an amendment to the Act in 1984 except in so far as remuneration is concerned. The remuneration of town clerks is regulated by the introduction of the Remuneration of Town Clerks Act, 1984 (Act 115 of 1984) which provides for an Advisory Committee to advise the Minister who makes the final salary determi-

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21. Botha, N. : Interview with the Secretary of Association of Chief Administrative Officers of Local Authorities, Benoni, 23 September 1987.
22. Association of Chief Administrative Officers of Local Authorities Circular Letter, no. 1 of 1985, Benoni, 22 Jan. 1985.



nations. Local authorities are obligated to pay the salary determined by the Minister. <sup>23)</sup>

At a meeting of ACAOLA held in Windhoek on 6th June, 1984 <sup>24)</sup> a constitution was adopted and it was decided to register as a trade union in terms of the provisions of the Labour Relations Act, 1956. This was decided upon to participate in the industrial council that existed for the local government undertaking in Transvaal and with the intention to expand to the other provinces as and when industrial councils are established. <sup>25)</sup>

According to the constitution the main objectives of the association are -

- (i) to regulate relations between members and their employers and to protect and promote the interests of members;
- (ii) to encourage the settlement of disputes by conciliatory methods;

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23. Republic of South Africa : Remuneration of Town Clerks Act, 1984 (Act 115 of 1984), section 9.

24. Association of Chief Administrative Officers of Local Authorities: Minutes of Annual General Meeting, 6 June, 1984.

25. Association of Chief Administrative Officers of Local Authorities: Circular letter, Benoni, 19 July 1985.



- (iii) to offer legal assistance and to advise members; and
- (iv) to co-operate with employers and employee organisations in any industrial council or conciliation board. 26)

Many town clerks retained their membership of SAAME and also became members of ACAOLA. In 1986 the association had 214 registered members -

84 in the Cape Province;  
36 in Natal;  
24 in Orange Free State; and  
68 in Transvaal. 27)

This membership should be seen against the background that there are 560 local government institutions in South Africa all of whom have a chief administrative officer qualifying for membership of ACAOLA. Membership of two trade unions is quite permissible. ACAOLA is open to all race groups.

The application of ACAOLA to register as a trade union was initially opposed by SAAME as it maintained that it represented all municipal

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26. Minutes, 6 June 1984, op. cit.

27. Association of Chief Administrative Officers of Local Authorities : Annual report of the Chairman, 1985/1986.



employees, inclusive of town clerks. This objection was, however, withdrawn and ACAOLA registered as a trade union on the 6th January, 1986. <sup>28)</sup> In March, 1986 the Association applied for participation in the Industrial Council for the Local Government Undertaking of Transvaal. It duly became a member with the Municipal Employers Organisation and the first meeting was held at Benoni on the 29th April, 1986. <sup>29)</sup> Early in 1987 the Association participated in a second industrial council in the Cape Province and in June, 1987 an industrial council was established for Natal. <sup>30)</sup>

From the minutes of the meetings of ACAOLA it is clear that the remuneration of town clerks and salary determinations by the Town Clerks Advisory Committee was a major issue. The Minister of Constitutional Development and Planning, in opening the conference of the Municipal Association of the Orange Free State, referred to these difficulties and commented on the Remuneration of Town Clerks Act, 1984. <sup>31)</sup> He indicated that he was prepared to consider amendments to the Act on the basis of the following three principles :-

- (i) discussions in terms of the Act should be depoliticised and not be taken by any Minister;

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28. Loc. cit.

29. Loc. cit.

30. Association of Chief Administrative Officers of Local Authorities: Minutes, Annual General Meeting, 2 June 1987.

31. Heunis, J.C. : Address, 81st Conference of the Orange Free State Municipal Association, Harrismith, 6 Nov. 1986.



- (ii) in line with the principle of devolution of power decisions regarding the determination of salaries should as far as possible be taken by the parties concerned viz. employers and employees; and
- (iii) local authorities are traditionally part of the public sector and the maximum level of salary should be controlled.

This development to move away from a statutory body to determine salaries of town clerks and to return to the principle of negotiation between employer and employee resolves many of the difficulties encountered. It is also in accordance with the principle that all matters concerning conditions of service, inclusive of the remuneration of town clerks should be negotiated between employer and employee. Amendments to the Remuneration of Town Clerks Act, 1984 have been drafted to give effect to the foregoing principles. A Remuneration Board is to replace the Advisory Committee which will consist of an equal number of representatives of the employer local authorities and representatives of the employees. 32)

In view of the very close relationship of ACAOLA with the Institute of Town Clerks, both being institutions for town clerks, it can be

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32. Natal Municipal Association : Minutes of conference, 20 - 21 June 1987.



expected that the trade union for town clerks will maintain a moderate and conservative approach. Town Clerks are a professional group of employees within local government and differences that exist with employers are likely to be negotiated strictly within the confines of labour legislation. The main party in such negotiations representing employers in local authorities is the Municipal Employers Organisation. The majority of local authorities are members of the Municipal Employers Organisation and various industrial councils have already been established in the different provinces for collective bargaining at the central level.

### 3. MUNICIPAL EMPLOYERS ORGANISATION

As early as 1917 the need to establish an organisation to protect the interests of the local authorities when employees press for improved salary and service conditions, was expressed at a conference of the Transvaal Municipal Association.<sup>33)</sup> The matter was, however, not pursued further. In 1959 a further attempt was made to organise local authorities to present an organised front as employers to SAAME by the United Municipal Executive, but this did not gain sufficient support.<sup>34)</sup> On the 8th October, 1968 at a meeting held at Warmbaths, Transvaal, an employers organisation of local authorities in Transvaal was eventually established. The Transvaal Municipal Employers

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33. Municipal Employers Organisation : Letter, V1/87 dated 17 June 1987.

34. United Municipal Executive : Minutes of Action Committee, June 1959.



Organisation (TMEO) was registered in terms of the Labour Relations Act, 1956 on the 10th January 1969. <sup>35)</sup>

An industrial council with the representatives of the employees (SAAME) was formed and the Industrial Council for the Local Government Undertaking in the Province of Transvaal approved in terms of the Labour Relations Act, 1956 on the 21st October, 1971. <sup>36)</sup>

The TMEO extended its' interests to the other provinces and changed its' name to the Municipal Employers Organisation (MEO). In May 1985 the area of jurisdiction was extended to Natal <sup>37)</sup> and in June 1986 to the Orange Free State. <sup>38)</sup> In June 1987 the MEO had 97 members in Transvaal, 42 in Natal and 46 in the Orange Free State. The local authorities in the Cape Province have their own employers organisation with 190 members. This organisation has decided to amalgamate with the MEO. <sup>39)</sup> A separate employers organisation with five local authorities as members, exists in the central Free State and is known as the Goldfields Municipal Employers Organisation. The cities, Johannesburg,

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35. Transvaal Municipal Employers Organisation : Report of the Chairman, 30 September 1969.

36. Municipal Employer Organisation, Letter, op. cit.

37. Government Gazette : Notice no. 145, 15 May 1985.

38. Government Gazette : Notice no. 131, 15 June 1986.

39. Municipal Employers Organisation, Letter, op. cit.



Cape Town, Durban, Pretoria and Port Elizabeth are not members of the MEO but have decided to form a separate employers organisation which is in the process of establishment. <sup>40)</sup>

The MEO and the Cape Local Authorities Employers Organisation formed a federation on the 4th April, 1986 and the employers organisations of Natal, Goldfields in the Free State and that of the cities are being included. <sup>41)</sup>

The industrial council has also been extended to include local authorities in the Orange Free State and Natal. <sup>42)</sup>

The main objectives of the Municipal Employers Organisation (MEO) is to -

(i) regulate relations between members and their employees and to protect and further the interests of members in relation to their employees;

(ii) promote the interest of members;

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40. Loc. cit.

41. Loc. cit.

42. Government Gazette : Notice no. 357, 29 May 1987.



- (iii) encourage the settlement of disputes by conciliatory methods;
- (iv) promote, support or oppose, as may be deemed expedient, any proposed legislation or other measures affecting the interests of members;
- (v) induce all local authorities to become members;
- (vi) provide advice and legal assistance to members; and
- (vii) to co-operate with organisations of employers and/or employees on any industrial council or conciliation board which may be established on matters that affect members.<sup>43)</sup>

The MEO initially had only to contend with SAAME and the few trade unions, true to local government, that existed mainly in the cities. In recent years with the recognition of trade unions for Blacks and the establishment of new unions, the MEO now faces a multitude of unions. The majority of these unions are active in industries unre-

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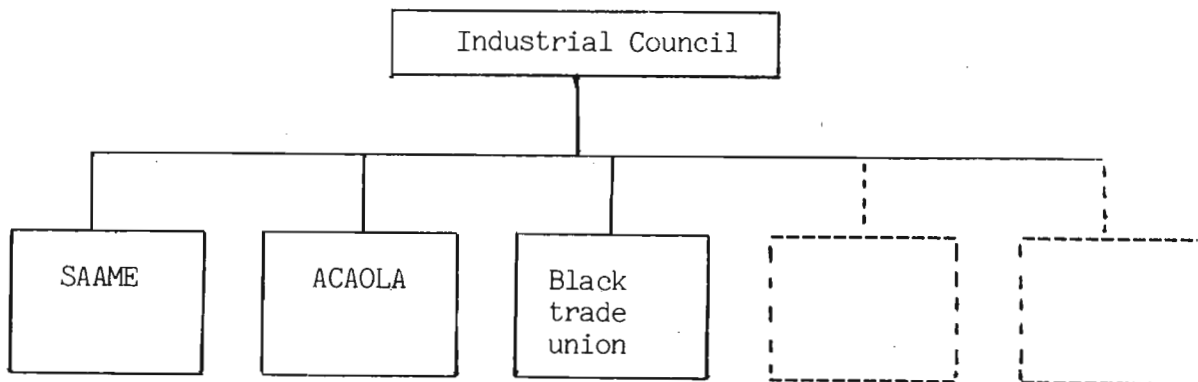
43. Municipal Employers Organisation : Constitution, Head Office, Verwoerdburg.



lated to local government. These unions both registered and unregistered, not true to local government, presents a problem. The MEO is now confronted with the trade unions who have no knowledge or experience of local government coming forward with demands and involving local government in disputes that have not originated or often have no bearing on local government. This complicates the collective bargaining process and can lead to serious disruption in municipal service. <sup>44)</sup>

The MEO intends to accommodate the divergent interests of employees with SAAME being only for Whites, the trade unions for Blacks and ACAOLA (town clerks), within one industrial council by making provision for different chambers or divisions within the industrial council. <sup>45)</sup> This is illustrated in figure 2.

Figure 2. INDUSTRIAL COUNCIL FOR MUNICIPAL UNDERTAKING:



44. Municipal Employers Organisation : Chairman's address, 1984, from records of Head Office, Verwoerdburg.

45. van der Merwe, J. : Address to meeting of Municipal Employers Organisation at Pinetown, 10 June 1987.



4. SUMMARY

To bargain collectively, employees and employers in local government have organised themselves in trade unions and employers organisations, respectively. On the employees side the South African Association of Municipal Employees (SAAME) has dominated collective bargaining since its' establishment in 1917. SAAME has proved itself to be responsible, non-political and non-militant, but has become a formidable opponent in that it relies on the merits of cases taken up on behalf of its members.

Apart from SAAME, a few trade unions were established solely within the local government activities mainly at cities where SAAME did not have branches. In recent years, with the development of trade unions for Blacks, both registered and unregistered trade unions, have directed their attention to local government. Many of these trade unions not even active in local government and considered not to be true to local government, are recruiting members amongst the Black local government employees. These unions have become increasingly active and are confronting individual local authorities with demands.

A further trade union that features prominently in the local government scene is the Association of Chief Administrative Officers of Local Authorities (ACAOLA) which union is restricted to town clerks or a person holding a similar position in a local authority.



Initially local authorities faced the well experienced SAAME with experts at its disposal, on an individual basis. The smaller local authorities, in particular, were no match for SAAME. This gave rise to the need on the part of employers to present a united front and the first organisation of employers in local government was established in the Transvaal. The Municipal Employers Organisation extended its' activities to the other provinces and presently represents the interests of local authorities in the Transvaal, Cape Province, Orange Free State and Natal. To maintain the identity of the constituent members a Federation of Municipal Employers has been formed.

The collective bargaining process in local government is well organised as an Industrial Council for the Local Government Undertaking exists with its' area of jurisdiction including the different provinces. This has resulted in peaceful and responsible negotiations avoiding unnecessary disputes and dissatisfaction. The Industrial Council does, however, not include Black trade unions. Local government presently faces the demands of registered and unregistered Black trade unions that are not true to local government. It would be in the interest of local government to include a trade union in the industrial council that represents Black municipal workers which would be sufficiently representative of the municipal employees in the different provinces so that collective bargaining can be successfully conducted at central level. In the absence of such a representative Black trade union, local authorities are being confronted at the local level by a variety of individual Black trade unions.



Not all local authorities are included in the organised collective bargaining at the central level and at the local level many have had little exposure to collective bargaining which places them at a disadvantage in the present climate of increased trade union activity.



CHAPTER 7

COLLECTIVE BARGAINING PRACTICES AT LOCAL GOVERNMENT LEVEL IN NATAL

1. INTRODUCTION

Many local authorities have determined salary and conditions of service on a unilateral basis with little interference from any trade union, except the South African Association of Municipal Employees (SAAME). This union has been moderate and reasonable in its' approach, working within existing systems that apply within local government. Being exposed to the newer trade unions, working within and also outside the statutory collective bargaining system, is to many local authorities a new experience. Many of these local authorities are unprepared for the demands of collective bargaining and because they have not been exposed have been lulled into a false belief that the practices relied on in the past, are adequate.

The existing personnel practices in local authorities in Natal, with particular attention to collective bargaining, are examined. The organisational structures that exist and that are used in various ways to create a forum for collective bargaining are dealt with. The manner in which the employer negotiates with the employees and the parties that play a role in such negotiations, are also considered. This leads to the question whether the structures that exist are adequate and whether there is a need for formal structures to facilitate the collective bargaining process at the local government level.



## 2. PERSONNEL PRACTICES AT LOCAL GOVERNMENT LEVEL

In local government the employees are free to become members of trade unions. The situation is comparable to the situation in the private sector and collective bargaining takes place with registered trade unions within the mechanisms provided by the Labour Relations Act, 1956 (Act 28 of 1956). Collective bargaining also takes place on a non-statutory basis with registered and unregistered trade unions. There is also an increasing tendency displayed by unregistered trade unions to approach individual local authorities for recognition by way of a recognition agreement. Because of trade unions active in industries unrelated to local government, also recruiting members in local government, local authorities are being involved in disputes arising from sympathy action by affiliated unions. To determine to what extent local authorities can cope with the changing situation in regard to labour relations, it is necessary to examine existing practices.

Various personnel systems have developed over the years such as :-

- (i) the aristocratic system where class distinction is prevalent and public offices are reserved for members of the aristocracy as was found in England;



- (ii) the democratic system followed in the United States of America with the election of public officials;
- (iii) the spoils system where the political party in power appoints supporters in public offices in recognition for their services (deviding the spoils of political war); and
- (iv) the merit system where it is accepted that public offices will be filled by the best qualified and most suitable candidates. <sup>1)</sup>

In local government the merit system has been applied. This has been assured by the presence of SAAME ready to take up the interest of its' members with the appointment and promotion of staff. It is in the interest of local government if it wishes to cater for the demands to provide services of a high quality in a complex society, that merit should prevail. In such a system it is essential to cater adequately for the handling of grievances, disciplinary procedures and for the settlement of disputes and to ensure sound labour relations. Various mechanisms are used by local authorities to promote sound labour relations. Local authorities are creatures of statute and as such in Natal are obliged to operate within the confines of the Local Authorities Ordinance (Natal), 1974 (Ordinance 25 of 1974) and other legislation.

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1. Cloete, J.J.N. : Personnel administration, (Pretoria : J.L. van Schaik, 1985), p. 22.



Within the confines of legislation personnel practices have developed which may follow the same basic principles but differences do exist to meet local conditions and preferences. To determine the nature of these practices in so far as they relate to collective bargaining, the parties involved and to ascertain views on the subject a questionnaire (Annexure E) <sup>2)</sup> was circulated to all local authorities in Natal.<sup>3)</sup> Out of 86 questionnaires that were distributed 75 were returned with the result that the information can be regarded as representative. These questionnaires have been completed by officials and therefore the views expressed do not necessarily reflect the views of their committees or councils, but can be regarded as reflecting current practices at the local government level in Natal.

In considering the information gleaned from the local authorities, it is important to realise that the majority of local authorities in Natal (inclusive of health committees) are not large institutions with a great number of staff. In fact

27 local authorities have a total staff complement of less than 50;

21 local authorities have a total staff complement between 50 and 200;

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2. Supra., p. 119.

3. Supra., p. 64.



20 local authorities have a total staff complement between 200 and 600;

7 local authorities have a total staff complement in excess of 600. <sup>4)</sup>

The majority of local authorities employ less than 200 and there are 12 local authorities with less than 10 employees. It can, therefore, be appreciated that many local authorities rely on informal arrangements. A difference in approach and in personnel practices at the large local authorities as opposed to the smaller local authorities, is understandable and justified.

Notwithstanding the size of a local authority, certain basic conditions promotes fairness and good order in labour relations, such as conditions of service which are applicable to all staff, disciplinary and grievance procedures so that supervisors do not act arbitrarily, but treat all cases uniformly and so that both supervisor and sub-ordinates know their rights. Many local authorities do not have these basic arrangements as 23 local authorities indicated that they do not have conditions of service for all their staff, 20 do not have disciplinary procedures and 29 do not have grievance procedures. Procedural fairness in the dismissal of any employee is as vital as substantive fairness. The existence of a uniform procedure accepted by employer and employee

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4. Note : These facts and further statistics and information reflecting the current situation at the local government level in Natal referred to furtheron in this chapter, have been procured from the replies to the questionnaire (Annexure E) sent to all local authorities. Furtheron reference will be made to "the questionnaire" or "survey".



places the employer in a far better situation to avoid any claim of unfair dismissal.

It would appear that many local authorities in determining conditions of service do not consult or negotiate with the employees. As many as 34 local authorities indicated that such matters were decided unilaterally. It can be accepted that this practice is not as paternalistic as it may appear at first. It should be borne in mind that salaries are influenced by the grading of local authorities in terms of the Remuneration of Town Clerks Act, 1984 (Act 115 of 1984) and that SAAME at central level (being represented on the Advisory Committee) has agreed to such grading. As far as conditions of service are concerned, many local authorities make use of standard regulations or make use of staff regulations already accepted by other local authorities. There is, therefore, existing uniformity and hence general acceptance by employees in local government of conditions of service that fall broadly within these "standard" conditions of service. What does become clear is that many local authorities have staff regulations (conditions of service) for White employees but not for Black employees. Local authorities are required to make rules prescribing the duties, privileges and conditions of service of its' officers and servants.<sup>5)</sup> This should be extended to all classes of employees and the existence of conditions of service acceptable to both employer and employee is fundamental to sound labour relations.

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5. Natal Provincial Administration : Local authorities ordinance, 1974 (Ordinance 25 of 1974), section 199(6).



From the foregoing it is also clear that many local authorities are not attuned to the process of collective bargaining or negotiating with trade unions. In response to the questionnaire, 36 local authorities indicated that they have not had any exposure to trade unions. The remaining local authorities that have been in contact with trade unions have mainly had to contend with salary and wage demands, reaction to grievance and disciplinary measures and requests for recognition. Very few cases for the improvement of conditions of service have thus far been the subject of negotiations with trade unions. In six cases strike action resulted as a result of labour disputes. This information is meaningful in that it identifies the areas that gave rise to dissatisfaction amongst employees which in turn is taken up by the trade unions. It also is indicative of the areas of labour relations that require the attention of local authorities and should be resolved within an orderly collective bargaining system. Furthermore, local authorities that have not had experience with trade unions should expect to be approached by trade unions. Salary and wage demands, disciplinary and grievance procedures, recognition, conditions of service and strikes are matters on which they should be prepared as unions have to an increasing extent become involved in these areas.

The unions presently involved in local government in Natal are reflected in Annexure D. Although only 45 local authorities indicated that their employees are members of one or other trade union, this figure



is perhaps higher as membership of SAAME is so traditional that it is possible that trade unions other than SAAME could have been considered in replying to the questionnaire. The fact remains that apart from trade unions true to local government, many of the trade unions involved are not true to local government as they are also active in other industries. Apart from SAAME and trade unions such as the Pietermaritzburg Municipal Employees Association, Durban Municipal Employees etc. true to local government, the following unions have been formally recognised by individual local authorities :-

United Workers Union of South Africa (UWUSA) - recognised  
by two local authorities;

Transport and General Workers Union (T & G.WU) - recognised  
by 7 local authorities;

National Sugar Refinery and Allied Industries Employees  
Union (NSRAI) - recognised by one local authority

To improve labour relations at the local government level, from the information procured in response to the questionnaire, various areas can be identified as requiring attention viz.

- (i) improving the knowledge of councillors and officials on labour relations and the legislative provisions regulating collective bargaining;



- (ii) improved communication between employer and employee;
- (iii) improving disciplinary and grievance procedures;  
and
- (iv) handling strike action.

These identified aspects of labour relations that are considered important by local authorities, confirm the need that exists at the local government level in regard to collective bargaining. For this reason the legislative provisions regulating collective bargaining have been dealt with at length and non-statutory collective bargaining explained. The importance of disciplinary and grievance procedures has been discussed and the role of strikers in the collective bargaining process considered. All these measures are designed to improve communication between employer and employee.

It is interesting to note that trade unions have concentrated on the larger local authorities. Particularly where the "newer" Black trade unions are becoming involved, it can be accepted that membership is important to them and at the same time they wish to be seen. Such impact is more likely to be achieved at the larger local authorities employing a greater number of workers. According to the survey 26 of the 37 local authorities that have been exposed to trade unions



have more than 100 employees. This does not suggest that smaller local authorities need not pursue sound labour practices. They should also prepare themselves to negotiate with trade unions. It is likely that as trade unions concentrate on local authorities and expand their activities in this area, the smaller local authorities will become involved.

In negotiating with the employees many local authorities, particularly the smaller local authorities with less than 50 members of staff, follow informal procedures. Out of the 75 local authorities that responded to the questionnaire 41 local authorities had formal structures for negotiating or consulting with employees. These formal structures vary. The different structures presently used in local government in Natal indicates that to a large degree traditional methods are still being employed. There is scope for improving the approach to collective bargaining to accommodate developments which occurred in the labour relations field in recent years.

### 3. ORGANISATIONAL ARRANGEMENTS FOR COLLECTIVE BARGAINING

It should be realised that local authorities according to their past experience, use one or more of the different formal structures that are discussed. The intention in this chapter is to be acquainted with the different types of organisational structures used in practice.



3.1. Branches of the South African Association  
of Municipal Employees.

In the majority of local authorities employees (Whites) are members of SAAME and have a branch at the particular local authority where they are employed. <sup>6)</sup> The SAAME branch usually elects an executive committee at branch level with its own chairman. The local branch then manages the interests of the members at that local authority under the guidance of the head office staff and within the policy determined by the General Executive Council. <sup>7)</sup> In negotiations with the local municipal council the branch will act and where necessary be supported and advised by expert staff from the head office. The head office also provides guidance and advice to the office bearers of the local branch.

Many local authorities recognise SAAME as a trade union representative of the White employees and also require employees to become a member of SAAME as a condition of service. Furthermore, in the formation of staff advisory committees, <sup>8)</sup> the committee consists of councillors and representatives of the employees who in many cases are nominated by SAAME. In many conditions of service it is also provided that no amendment shall be affected without the approval of

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6. See questionnaire in which local authorities indicated to which trade unions employees belonged.

7. Calburn, R. : SAAME 5th Anniversary Publication from the records of the Head Office, Pretoria.

8. Infra., p. 153.



SAAME.<sup>9)</sup> By tradition the SAAME branch is acknowledged as the trade union representative of White staff. This general statement does not apply in Durban and one or two other local authorities where SAAME does not have branches. In these cases unions true to local government such as the Durban Municipal Employees Society and others, exist.

### 3.2. Liaison Committees and Works Councils

Before the reforms introduced by the Wiehahn Commission,<sup>10)</sup> Black trade unions were not recognised and could not become registered. Consequently they could not participate in the collective bargaining mechanisms provided by the Labour Relations Act, 1956 (Act 28 of 1956). The private sector exercised considerable pressure on the Government to recognise Black trade unions. At that stage the Government was opposed to admitting Black trade unions to the collective bargaining mechanisms of the Labour Relations Act, 1956. To provide for the need of Black employees to convey their views to employers and for better communication, the system of liaison committees was introduced. Local authorities were also encouraged to establish liaison committees for the Black employees. These committees were intended to serve as a structure to channel the views and grievances of Black employees to

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9. See as an example Natal Provincial Administration : Provincial Gazette, 1 Dec. 1977, Notice 634, Conditions of service, Newcastle municipality.

10. Republic of South Africa, Department of Labour and Mining : Report of the Commission of Enquiry into labour legislation, (Pretoria : Government Printer, RP 47/1979.



the employer (municipal council).<sup>11)</sup> These committees functioned at individual local authority level and consisted of such numbers as the employer and employees agreed upon. Half of the members were appointed by the employer and half elected by the employees. The chairman could be appointed by the employer or chosen by the committee.<sup>12)</sup> These committees were consultative committees and their recommendations were put to the municipal council for a decision.

With the inclusion of Blacks within the provisions of the Labour Relations Act, 1956 and the recognition of Black trade unions for purposes of registration in terms of the Act, the need for liaison committees changed. Blacks could now participate in industrial councils. To provide for negotiations at the local level the Act provides for the formation of works councils.<sup>13)</sup> The works councils can be used for the settlement of grievances at the work place level and for negotiating wages and conditions of service. These works councils are an in-house arrangement and not representative of or responsible to any trade union.

In many cases liaison committees still exist and are termed as such. These liaison committees have, however, been replaced by the works councils in terms of the Labour Relations Act, 1956. From the ques-

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11. Transvaal Municipal Association : Minutes, Annual General Meeting, 11 August 1975.

12. du Toit, M.A. : South African trade unions, (Johannesburg : McGraw-Hill Book Company, 1976), p. 50.

13. Republic of South Africa : Labour Relations Act, 1956 (Act 28 of 1956), section 34A.



tionnaires completed by local authorities 9 still use liaison committees and 8 works councils also referred to as works committees. The Labour Relations Act, 1956 deems liaison committees that were in existence with the introduction of the Act, to be works councils.<sup>14)</sup> It can, therefore, be said that out of 75 local authorities, 17 make use of the system of works councils provided by the Act to improve communication between the Black employees and the employer.

The trade unions are not supportive of works councils, but prefer to be the spokesmen of their members. They use shop stewards to serve as a link between the members and the trade union and to be seen as representatives of the employees.

### 3.3. Shop Stewards

Trade unions make use of a member in a work place, be it a factory, business or local authority, as a shop steward. The shop steward is the representative of the union in a particular work place. Such a shop steward serves to explain the union policy to the rank and file and also informs the union of the opinions of the members.<sup>15)</sup> He, therefore, serves as a communication link between the members at a particular place of employment and the trade union officials of the local branch. These shop stewards are elected by members of the union to act as the union representative. Disputes and grievances are channelled through the shop steward rather than confronting management per-

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14. Loc. cit.

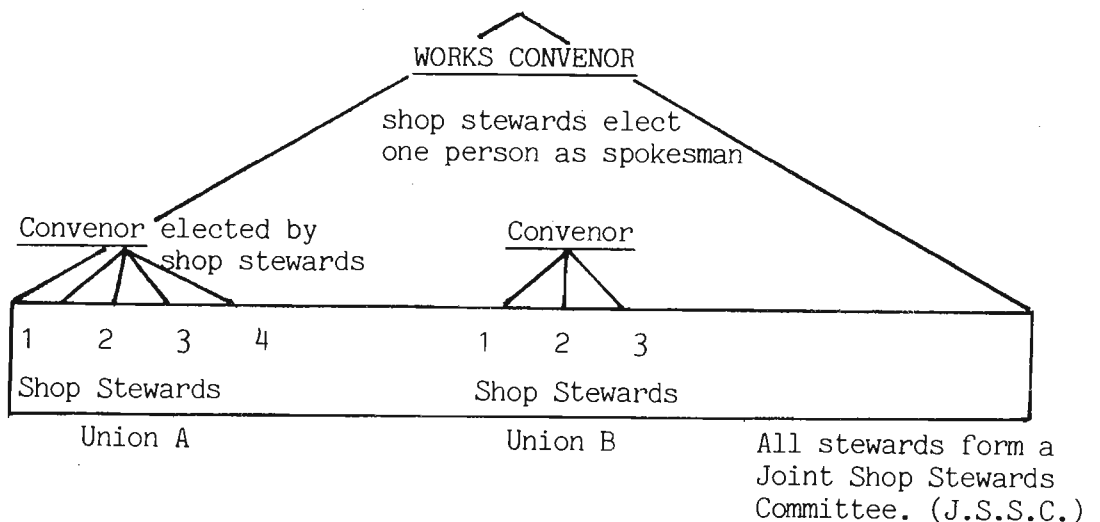
15. Jones, R.A. : Collective bargaining in South Africa, second edition, (Johannesburg : MacMillan South Africa (Publishers) (Pty) Ltd., 1984), p. 20.



sonally. If the shop steward cannot resolve the issue then he will bring in the branch official of the union. <sup>16)</sup>

In a large group with different types of specialist workers such as electricians, construction, heavy machinery all working in different areas, shop stewards to represent the interests of each group, will be elected. In a local authority this pattern would result in shop stewards being elected to represent the union members in the different departments such as departments responsible for electricity, civil engineering, parks, health, administration and treasury. It is also possible that different unions are involved with members amongst a particular class such as electricians or construction workers. In such a situation union A will elect a shop steward representing say three or four different groups and union B will do likewise. These shop stewards in turn elect a convenor and the convenors elect one of their members as works convenors. <sup>17)</sup> This is illustrated in figure 3.

Figure 3. ORGANISATIONAL STRUCTURE FOR SHOP STEWARDS.



16. Ibid., p. 15.

17. Ibid., p.17.



An alternative method is that the Joint Shop Stewards Committee consists only of the convenors. This model is also possible where only one union is involved and all the shop stewards of the same union representing different groups will form a Shop Stewards Committee (S.S.C.) who elects a works convenor.<sup>18)</sup>

In local government the shop steward system has not developed to the above extent. From the survey of collective bargaining practices in local government in Natal, only one of the cities indicated that one of the formal structures that existed was structured meetings between union officials, shop stewards and management. Black trade unions have appointed shop stewards where they are active in local authorities, but these serve on works councils or other committees that are used to establish liaison or to negotiate with management.<sup>19)</sup> Shop stewards where they exist, act as liaison between members and the trade union officials of the local branch and act as the voice of the members towards management. This basic task is performed, but convenors and works convenors have not been elected and structured Shop Steward Committee (S.S.C.) do not exist in anyone of the local authorities that responded to the questionnaire.

#### 3.4. Staff Advisory Committees

The Local Authorities Ordinance (Natal), 1974 (Ordinance 25 of 1974) provides that a council may establish an advisory committee<sup>20)</sup> con-

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18. Loc. cit.

19. Hauptfleisch, E. : Interview with Chief Personnel Officer, Newcastle Municipality, Newcastle, 3 August 1987.



sisting of not more than six councillors and a like number of employees elected by them to consider, report, advise and make recommendations to the council on all matters affecting its employees other than the heads of departements provided that it shall not appoint any personnel. The chairman is elected from the council members and he only has a deliberative vote. These committees are also used for the hearing and disposal of complaints. 21)

Of the 75 local authorities that responded to the questionnaire, 41 indicated that some or other formal structure existed for negotiating or consulting with staff. Of these 16 make use of staff advisory committees.

Staff advisory committees have been typical negotiating committees established primarily between the employer and the White employees. In the majority of cases this meant that the representatives of the employees were members of SAAME and were normally nominated by the local branch of SAAME. 22) There are, however, instances where the staff committee represents all the race groups employed by the local authority.

The staff advisory committee consisting of an equal number of employer representatives (councillors) and an equal number of employee representatives, is in fact a similar structure or forum as the works council

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21. Local Authorities Ordinance, 1974, op. cit., section 202.

22. Hauptfleisch, op. cit.



with basically the same objectives and functions. Again the dualism of systems one primarily for the Whites (Advisory Committee) and one for the Blacks (works councils), is evident. There is no firm pattern of both an advisory committee and a works council where a structure for negotiating has been established. Some local authorities have either an advisory committee and no works council or works council and no advisory committee. Others have both an advisory committee and a works council (also termed works committee or a liaison committee).

There is no obligation upon a local authority to establish any one of these committees. Theoretically it is possible to establish a staff advisory committee for a specific class of employees and to operate with more than one of these committees or they could be termed works councils in accordance with the forum envisaged by the Labour Relations Act, 1956. At present the distinction is based on race groups, but it could develop into a distinction based on the grouping of trades or skills such as labourers, skilled workers, clerical workers or professional staff.

### 3.5. Disciplinary Committees

In the conditions of service of many local authorities provision is often made for a committee appointed by the council to enquire into and consider cases of misconduct. The procedure of such committees is not set out in detail but principles of natural justice normally



apply. These conditions are often applied only to White employees as the conditions of service only relate to such employees.<sup>23)</sup>

With the involvement of trade unions for Blacks and considerable emphasis on fairness, disciplinary procedures have been introduced either unilaterally by the local authority or by an agreement with a trade union that is recognised.<sup>24)</sup> These procedures normally provide for an agreed procedure for the hearing of any disciplinary action as a line function. Provision is made for an appeal to a committee of the council should an employee not be satisfied with the disciplinary measures decided upon.

At present there is the tendency to have one procedure for disciplinary action where White employees are involved relying on conditions of service promulgated in terms of the Local Authorities Ordinance, (Natal) 1974 and a different disciplinary procedure for Blacks often the outcome of a recognition agreement with a specific trade union.<sup>25)</sup>

### 3.4. Strike Handling Committees

Due to the increased number of strikes that have occurred in the private sector, local government has become aware of the fact that it

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23. Conditions of service, op. cit.

24. van Schalkwyk, J.A. : Interview with Secretary of Municipal Employers Organisation, Roodepoort, 6 October 1987.

25. van Schalkwyk, op. cit.



is not safeguarded against strikes merely because essential services are concerned and which makes strikes illegal. Strikes are called out notwithstanding the fact that they are illegal and local government has experienced such instances. According to the information gleaned from the questionnaire to all local authorities in Natal six local authorities have experienced strikes.

In order to act effectively should a strike occur the Municipal Employers Organisation (MEO) has encouraged local authorities to be prepared. To meet the situation local authorities have been encouraged to form strike handling committees. A strike handling committee is basically a committee used in the event of a strike to co-ordinate the actions of the employer and to enter into negotiations with the employees to resolve the differences that are often highly emotional situations. The intention is to provide the town clerk or chief negotiator on behalf of the employer with a team, each concentrating on a specific area of activity requiring attention during a strike. Such identified areas of activity are negotiation, security, communication internally with staff and externally with the media, interpretation, secretarial duties and facilities for meetings. In establishing such a committee training can be provided in strike simulation situations so that the team develops an effective modus operandi. Should a strike occur then action can be taken to negotiate effectively with the strikers and at the same time ensure that essential services are continued.<sup>26)</sup>

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26. Hauptfleisch, op. cit.



The chief negotiator nominated by the local authority should be given the necessary mandate and authority to negotiate and to conclude agreements to resolve a dispute that may arise without any notice.

#### 4. NEGOTIATORS AT LOCAL GOVERNMENT LEVEL

In negotiating with trade unions 11 local authorities out of the 75 that responded to the questionnaire (Annexure E), indicated that they rely on a staff advisory or other committee of the local authority. In 27 cases it was indicated that the town clerk either by himself or supported by staff or councillors would negotiate and in 8 cases reliance was placed on the MEO. In 29 cases no indication was given who will negotiate which suggests that the need had not yet arisen and that no prior arrangement exists. In such an event the situation can be dealt with only on an ad hoc basis.

Considerable reliance is placed on the ability of officials or individual councillors to negotiate. Short courses in the art of negotiation have been introduced by the MEO, which is invaluable. It should, however, be borne in mind that no matter how well a course is structured, effective negotiators cannot be turned out in a mere week or two. Such a course merely opens up a new world of insight into themselves and their capabilities. Collective bargaining is an art. It is an area where techniques and skill play a vitally important role. Not only should the nature of the collective bargaining process be understood, but skills are to be acquired which will produce the most



positive results for the negotiator concerned and the party he represents. Like other fields (medicine, law, science, sport) the skillful negotiator should also be a professional in his business.<sup>27)</sup>

An all important aspect of negotiations, is that the negotiator or negotiating team should be given adequate authority to make final agreements. There can be consultation before final commitment, but negotiations should not be negavated by the veto or disapproval of a higher authority. Should the lack of authority prevent a party from bringing the process to a final and binding conclusion, the value and credibility of the process, is seriously damaged.<sup>28)</sup>

The importance of collective bargaining and negotiating with trade unions should be realised and local authorities should prepare themselves to be engaged in such activities to an increasing extent. Reliance cannot be placed on membership of the Municipal Employers Organisation as they are involved merely at the central level and provide advice and support at the local level. The stage for conflict is often set at the initial contact at the local level. The individual local authority should be equipped to handle any given situation with the necessary skill.

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27. Lombard, B.U. : "Collective bargaining by objectives, a practical negotiating model", Paper at seminar on Labour Relations and Human Resources Planning, University of South Africa, November 8 - 10, 1977.

28. Brookshire, M.L. and Rogers, M.D. : Collective bargaining in public employment, (Toronto : Lexington Books, 1977), p. 14.



5. THE NEED FOR FORMAL STRUCTURES

From the questionnaire to local authorities, 41 have one or other formal structure for negotiating or consulting with their employees. The fact that many do not have any formal structures for negotiating is not all that alarming as the majority of them have less than 50 members of staff. Negotiation that does take place is, therefore, on an informal basis. In the smaller local authorities communication is easier and on a more personal basis. Informal systems tend to be simpler and more direct, but such agreements are mostly made on an ad hoc basis. Understanding and mutual trust exists. It should, however, be appreciated that formal arrangements promote uniform and fair treatment.

The formal system demands a fair approach as well as a high degree of integrity from all parties involved. The most important issues with which trade unions have concerned themselves according to the survey on labour relations at the local government level in Natal, are

- (i) salary and wage determinations;
- (ii) grievance and disciplinary procedures;
- (iii) recognition;
- (iv) conditions of service; and
- (v) strike handling.

From this it should be apparent that formal and uniform procedures to procure agreement between employer and employee on the above matters would obviate unnecessary disputes and grievances. The process to



negotiate with the employees at the smaller local authorities need not be complex, but should be directed at agreement and avoid unilateral decisions on matters affecting the conditions of service and working conditions of employees.

## 6. SUMMARY

Local authorities in providing for the needs of a complex society are required to rely on staff. To ensure an effective service it is important to maintain sound labour relations. Local authorities are creatures of statute and are therefore obligated to act within the confines of legislation. Notwithstanding these constraints that apply to local authorities in Natal, differences do exist to meet local needs and preferences. These differences have influenced personnel practices and the manner in which collective bargaining takes place at each individual local authority.

To ascertain current personnel practices in so far as they relate to collective bargaining in local government in Natal, a survey was done by means of a questionnaire directed to all local authorities. From a representative response it was possible to determine the practices followed and information was gleaned in regard to collective bargaining in Natal.

In the first instance it is necessary to appreciate that the differences between the small and the larger local authorities are warranted.



The majority of local authorities in Natal can be classified as small local authorities with a total staff complement of less than 200.

It is a general tendency that relations between the employer and employee at the small local authorities are on a far more informal basis and a less structured relationship exists.

Conditions of service in which provision is made for disciplinary and grievance procedures do not apply to staff of all races. A distinction is also made in the procedures that do exist for White and Black staff. It is also clear that in many cases such procedures do not exist at all. Written procedures are desirable so that action is uniformly applied and decisions not taken in an arbitrary manner.

In many cases decisions regarding the conditions of service, salary and matters affecting the work environment are not taken in consultation with the employees. Many local authorities have had very little exposure to trade unions and are not attuned to negotiating or collective bargaining with such unions. The main topics with which trade unions have concerned themselves in local government in Natal are salary and wages, grievance and disciplinary matters and request for recognition. Strikes have occurred at a very few local authorities but the necessity to be prepared for the eventuality of a strike should not be underestimated.

In the cities of Durban and Pietermaritzburg various trade unions, true to local government and confining their activities to the par-



ticular local authorities, exist. A number of new trade unions for Black employees have become active and these are not necessarily registered unions.

The organisational arrangements that exist at the local government level for collective bargaining vary. Particularly in the smaller local authorities, no formal structures are used, whilst in others any one of the following structures exist :

- SAAME branches;
- liaison committees or works councils;
- shop stewards;
- staff advisory committees;
- disciplinary committees;
- strike handling committees.

SAAME is well established in local government and branches exist at most local authorities. The local authorities use staff advisory committees to establish a forum for negotiating and bargaining collectively with the employees. SAAME normally has representatives on such advisory committees together with members of the council to represent the local authority. The works councils can be regarded as the equivalent of the staff advisory committees and in most cases accommodate the Black employees. Liaison committees existed previously and these have been replaced with the works councils. In certain cases shop stewards serve on the works councils. There is no reason why the White



employees and Black employees cannot be represented on one committee, either a staff advisory committee or a works council. Disciplinary committees are employed by local authorities in many cases to handle disciplinary action. Strike handling committees are being encouraged to ensure that local authorities can deal effectively with any strike action that may occur.

In negotiating with trade unions a variety of approaches are evident. Some rely on the town clerk, others on an advisory or other committee. Many local authorities have had no such experience and consequently have not made predetermined arrangements as to who should negotiate on behalf of the local authority. In such cases the reaction would most probably be on an ad hoc basis depending on circumstances.

There is a need for predetermined arrangements and formal structures to facilitate collective bargaining at the level of each individual local authority. Such structures promote uniform and fair procedures and contribute to sound labour relations between the employer local authority and employees. At present various formal structures and informal arrangements exist. A greater degree of uniformity and the elimination of duplicate structures for White employees and Black employees would not only simplify matters, but provide a sound basis for improving labour relations.



## CHAPTER 8

### COLLECTIVE BARGAINING MODELS FOR NATAL

#### 1. INTRODUCTION

The models that presently exist in local government in Natal are examined. Differences of opinion exist as to the desirability of collective bargaining at the central and at the local level. In discussing these differences, it is shown that negotiating at the central level can co-exist with collective bargaining at the local level. The structures that exist are considered and placed in perspective to the role of the State. It becomes clear that considerable flexibility exists within the statutory system.

In considering future developments current trends are reflected upon. These trends are indicative of developments for which local government should be prepared. Guidelines to direct the development of collective bargaining at the local government level in Natal, are suggested. Future models of collective bargaining at the local and the central level are deduced to promote effective collective bargaining and to ensure sound labour relations.

#### 2. EXISTING MODELS

Collective bargaining between employer and employee takes place at two levels. At the local level the bargaining process is between the



employees of a particular local authority and the council of that local authority. In the previous chapter the practices that are followed in Natal indicated a variety of structures that are used in collective bargaining at the local level. In many cases no formal structures exist and collective bargaining takes place on an ad hoc basis and informally. Collective bargaining at the local level is also established by way of a recognition agreement. Black trade unions that have not been accommodated within the existing structures of local authorities, such as staff advisory committees and works councils, prefer a recognition agreement. In a recognition agreement provision is normally made for the appointment of shop stewards who negotiate with the employer in a structured committee.

At the central level the collective bargaining takes place between representatives of the employers who have organised themselves into an employers organisation and trade unions. The collective bargaining within the framework of legislation, at this level, is within an industrial council.

Bargaining at two levels is a controversial issue. The question arises what the relationship should be between collective bargaining at industry level (central level) through the statutory institution of the industrial council and bargaining at the local level (specific local authority) through a recognition agreement or through committees that exist in many local authorities on which the employer and employee is represented.



It is clear that the same issue cannot be negotiated at two levels. This can be overcome if at the central level minimum wages and service conditions are negotiated and at the local level particular wages and conditions that are suitable for the circumstances of the individual local authority concerned. Agreements concluded at the local level should be subject to the agreements concluded at the central level to avoid any conflict.

### 2.1. Collective Bargaining at the Local Level

Bargaining at the local level cannot be avoided irrespective of collective bargaining at the central level. Apart from the preference of trade unions to bargain with the individual employer, many local problems have to be resolved. At the local level dissatisfaction relating to employees can best be resolved with the employer and employees familiar with all details. Collective bargaining at the central level is more likely to be acceptable and successful if the issues for joint negotiation are limited to those which are generally recognised as being common to the employment security and economic welfare of employees, redundancy effects of technological changes, standard rates of pay, pensions, health matters and retrenchment. Whereas working conditions, shop and office rules and such other issues that relate to the daily work-lives of employees should be left as much as possible to joint labour management committees at the local level. <sup>1)</sup>

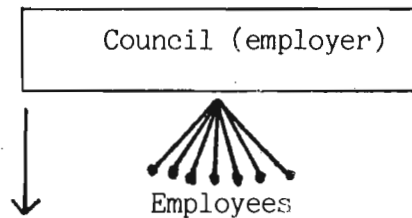
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1. Peitchinis, S.G. : Issues in management - labour relations in the 1990's, (London : MacMillan Press Ltd., 1985), p.38.



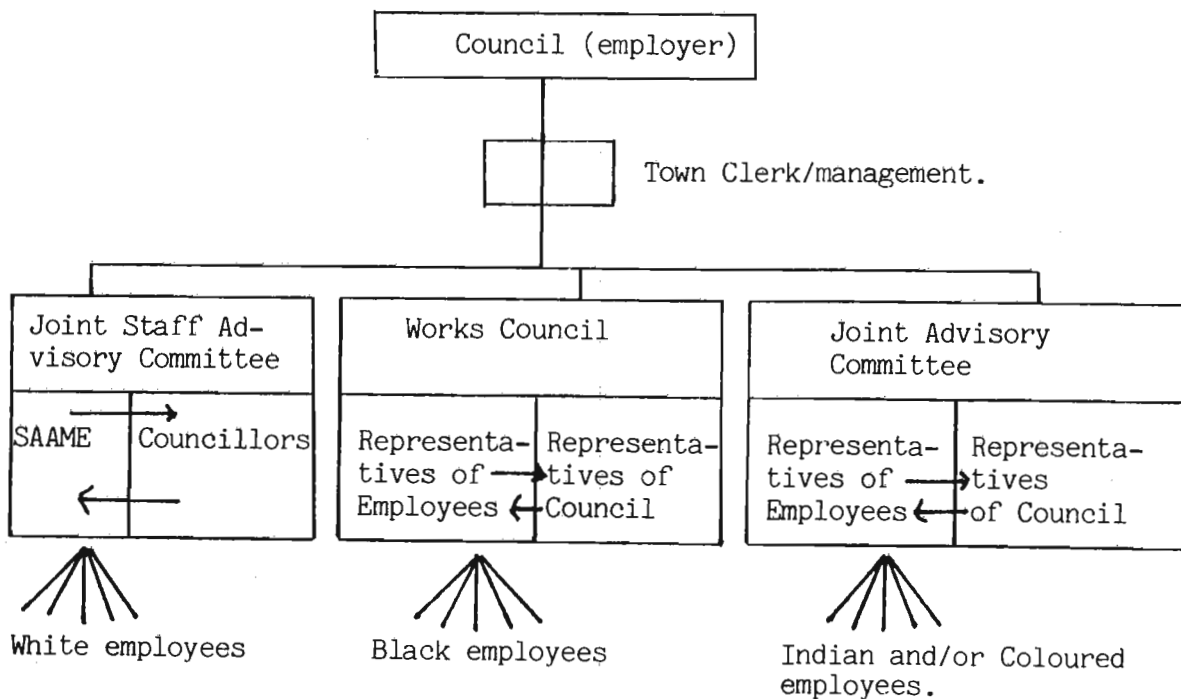
At present in Natal many local authorities take decisions in regard to salaries and wages and conditions of staff unilaterally. No structures exist for collective bargaining at the local level. This situation can be illustrated as follows :-

Figure 4. RELATIONSHIP COUNCIL AND EMPLOYEES.



Local authorities do, however, have structures for collective bargaining, using joint staff advisory committees and/or works councils (liaison committees). In some instances more than one advisory committee is used to accommodate different race groups. For example, compare Figure 5 hereunder.

Figure 5. ADVISORY COMMITTEES AND WORKS COUNCIL.



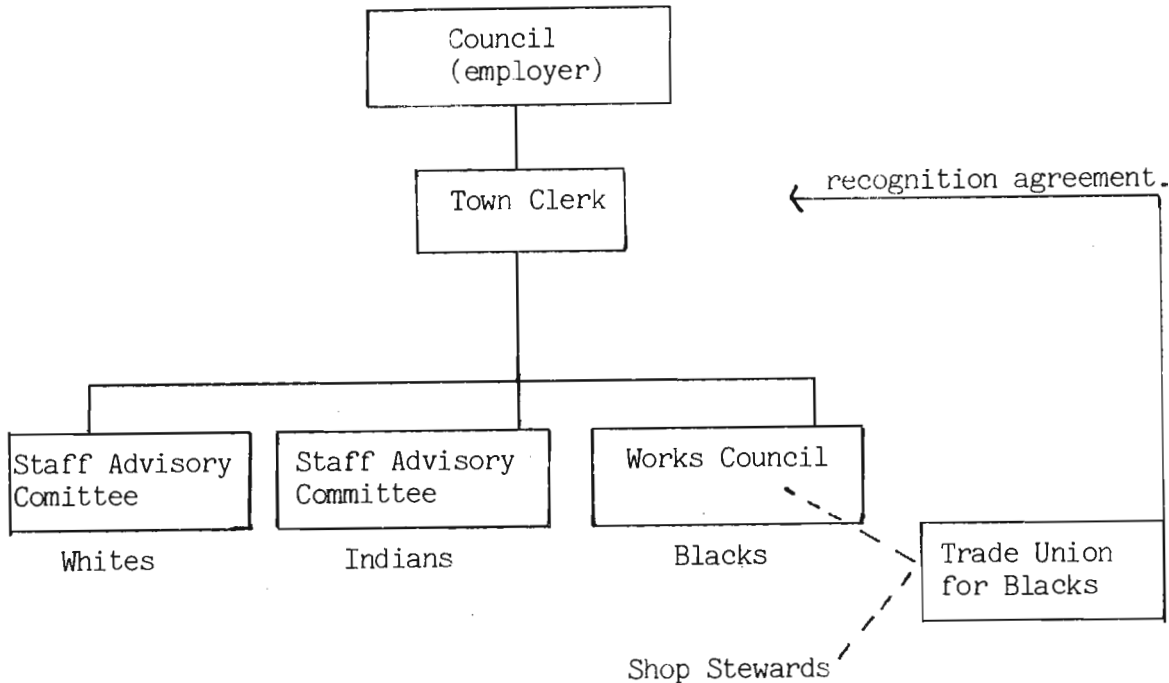


The above model occurs in a variety of formats. At certain local authorities joint staff advisory committees exist only for White staff. No structures exist for Black employees and/or Coloured employees. At other local authorities different advisory committees exist for different race groups and normally the committee for Black staff will be termed a liaison committee or works council. At some local authorities structures exist for the White employees and the Black employees, but not for Indian or Coloured employees.

Black trade unions, not having been part of the system, are not inclined to fit into the existing structures, but prefer to negotiate directly with management. They operate through shop stewards, who sometimes become the elected representatives on the works council, but often the works council is ignored. The danger is that the trade union then does not necessarily speak on behalf of all employees and due to the pressure it exerts, the works council is undermined and becomes ineffective. If such a trade union is formally recognised by way of a recognition agreement, provision should be made for a workers committee or a representative committee on which shop stewards (the representatives of the employees) serve. In this manner a forum is created similar to a works council or joint advisory committee where employer and employee can negotiate. This situation is depicted in Figure 6.



Figure 6. TRADE UNIONS IN RELATION TO EXISTING STRUCTURES.



The trade union is a body outside the local authority, but it chooses to negotiate directly instead of being represented through its shop stewards on a works council in the same way that SAAME participates in the staff advisory committee. Local authorities should be aware of the difference in approach. The above situation becomes more complicated when different trade unions are involved. Negotiation is made more difficult with many unions that have different policies, personalities and jealousies.<sup>2)</sup> Militant unions are often the unions perceived to be the most active and doing the most for its' members. Where unions compete, the militant ones survive.<sup>3)</sup> The multiplicity of unions is a development that is evident in the private sector but

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2. Jones, R.A. : Collective bargaining in South Africa,, second edition, (Johannesburg : MacMillan South Africa (Publishers) (Pty) ltd., 1984), p.7.

3. Loc. cit.



which local authorities will also have to face. The Director of Manpower recently stated that "there is going to be a particularly fast growth of collective bargaining at the level of the enterprise, whether we like it or not, and that this is going to give rise to a number of new problems, particularly problems of union multiplicity, inter-union conflict and co-ordination --- at the present moment there are clear indications that a number of trade unions favour enterprise level bargaining above industry level bargaining through the industrial council system and that a growing number of employers are entering into recognition agreements." <sup>4)</sup>

It is, therefore, in the interest of local government not to be exposed to the pressures of a multitude of trade unions, but to negotiate with trade unions true to local government. At present a clear distinction exists between trade unions for Whites and for other races with the result that the number of unions should at least be representative of the different race groups. This may require different forums for collective bargaining with representatives of the different racial groups. A relationship with a registered trade union is preferable as it facilitates collective bargaining within the structures provided by the Labour Relations Act, 1956 (Act 28 of 1956). It also removes the anomaly and the complication of dealing with a registered trade union within the framework of the Labour Relations Act, 1956 for some employees and in the case of others on a non-statutory basis

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4. van der Merwe, P.J. : Employment Law, vol. 1 no. 2, October 1984, I.R. Data Publications (Pty) ltd., Johannesburg.



with an unregistered trade union.

The ideal situation is to have one union operating in a particular local authority. Negotiation would be far simpler and competitive militancy would not occur. This is industrial unionism where unions seek to organise all workers in a single well defined industry regardless of the job that is being performed e.g. mineworkers, clothing workers, chemical workers and municipal workers. The workers have more in common with those that work in the same industry. They are bonded together by working under similar conditions, with a common technology and similar employers. <sup>5)</sup> This possibility can only be achieved at a centralised level.

## 2.2. Collective Bargaining at the Central Level

Industry wide bargaining has a role to play. This is also applicable to local government which implies that the parties involved are true to local government and do not concern themselves with other industries. It is not only in the interest of the employer but also in the interest of the union. It facilitates the notion of equity, which is that workers performing similar jobs anywhere in the industry should receive similar pay. It also promotes union solidarity and prevents unnecessary union rivalry. Industry-wide wage rates receive extensive

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5. Jones, op. cit., p. 4 and 7.



publicity and hence are more easily defended than more numerous and less publicised area or plant rates. 6)

Negotiating conditions of service at a central level would result in national industrial agreements that lay down minimum conditions that are supplemented by the agreements at local level that determine actual conditions and could accommodate justified local differences. An agreement at the central level on fundamental issues need not clash with a decentralised modification of some of these conditions to meet local circumstances. 7)

Skilled people are interested in protecting their craft and in keeping numbers tight by controlling the access of apprentices. This can be accomplished at central level. Unskilled and semi-skilled workers are replaceable and more concerned with the way in which supervisors treat them, about job security, discipline and realising basic conditions of work. To them bargaining at plant level is important. 8)

Bargaining at central level has certain advantages :

- (i) by transferrring the problem to another forum such as an industrial council which must of necessity be objective to the parties concerned, the tension between employer and employees is relaxed and relationships often improve;

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6. Ibid., p. 19.

7. Financial Mail, Manpower/Industrial relations supplement, 16 September, 1983.

8. Loc. cit.



- (ii) industry-wide bargaining removes the possibility of employee organisations concluding a favourable contract with the weakest company ... and then seeking to impose the same provisions on all other companies of the industry. 9)
- (iii) the danger is avoided that a union negotiates a settlement individually with a local authority that is willing and able to pay an attractive wage and then demands similar concessions from a local authority that is not able to afford such a wage;
- (iv) agreements at the central level promote order and uniformity in the conditions of employment and wage structures within the same industry; and
- (v) labour relations in general are improved because of a more professional approach to negotiations and resolving conflict at the central level.  
At the local level personalities are often involved with more emotionally influenced attitudes.

The benefits of collective bargaining at the central level in local government is achieved by the Industrial Council for the Local

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9. Peitchinis, op. cit., p. 40.



Government Undertaking<sup>10)</sup> which exists in the Transvaal and is being extended to the other provinces. In 1982 the Chairman in his annual report stated "dit is ons ondervinding dat die Nywerheidsraad as 'n forum vir bedinging beslis met sukses kan funksioneer ...., dit is a bewese feit dat ons deur middel van die Nywerheidsraad groter orde en eenvormigheid in Transvaal geskep het. Die blote feit dat daar vanjaar geen nywerheidshofgedinge was nie, dien as bewys van die feit dat dit wel arbeidsvrede kan skep." <sup>11)</sup>

In local government collective bargaining at the central level is well organised, in that structures have been established within the mechanisms provided by the Labour Relations Act, 1956 for such purpose. An industrial council exists for the municipal undertaking in which an equal number of representatives of the employers (municipal councils) and employees (trade unions) serve. The different trade unions such as SAAME (Whites), ACAOLA (town clerks) and the Germiston Municipal Workers Union (Black employees) are accommodated. Provision is further made for provincial differences by the establishment of different divisions or chambers within the industrial council. This was explained by the Secretary of the Municipal Employers Organisation (MEO) in an interview to ascertain recent developments regarding the extension of the area of jurisdiction of the organisation. <sup>12)</sup> The situation is reflected in Figure 7.

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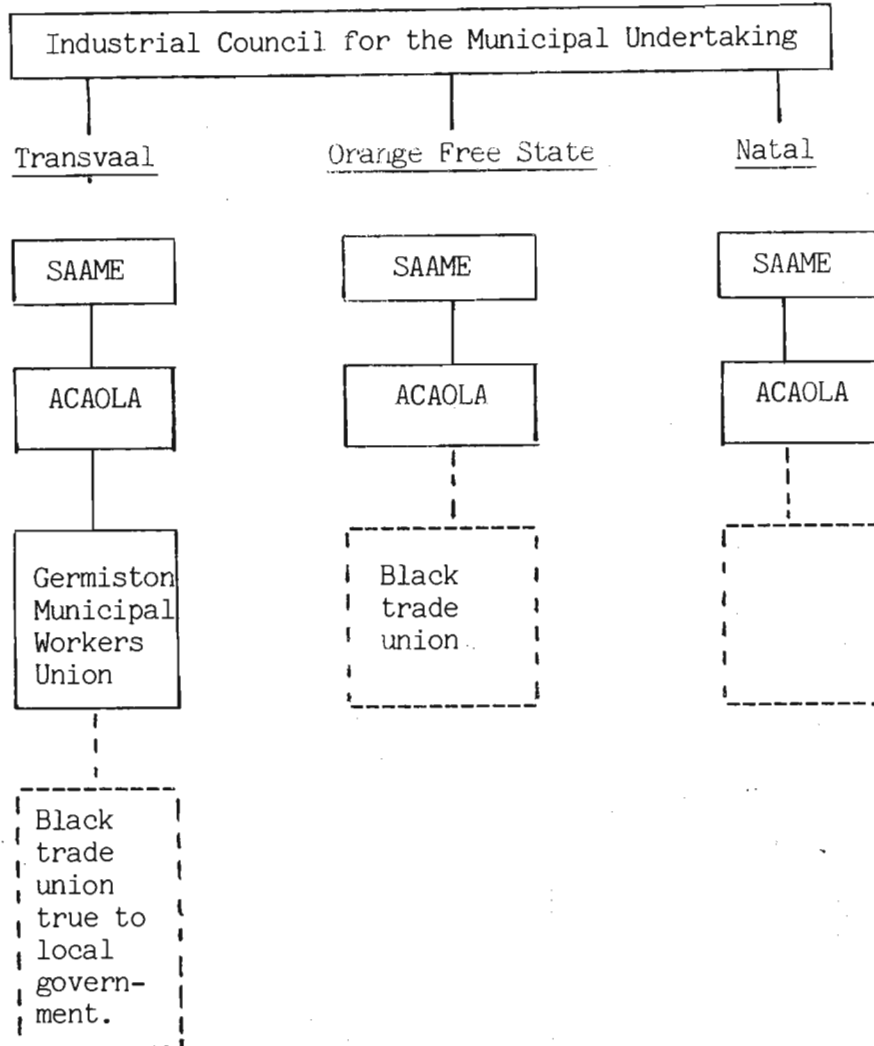
10. Note : The industrial council on which municipal employees and municipal councils are represented.

11. Transvaal Municipal Employers Organisation : Annual report of the Chairman, September, 1982.

12. van Schalkwyk, J.A. : Interview with Secretary of Municipal Employers Organisation, Roodepoort, 6 October 1987



Figure 7. DIVISIONS WITHIN THE INDUSTRIAL COUNCIL.



What is lacking at present is a Black trade union true to local government, which represents Black employees in local government, either nationally or on a provincial basis.

The attitude of the MEO to discourage local authorities from entering into recognition agreements with a multitude of different Black trade unions that are not registered, can be understood. It is in the interest of local government to establish a working relationship with a trade union true to local government that can be included in the



industrial council system already in existence on a similar basis that has been achieved with SAAME and ACAOLA. The excessive freedom of association gives rise to a proliferation of trade unions that makes meaningful collective bargaining impossible. If trade unions are involved that are not true to local government the employers will be forced to negotiate with unions that do not appreciate the real problems of local government and will be making direct comparisons with the private sector. Negotiations will be conducted with trade unions whose members possess different rights than its members in local government such as the right to strike or voluntary arbitration. In local government, being concerned with essential services, a strike is illegal and arbitration is compulsory. This situation is only aggravated when an unregistered trade union is involved.

### 2.3. Control by the State

It is the official policy of the South African Government that its' role in the field of manpower should be minimised. It sees its' function as mainly of a regulatory nature with autonomy for employer and employee. There is a growing emphasis on justice rather than on inflexible statutory rules. Freedom of choice for the employer and employee parties is respected as long as their actions are fair and justifiable. <sup>13)</sup>

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13. Republic of South Africa : Report of the National Manpower Commission, "Dispute settlement levels of collective bargaining and related matters", (Pretoria: Government Printer RP 115/1986), p. (ii).



This means that the Government should interfere in the relationship between employer and employee as little as possible. The parties should arrange their mutual relationship through self governance within the framework of the Government's broad policy objectives in the manpower field and in the public interest. <sup>14)</sup> The government policy of non-intervention has also been confirmed by the Director General of Manpower. In referring to collective bargaining at the local level he said, "It is, moreover, the only real form of bargaining which exists in developing countries where collective bargaining is in an early stage of development." <sup>15)</sup>

The relationship of the State in labour relations is illustrated in Annexure F. This illustration clearly indicates the manner in which the employer and employee bargains collectively through an employers organisation and the different trade unions within an industrial council, a mechanism created by the Labour Relations Act, 1956. <sup>16)</sup> This relationship relates specifically to local government.

### 3. A FUTURISTIC APPROACH

One should be careful not to seek a solution to all problems in a system. Rules and systems are useful in that it creates a framework and serves as a guideline within which the collective bargaining process can take place in an orderly manner. Collective bargaining

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14. Loc. cit.

15. van der merwe, op. cit.

16. Van Schalkwyk, op. cit.



should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules. The Collective Bargaining Convention 1981 (no. 154) of the International Labour Organisation takes the view that there should at least be a framework established by public authorities within which collective bargaining should take place, but that the process itself should be free. <sup>17)</sup> Whilst one should not be too rigid it is essential to operate within a framework for collective bargaining which in South Africa is provided by the Labour Relations Act, 1956.

Local government should appreciate that the activities of trade unions will increase and that local government should prepare itself for this eventuality. Levy <sup>18)</sup> has pointed out that the private sector has progressed the last ten years but "local authorities are now only beginning the voyage of discovery in the field of labour relations". It is a changing world because of the Black trade unions who have had their fling at what Levy describes as the "high profile targets" such as the motor industry, the giants in industry - all these in the private sector have organised themselves and now "the phenomenon of trade union organisation is beginning to permeate through to the smaller employment units and the ones that are not so clearly identi-

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17. International Labour Office : "Collective bargaining", A workers educational manual, second edition (Geneva: Publication by International Labour Office, 1956), p. 18.

18. Levy, A. : "The realities concerning labour relations with special reference to local government", Paper presented to Institute of Municipal Personnel Practitioners of South Africa, Cape Town, 23 April 1987.



fied as a sector ... the municipal sector is a big one".<sup>19)</sup> Local government can, therefore, expect to be the target of trade unions and should be organised to meet the challenge. COSATU have stated as part of their ongoing objectives, their policy for the next couple of years, an expansion into the local government sector.<sup>20)</sup>

The Black labour force has become acquainted with labour unions, they know about strikes and the media are full of such reports and labour demands. They know of unfair dismissal and unfair labour practices. Irrespective of pursuing demands inside or outside the statutory system, labour on the municipal front will organise and place demands on employers to satisfy their expectations. The attitude that all is well and so far everyone has been satisfied, is a false security. The argument that one can manage without a union really suggests that employees will be treated individually, thereby denying them the right to bargain collectively.<sup>21)</sup>

It is appreciated that systems do not present a solution to all problems. The dynamics of labour relations should also be realised. Levy maintains that "labour is a power game where unions, goals and practices change according to the power available, the issue being fought,

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19. Loc. cit.

20. Loc. cit.

21. Loc. cit.



the past history, the opponents around the table, the character and the nature of the leadership of these people themselves and as such it is a non-static mould and can never even be anything other than the most dynamic of all systems." <sup>22)</sup> Notwithstanding legislation there will always be strikes because unions, whenever, it suits them will disregard statutory frameworks. In dealing with the dynamics of labour relations matters are, however, facilitated if as a departure point and as a guideline the negotiations are directed to a basic framework. The framework should serve as guideline and if this objective is attainable, it will facilitate and bring order into the relations between employer and employee.

The Manpower Commission concluded that it is of great importance for the maintenance and promotion of industrial peace that the relation between employers and employees should be regulated by one system. The formal and statutory system should, therefore, be as attractive as possible for all parties concerned to participate. <sup>23)</sup> The existence of bargaining models and negotiating procedures can greatly assist in making the process of collective bargaining orderly.

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22. Loc. cit.

23. Republic of South Africa : Report of the National Manpower Commission for the period 1 Jan. 1983 to 31 Dec. 1983, (Pretoria : Government Printer RP 41/1984), p. 187.



At present provision exists for non-registered trade unions to participate in the statutory system to a limited extent. In so far as collective bargaining outside the statutory system is concerned the attitude of the National Manpower Commission is that <sup>24)</sup>

- (i) the Government should not be prescriptive on which issues should be negotiated at specific levels, settlement of dispute machinery should be available to those that wish to use it;
- (ii) the collective bargaining system should remain of a voluntary nature; and
- (iii) the enforcement of labour agreements (recognition agreements) should continue to be adjudicated in terms of the law of contract or by unfair labour practice dispute procedures by the Industrial Court.

Due to the flexibility of the system it should be practical to bargain collectively within the framework provided by the Labour Relations Act, 1956. The collective bargaining process, is and will remain an

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24. Report of the National Manpower Commission, "Dispute ...", op. cit., p. 28.



effective mechanism as long as it is used for the settlement of terms and conditions of employment for which it is designed.<sup>25)</sup> The problem which is experienced is that the newer trade unions are pursuing political aspirations and attempting to use the collective bargaining process to achieve objectives outside the scope of the employer/employee relationship. The outcome of the collective bargaining process in labour relations is agreement between the employer and employee and it cannot be used or be effective to determine a matter which the parties are not able to decide such as political or "outside" issues.

Collective bargaining should be restricted to conditions of employment and matters related to working conditions. The lack of appropriate forums to participate in governing the country, has understandably given rise to the politically flavoured aspirations of trade unions and the use of trade unions to promote political interests of the Blacks. This is unfortunate and the solution lies in creating suitable structures within the political system for Black representation and the establishment of forums to hear their views and to participate in the government of the country. The solution is not in encouraging the use of trade unions and using the work place as an arena for political battles and differences.

The primary purpose of collective bargaining is to ensure a sound relationship between the employer and employee and to determine conditions of service and working conditions to the satisfaction of the

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25. Peitchinis, op. cit., p. 103.



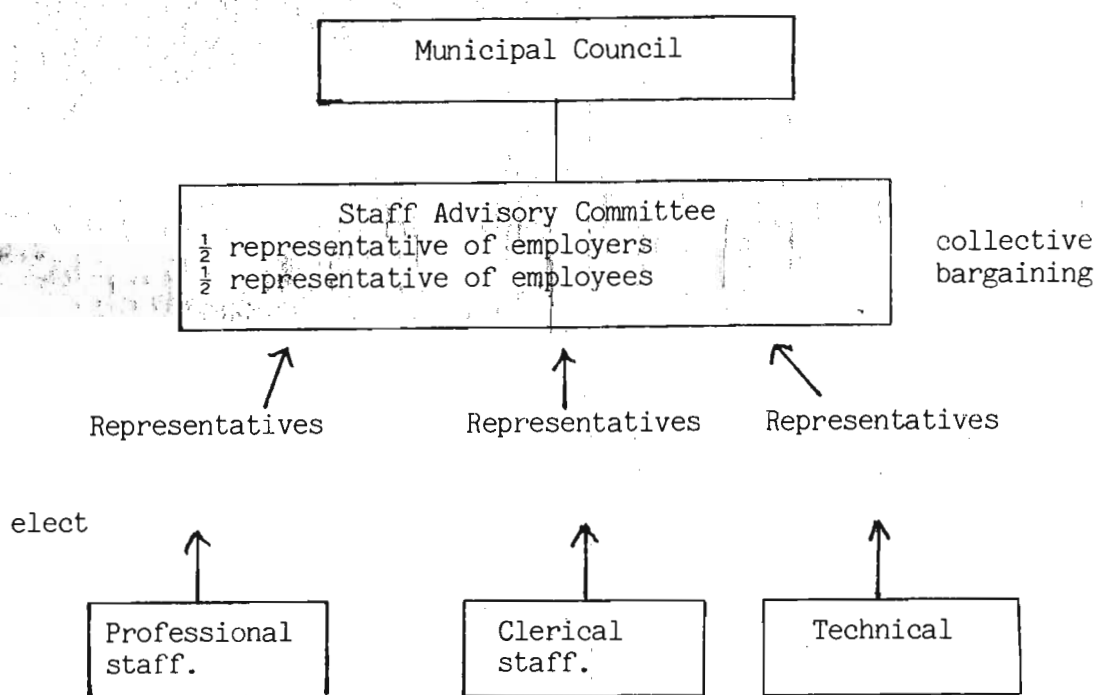
worker and employer. In this environment the worker is concerned with matters that is within the ability of the employer to determine and to resolve. It would, therefore, not be reasonable to confront the employer with issues that are beyond his ability or scope which have no bearing on the work place. Registered trade unions are required to acknowledge the foregoing and there is no reason why unregistered trade unions should be permitted freedoms which are being abused to disrupt industrial stability and peace. All trade unions if they have the interests of workers at heart, should submit to registration. Removing the dualism that exists between registered and unregistered trade unions the one operating within the confines of statutory provisions and the other on a non-statutory basis, should not present any hardship. Statutory provisions permit ample freedom and provides adequate machinery for resolving disputes without interference by the State.

If trade unions are obliged to operate within the statutory system industrial councils can be established for all industries including local government. This would promote labour stability and peace. Wages and conditions of service will be negotiated before it becomes a dispute. Any dispute that arises would be settled by the machinery provided by the Labour Relations Act, 1956. To cater for individual differences at the local level, collective bargaining with the employing local authority should be encouraged. Matters such as grievance procedures, disciplinary codes and matters relating to the conditions of a particular work place could beneficially be dealt with locally.



At present, there is also a dualism between White employees and other racial groups in local government. This dualism has been created by historical developments in the labour legislation. In future, these differences should be reduced and the grouping of employees be based on skills and crafts. In local government, at the local level, the structures could be as illustrated in the figure hereunder :-

Figure 8. SUGGESTED GROUPING OF MUNICIPAL EMPLOYEES.



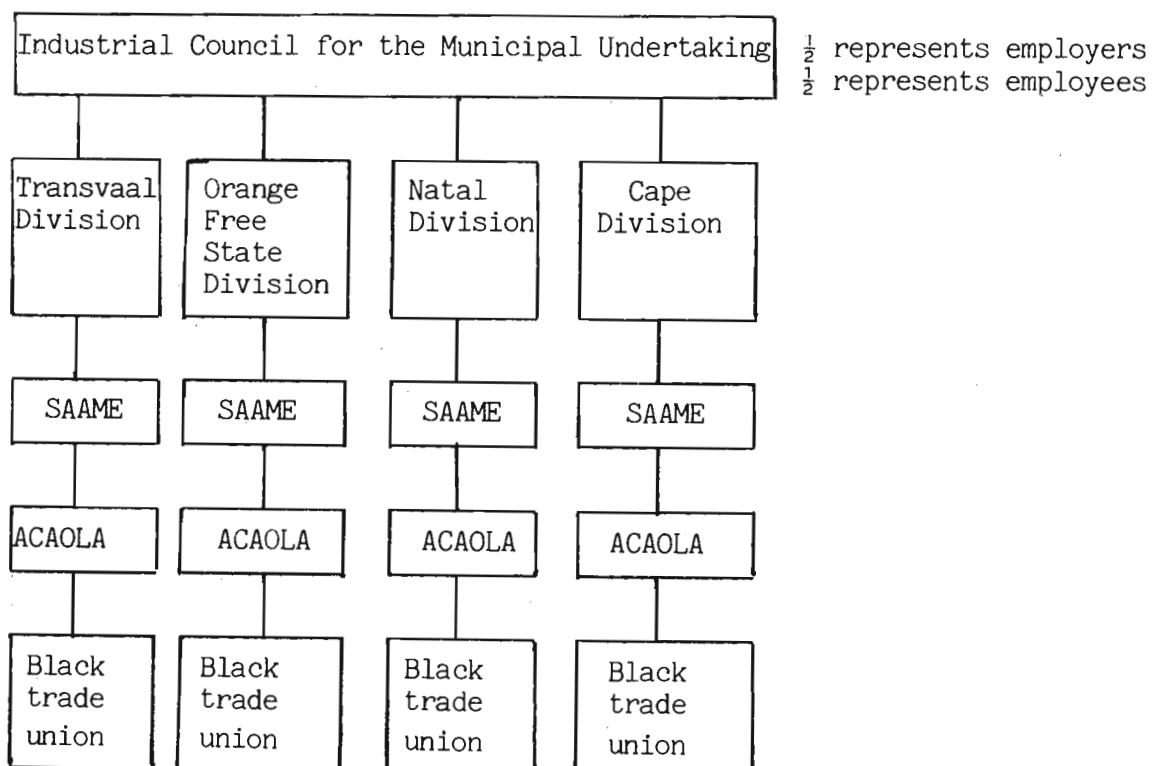
At the central level it is in the interest of local government not to be dealing with a proliferation of trade unions, but to establish a working relationship with a union true to local government. In such a relationship the interest of the employee will be of prime importance and there would be an understanding of the working conditions prevalent in local government. There should be a mutuality of interest in wages and conditions of service i.e. there should be a substantial



degree of common interest.

To a large extent the collective bargaining process at the central level in local government is organised. Once again considerable emphasis exists at present on different trade unions for Whites and Blacks. In future it may be desirable that these differences will diminish and unions concentrate on skills rather than racial groups. Until the racial grouping is eliminated, the present structures meet the needs for collective bargaining, except that a trade union, true to local government, to represent the interests of Blacks and non-White municipal employees, is desirable. This situation is depicted in Figure 9.

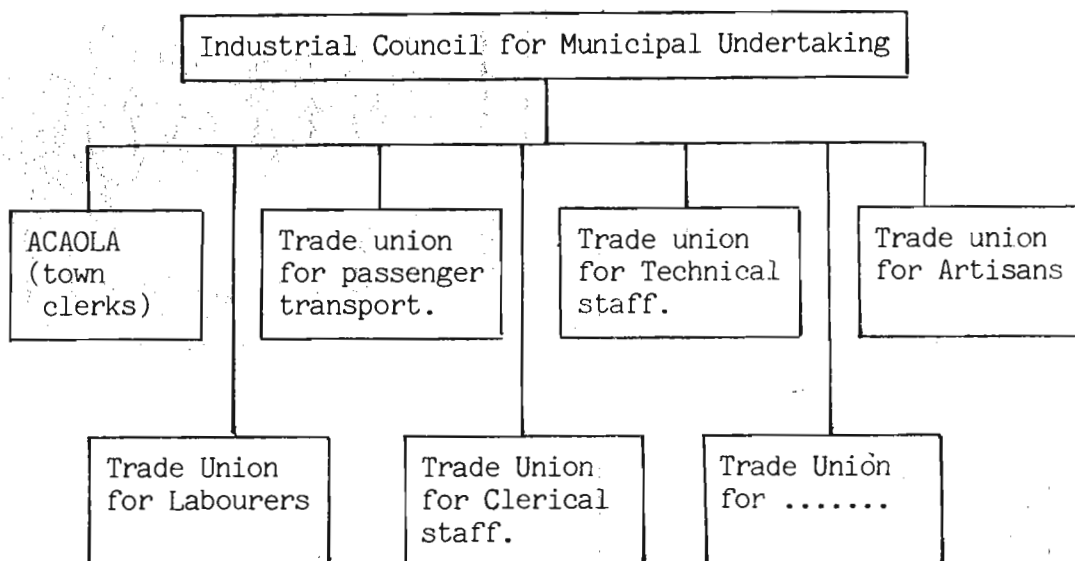
Figure 9. COLLECTIVE BARGAINING UNITS AT THE CENTRAL LEVEL





In the longer term collective bargaining units grouped according to skills and crafts could possibly develop with no racial grouping in which case different structures are likely. This is illustrated in Figure 10.

Figure 10. COLLECTIVE BARGAINING UNITS BASED ON SKILLS AND CRAFTS.



The importance of trade unions true to local government should be realised, and for such unions to be accommodated within the statutory system. Dualism based on statutory and non-statutory collective bargaining and a different dualism based on racial groupings, should be eliminated.

#### 4. SUMMARY

Collective bargaining takes place in local government at the central and at the local level. In Natal at the local level structured collective bargaining uses staff advisory committees and works councils.



A variety of situations exist with more than one advisory committee to provide for different racial groups and works councils, mainly used for the Black employees. On the other side of the spectrum some local authorities do not have any formal structure for their staff, others again have only an advisory committee for White staff or only a works council for Black staff. There is no uniform system in operation. To add to the complication of different groups of staff being treated differently in the collective bargaining process, trade unions prefer to establish a relationship outside the existing structures and based on a recognition agreement. The multiplicity of trade unions adds to the complexity of collective bargaining at the local level.

An ideal situation would be to have one union operating within a particular local authority, but with divergent interests. This would be difficult to attain in practice. A balance can be achieved by limiting the number of trade unions, but providing structures in which each trade union presently representative of a race group, bargains collectively on a similar basis with the employer. The present staff advisory committee system can be adapted to meet such requirements.

At the central level an organised structure exists for collective bargaining in that an industrial council has been established for the municipal undertaking. It has extended its activities to the different provinces and they are accommodated as different divisions within the industrial council. It is important to include a trade union to represent Black municipal employees within this structure.



Bargaining at central level has decided advantages and these benefits accrue from the industrial council system. In local government collective bargaining at the central level is well organised and has contributed to labour stability and peace. It only needs to be extended to include a trade union true to local government for Black employees.

The role of the State in the field of labour relations is mainly of a regulatory nature. The philosophy is that employer and employee should be given complete autonomy in determining their mutual relationship. Mechanisms are provided by legislation to facilitate the collective bargaining process.

In considering the future of collective bargaining at the local government level, present tendencies of particularly the Black trade unions influence the situation. At present, there is a strong tendency to politicise collective bargaining. Local government can also expect that the attention of militant trade unions will be focussed on local government. There is a need to depoliticise trade unions and concentrate on the basic objectives, viz. to promote collective bargaining between employer and employee regarding matters that affect the work place. To promote sound labour relations, it would be advantageous to include all trade unions in the statutory provisions for collective bargaining. The mechanisms that exist are flexible and can accommodate divergent interests. Removing the dualism that exists in statutory and non-statutory collective bargaining will improve sound labour relations and avoid existing differences.



Apart from the foregoing dualism, a difference in collective bargaining arrangements between White employees and employees of other race groups exists which should be eliminated. It is suggested that grouping of employees on the basis of skills and crafts within local government would be beneficial and a step in the right direction.



## CHAPTER 9

### CONCLUSIONS AND RECOMMENDATIONS

Collective bargaining is fundamental to the relationship of employer and employee. Trade unions representing the interests of employees have become active in the field of labour relations in recent years. Employers can no longer act unilaterally but have been obliged to take cognisance of the views of employees in determining matters affecting the work place. Collective bargaining has, therefore, become an essential feature of personnel administration in any public institution.

In this dissertation the focus has been on collective bargaining in local government which is part of the public sector. To establish a clear understanding of the process, legislation relating to collective bargaining was examined. The process of collective bargaining outside statutory provisions was also explained, as local government is involved in statutory and non-statutory collective bargaining. The parties involved in the collective bargaining process were identified and discussed. Particular attention was given to existing practices of collective bargaining at the local government level in Natal. From the existing practices collective bargaining models were determined. Possible future developments were concluded from present trends and practices.

The concept of collective bargaining is explained in Chapter 2 of this dissertation and related to municipal personnel administration.



To achieve any objective a local authority is required to perform, inter alia, six generic administrative functions viz. policy-making, organising, financing, staffing, work procedure and controlling. For this purpose personnel are necessary as they have to render services and undertake such activities that have to be performed to promote the quality of life in any community. Personnel administration is an integral part of public administration and in itself requires the performance of the six generic administrative functions. These activities are always accompanied by functional and auxiliary functions. One of the auxiliary functions that have to be carried out in support of personnel administration, is collective bargaining. Collective bargaining embraces the inter action that takes place between employer and employee where a group of employers are represented by an employers organisation and a group of employees by a trade union. The subject matter of such bargaining relates to conditions of service and conditions pertaining to the work place. The process of collective bargaining takes place at two levels viz. the central level for particular types of industries and at the local level which relates to the individual undertaking.

In Chapter 3 the development of the legislation determining collective bargaining has been discussed. The historical and cultural background of the country has had a marked influence on the legislation. Separate legislation for White employees and Black employees has been



a characteristic of labour laws. This dualism in the legislation was abolished on the recommendation of the Wiehahn Commission, which was a watershed in labour relations in South Africa. A different kind of dualism has now developed. This dualism is collective bargaining within the framework of the Labour Relations Act, 1956, and collective bargaining outside the provisions of this Act. A further field of differences that apply is the legislation governing labour relations within the Republic of South Africa and the self governing states for the various Black groups within the Republic.

In collective bargaining the main parties are the employer and the employee. Both the employer and the employee organise into associations known as an employers organisation and trade union respectively, to bargain collectively on behalf of its members. Recent trends in trade unionism indicate a considerable growth in the membership and the numbers of different trade unions, both registered and unregistered. The biggest increase is in new trade unions for Blacks. Trade unions are becoming increasingly active and particularly the Black trade unions are also active in the political sphere.

Both the employer and employee through employers organisations and trade unions can participate in the forums that have been established by the Labour Relations Act, 1956 for collective bargaining. Such collective bargaining within the framework of the legislation is referred to as statutory collective bargaining. Trade unions and employer organisations are required to register in terms of this Act to participate in the forums that are available. Provision exists for works



councils to improve the communication at the work place. Dispute settling machinery is provided by industrial councils, conciliation boards, mediation, arbitration and the Industrial Court. In Chapter 4 these forums for collective bargaining have been examined and circumstances in which they are used discussed. Labour legislation in South Africa functions effectively and permits the employer and employee to resolve their disputes without State intervention. The State merely provides the framework by way of the Labour Relations Act, 1956 within which collective bargaining takes place.

Collective bargaining also takes place outside the framework of legislation and the forums established by the Act. Non-statutory collective bargaining has been discussed in Chapter 5. Both registered and unregistered trade unions can be involved in non-statutory collective bargaining, which relies mainly on a recognition agreement to establish a collective bargaining relationship at the local level between employer and employee. Certain contractual obligations arise from a recognition agreement and in the event of a breach of the contract civil proceedings can be instituted. To have recourse to the Industrial Court reliance has to be placed on the fact that a breach of such an agreement constitutes an unfair labour practice. Disciplinary procedures and grievance procedures are often an integral part of a recognition agreement. Such procedures can, however, be separate arrangements not related or dependant upon a recognition agreement. The advantage of such agreements are that both the supervisor and sub-ordinate know their rights and the procedures that are to be



followed are clearly laid down. Such procedures are agreed upon between employer and employee and are, therefore, bound to be fair. Such agreements are desirable and promote sound labour relations.

In local government the employees and employers have organised themselves in trade unions and employers organisations. In Chapter 6 the trade unions that feature in local government and the employers organisations have been considered. On the employees side the South African Association of Municipal Employees (SAAME), a trade union for White employees, has dominated collective bargaining. SAAME is non-political and non-militant and is considered to be conservative, acting totally within the provisions of legislation. In recent years registered and unregistered Black trade unions have appeared on the local government scene. Many of these trade unions seeking recognition at the local level are not true to local government and this complicates the collective bargaining relationship. A further trade union that features in local government is the Association of Chief Administrative Officers of Local Authorities (ACAOLA) which union is restricted to town clerks. On the employers side local authorities have established the Municipal Employers Organisation. The activities of this organisation which started in the Transvaal have been extended to include the other provinces.

The collective bargaining process in local government at the central level is well organised and has extended its area of operation to the different provinces. An Industrial Council for the Local Government



Undertaking is in operation, which has resulted in peaceful and responsible negotiations. This industrial council needs to be expanded to include a trade union representative of the Black municipal employees. Not all local authorities operate within the statutory system and in practice many local authorities are not much concerned with collective bargaining. A variety of approaches exists.

In Chapter 7 the collective bargaining practices at the local government level in Natal have been examined. To ascertain current practices a survey was conducted and a questionnaire directed to all local authorities in Natal. The results of the survey indicate many differences, particularly between labour relations at the larger local authorities as opposed to the situation in the smaller local authorities. In the first instance, structures have been established in the majority of cases within which collective bargaining takes place, whereas at the smaller local authorities very little attention has been given to structures, and collective bargaining is normally on an ad hoc and informal basis. Vast differences exist in regard to uniform conditions of service for all staff and in the majority of cases such conditions exist for White employees, perhaps for Coloureds and Indian staff, whilst conditions of service for Black employees in the most cases have been neglected. In the latter case attention has been given to the establishment of disciplinary and grievance procedures.

It is important for sound labour relations that conditions of service and disciplinary and grievance procedures should be agreed upon between



employer and employee. Such conditions and procedures contribute to stability and prevents unnecessary disputes. In many cases the conditions of service and wages are still determined unilaterally.

As yet, local authorities in Natal have not had much exposure to trade unions. Those who have had experience with particularly the "newer" Black trade unions, have had to deal with salary and wage demands, dissatisfaction related to grievances and disciplinary measures and requests for recognition. Very few local authorities have had experience of strikes.

In Chapter 8 the existing collective bargaining models at the local level were examined and projections made to anticipate future developments. The organisational arrangements that are used by local authorities for collective bargaining at the local level are mainly works councils. In some cases these councils are still referred to as liaison committees. Furthermore, staff advisory councils are used. Other committees, such as disciplinary committees and strike handling committees, are in existence for particular situations that may arise. Shop stewards are making their appearance as the new Black trade unions get involved in local government. Local government will have to adapt its structures to provide for shop steward committees. The present works councils and staff advisory committees could easily be adapted to accommodate the needs in this regard.

There is a need for predetermined organisational arrangements to facilitate collective bargaining at the local level in municipal govern-



ment. Such structures promote stability and uniform and fair procedures. It is evident that a variety of different structures exist, ranging from ad hoc arrangements to well defined structures, the latter being true mainly in the case of the larger local authorities. There is no uniform system in operation. To add to the complication different groups of employees, mainly grouped on racial grounds, are dealt with in different manners. A variety of structures exist to accommodate these differences, ranging from the formal to informal. These differences should be removed. Due to the historical background and cultural differences it should be accepted that it will not be an easy process to eliminate racial groupings, because trade unions, in many cases, are also aligned to grouping on a racial basis. Although it is desirable to eliminate the racial grouping of employees for purposes of collective bargaining, this fact will have to be faced on the short term. The immediate objective should be to ensure that structures exist to accommodate representatives of all the different racial groups viz. Whites, Coloureds, Indians and Blacks on a uniform basis. The present staff advisory committee system can be adapted to meet this need. At the central level where an Industrial Council for the Municipal Undertaking exists, the collective bargaining process is on a sound basis. In the interest of local government it is desirable that the present Industrial Council should be expanded to include a trade union true to local government to represent Black employees in the different provinces.

Local government should realise that they will to an increasing extent become an industry to which trade unions will direct their at-



tention. These trade unions will include registered and unregistered trade unions competing to increase their membership. Many of these trade unions, being unregistered unions, prefer to operate outside the statutory system and have displayed militant and politically biased tendencies. Local government will have to be prepared and equipped to meet this challenge and the complexities that arise from collective bargaining with a variety of trade unions, many of which are influenced by political aspirations and other interests outside the work place.

#### RECOMMENDATIONS

During the past years considerable developments have taken place in the field of labour relations. These developments have obliged the private sector to become organised, with the result that collective bargaining has been well established. Local government is now experiencing the demands of trade unions hitherto not involved. The increased exposure to trade union activities and changing statutory provisions requires adaptation on the part of local government. Current practices indicate that local government in Natal should prepare itself with established structures to meet the demands which local government are confronted with in so far as collective bargaining is concerned.

The following recommendations are made for consideration by local government :



Recommendation One

Special efforts should be made to create a greater awareness of the importance of collective bargaining in local government, both at the local and the central level of the industry and it should be realised that the attention of trade unions will be focussed on local government to an increasing extent.

Recommendation Two

A thorough knowledge of legislation relating to collective bargaining in local government should be acquired and developed so that the mechanisms provided by legislation can be used and the disadvantages of non-statutory collective bargaining be fully appreciated.

Recommendation Three

Formal structures should be established and existing structures within local authorities should be adapted to provide a uniform basis for collective bargaining with employees of all race groups. Existing structures at the central level provided by the industrial council should be supported, as it promotes stability and peaceful negotiations which not only resolve disputes but prevents the occurrence of grievances and dissatisfaction.

Recommendation Four

Apart from providing structures for facilitating collective bargaining,



uniform conditions of service, disciplinary procedures and grievance procedures for staff of all race groups should be established by agreement between the employer and employee as a matter of urgency to ensure fairness in order that the rights are known in clearly laid down terms to all parties.

#### Recommendation Five

Local government should seek to expand the existing industrial council system to include trade unions representative of Black employees, but ensure that such trade unions are true to local government and are registered trade unions in order that collective bargaining at the central level can be conducted and maintained within the provisions of the labour legislation.

#### Recommendation Six

Entering into recognition agreements with a multitude of registered and unregistered trade unions detracts from the objective of placing and retaining collective bargaining within the statutory system. It further complicates the process of collective bargaining at the local level. Local authorities should, therefore, approach such agreements with great circumspection and be fully aware of the implications and legal standing of the parties in the event of any breach of such an agreement. The influence of such recognition agreements on collective bargaining at the central level should also be fully appreciated and unnecessary complications avoided.



Recommendation Seven

Grouping of employees on a racial basis for purpose of collective bargaining is the result of historical and cultural developments, but local authorities should endeavour to move away from such a basis. The objective for the future should be group employees in interest groups that would be directed at professions, skills and crafts rather than racial considerations.

Recommendation Eight

Trade unions if they wish to promote the interest of the workers whom they represent in local government, should confine the matters subjected to collective bargaining to those issues that affect the work place and over which the employer has authority and control and not to use the trade unions to further political and other aspirations outside the scope and ability of the employer and employee to resolve.



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CLASSIFICATION OF STAFFING FUNCTIONS

Generic Administrative Functions	Auxiliary Functions	Functional Activities			
		Personnel provision functions	Support functions	Training and development functions	Utilisation functions
Policy-making Organising Financing Staffing Determining work procedures Controlling (Checking and rendering account)	Collection and Processing of data; Decision-making	Creation of posts (jobs); determination of establishment Recruitment; determining personnel needs, determining fields of recruitment, attraction of candidates, selection. Placement Probation Promotion Transfer Termination of services.	Determining conditions of service, remuneration, fringe benefits, Record Keeping, Settlement of grievances, Counseling Employer - employee relations; joint consultation, Research Health, safety and welfare.	Induction/ orientation, Training Development (These functions could well have been listed under one or more of the other headings - e.g. personnel provision functions - but they are dealt with separately here for the sake of clarity).	Providing work programmes, Leadership, Discipline Evaluating work performance, (appraisal procedures or merit rating).



REGISTERED TRADE UNIONS FOR THE MUNICIPAL SECTOR AND THEIR AFFILIATIONS

Bloemfontein Munisipale Werknemersvereniging .....	U.A.
Cape Divisional Council Workers Association .....	U.A.
Cape Town Municipal Workers Association .....	Cosatu
Durban Integrated Municipal Employees Society .....	U.A.
Durban Municipal Employees Society .....	U.A.
Durban Municipal Professional Staff Association .....	U.A.
Durban Municipal Transport Employees Union .....	U.A.
Durban Municipal Workers Union .....	U.A.
East London Municipal Workers Union .....	Tucsa
Germiston Municipal Workers Association .....	U.A.
Johannesburg Municipal Combined Employees Union .....	U.A.
Johannesburg Municipal Employees Association .....	U.A.
Johannesburg Municipal Transport Workers Union .....	Tucsa
Johannesburg Municipal Water Works Mechanics Union .....	U.A.
Johannesburg Municipal Workers Union .....	Tucsa
Kaffraria Divisional Council Employees Association .....	U.A.
Kimberley Municipal Coloured Workers Association .....	U.A.
Ladysmith Indian Municipal Employees Association .....	U.A.
Munisipaliteit Vredenburg - Saldanha se Werkersvereniging ....	U.A.
Natal Municipal Transport Employees Association .....	U.A.
Personeelvereniging van die Transvaalse Raad vir die Ont- wikkeling van Buitestedelike Gebiede .....	U.A.
Port Elizabeth Municipal Employees Association .....	U.A.
S.A. Association of Municipal Employees (Non-Political).....	U.A.
Stanger Association of Municipal Employees .....	Tucsa



Union of Johannesburg Municipal Workers .....	U.A.
Union of Pretoria Municipal Workers .....	U.A.
Vereniging van Administratiewe Hoofamptenare van Plaaslike Owerhede .....	U.A.
Verulam Indian Municipal Employees Association .....	U.A.
Walvisbaai Munisipale Personeelvereniging .....	U.A.
Wes-Randse Personeelvereniging .....	Sacol
Western Cape Administration Board Workers Union .....	U.A.
Worcester Munisipale Werknemersvereniging .....	U.A.

U.A. is unaffiliated.



TRADE UNIONS ACTIVE IN LOCAL GOVERNMENT IN NATAL

\*South African Association of Municipal Employees (SAAME)

Municipal Workers Union of South Africa (MWUSA)

South African Allied Workers Union (SAAWU)

Black Allied Workers Union (BAWU)

Transport and General Workers Union (TOGWU)

United Workers Union of South Africa (UNUSA)

Council for South African Trade Union (COSATU)

\*Association of Chief Administrative Officers of Local Authorities  
(ACAOLA)

National Sugar and Refining and Allied Industries Employees Union

United Peoples Union of South Africa (UPUSA)

National Union of Public Service Workers (NUPSW)

National Union of Brick and Allied Workers Union

National Industrial and Commercial Workers Union

\*Pietermaritzburg Municipal Employees Association

\*Estcourt Municipal Employees Trade Union

\*Durban Municipal Employees Society

\*Durban Integrated Municipal Employees Society

\*Durban Municipal Professional Staff Association

\*Durban Municipal Workers Union

\*Natal Municipal Transport Employees Association

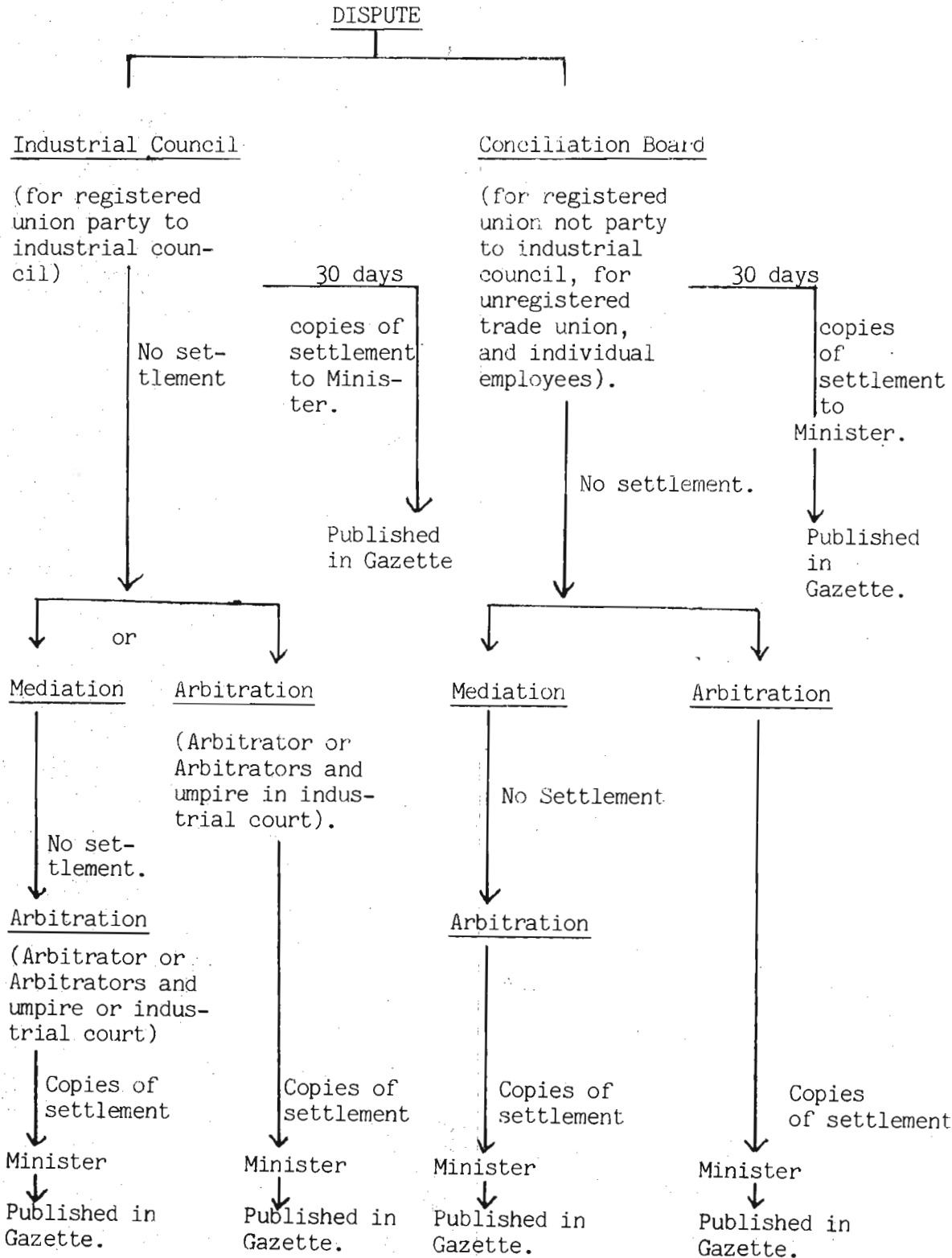
\*Isipingo Municipal Workers Union

\*Verulam Municipal Employees Association.

\*Trade Unions are true to the local government industry.



PROCESS OF RESOLVING DISPUTES WITHIN THE PROVISIONS  
OF THE LABOUR RELATIONS ACT, 1956, (ACT 28 OF 1956)



Note : Gazette means Government Gazette.



QUESTIONNAIRE ON LABOUR RELATIONS

1. How many employees are in service of your Council/Committee?  
Total : ..... (Whites ..... Asians .....  
Coloureds ..... (Blacks .....)
2. Does your Council/Committee have :-
  - (a) conditions of service for all staff YES/NO
  - (b) disciplinary procedures YES/NO
  - (c) grievance procedure YES/NO
3. (a) Do your members of staff belong to any trade unions? YES/NO  
(b) If yes, which trade unions are involved? YES/NO  
.....  
.....
4. (a) Has your Council/Committee formally recognised any trade union? YES/NO  
(b) If yes, in what manner? .....  
(c) Names of trade unions formally recognised .....  
.....
5. Are decisions by your Council/Committee regarding conditions of service, salaries and wages, hours of work, etc. taken:
  - (a) unilaterally YES/NO
  - (b) in consultation with any trade union or representatives of staff YES/NO



6. Does your Council/Committee have any formal structures for negotiating or consulting with employees? YES/NO
- If Yes, please describe .....
- .....
- .....
7. What has been the nature of your Councils/Committees exposure to negotiating with trade unions during the past five years. Briefly state e.g. demands, grievances, strikes, recognition?
- .....
- .....
- .....
- .....
8. Who negotiates with trade unions on behalf of your Council/Committee?
- .....
- .....
9. Have the negotiators received any formal training in the art of collective bargaining? YES/NO
10. If yes,
- What was the nature of formal training e.g. short course (Identify)
- .....
- What is the extent of experience .....
11. Did the formal training include the following :
- (a) conflict management YES/NO
- (b) strike handling YES/NO
- (c) negotiations YES/NO



12. If no to any of these : are these areas considered to be training needs?

YES/NO

13. If there is any other aspect of labour relations which could be considered important : motivate

.....  
.....  
.....

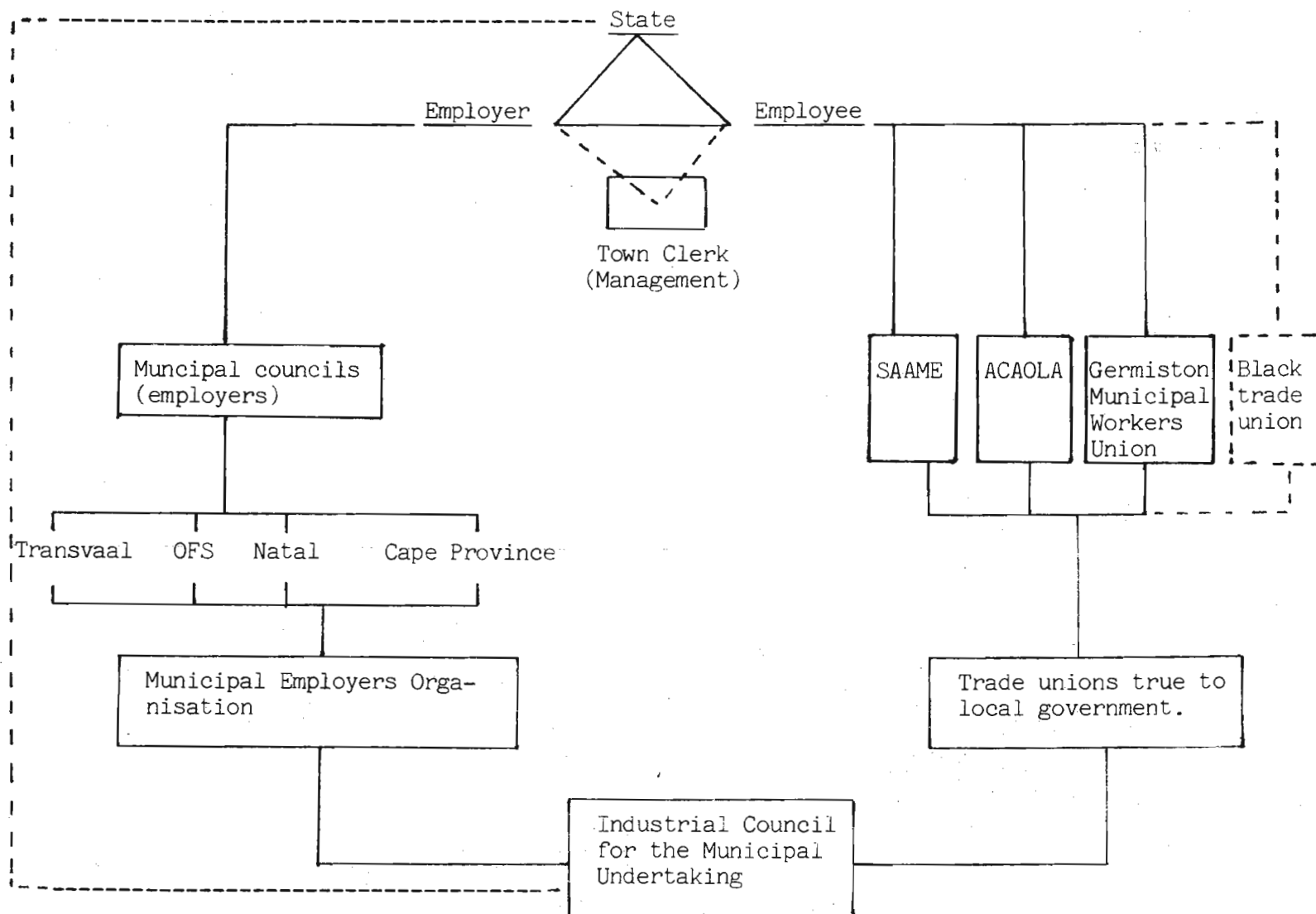
14. What in your opinion are currently the shortcomings in the process of collective bargaining

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15. What in your opinion are the strengths of your local authority in collective bargaining.

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Forum established by the  
Labour Relations Act, 1956 for  
collective bargaining.

RELATIONSHIP OF THE STATE IN LABOUR RELATIONS

ANNEXURE F.