SOUND
LABOUR RELATIONS
PRACTICE
A Key to Labour Peace
Vision

The Public Service Commission is an independent and impartial body created by the Constitution, 1996, to enhance excellence in governance within the Public Service by promoting a professional and ethical environment and adding value to a public administration that is accountable, equitable, efficient, effective, corruption-free and responsive to the needs of the people of South Africa.

Mission

The Public Service Commission aims to promote the constitutionally enshrined democratic principles and values of the Public Service by investigating, monitoring, evaluating, communicating and reporting on public administration. Through research processes, it will ensure the promotion of excellence in governance and the delivery of affordable and sustainable quality services.
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Sound Labour Relations Practice - a Key to Labour Peace

South Africa shares some of the best practices of a democratic labour relations system. Its Constitution is widely recognised as one of the most progressive in the world. The country promotes the rights of every worker, trade union, employers’ organisation and employer to engage in collective bargaining. It also diminishes the past practices of unfair labour relations and race discrimination in many sectors of the economy. Through statutory provisions, bodies such as, the Public Service Coordinating Bargaining Council (PSCBC), Commission for Conciliation, Mediation, and Arbitration (CCMA), General Public Service Sectoral Bargaining Council (GPSSBC), and the Education Labour Relations Council (ELRC) were established to develop and implement the best labour relations practices in specific sectors of the economy.

The Public Service Commission (PSC) has made enormous contributions towards promoting sound labour relations matters. As a custodian of good governance, the PSC plays a vital role in the implementation of the Grievance Rules, the framework for the Evaluation of Heads of Department and the assessment of labour relations issues. It is against this background that the theme for this edition of PSC News is “Sound Labour Relations Practice - a Key to Labour Peace”.

In this edition of PSC News, we start by analysing the Transformation of Labour Relations in the Public Service. The article, which traces the evolution of labour relations post 1994, looks at, amongst others, pieces of legislation and organisations that have been established through the Constitution, to enhance labour relations in both the public and private sectors.

Collective bargaining and sound labour relations are the key elements that contribute towards labour relations peace. Ms Thandi Mnisi of the Public Service Coordinating Bargaining Council discusses the importance of collective bargaining in the Public Service and how collective bargaining can be a useful instrument to attain the goal of transformation.

The General Secretary of the South African Teachers Union (SADTU), Mr Mugwena Maluleke on the other hand, looks at the importance of bargaining from SADTU’s perspective. The article also reflects on the 2010 Public Service Strike.

In another topic, the PSC takes a closer look at the Grievance Procedures and the management thereof in the Public Service. Some of the key points that the article reflects on include amongst others, correct procedures to be followed when lodging a grievance as well as the different grievance procedures in the Public Service.

Drawing from his experiences in dispute resolution, Mr Heinrich Bohmke, Senior Trainer and Author at LexisNexis discusses some of the approaches that could be used in resolving disputes to attain labour peace. Also drawing on a Report produced by the PSC Chairperson, Mr Ben Mthembu from the Public Service Commission, touches on the role of Labour Relations Officers in the Public Service in contributing towards labour peace. The article further provides an international perspective in relation to the work of labour relations officers and also makes a case for role clarification between the functions of labour relation officers and those of line managers.

The management of discipline is seldom regarded as a pleasant human resource responsibility and this inevitably creates tensions in the relationship between the employer and employee. To put this phenomenon into perspective, Ms Mmathari Mashao, Chief Director: Labour Relations Improvement from the Office of the Public Service Commission examines the consistency in sanctions within departments as well as across the Public Service.

We conclude this edition by featuring an article written by Mr Ebrahim-Khalil Hassen, an Independent Labour Relations Analyst. The article focuses on the broader pattern of collective bargaining in the Public Service and the worrying trends of crises driven settlements, which rather than resolve underlying issues, deepen conflicts.

This edition of PSC News contains a variety of topical articles and we hope that they will add value to all Public Servants, particularly, labour relations practitioners.

Humphrey Ramafoko
Editor in Chief
Transformation of Labour Relations in the Public Service: A Journey with a Destination
The post 1994 labour legislation was a result of extensive negotiations between the government and labour as well as employers in the private sector. These negotiations processes were a prelude to organised labour and employers as public partners that have rights enshrined in section 23 of the Constitution to determine their own administrations, programmes and activities to organise and form or join federations. In section 23 (5) of the Constitution, it is specified that every trade union, employers’ organisation and employer has the right to engage in collective bargaining which is regulated by national legislation. The huge change post 1994 is that provision has been made for the relationship between labour and the employer to be of reciprocal respect for each party, in that there is no longer a one-sided enforcement of terms in labour relations outside social dialogue.

Through negotiations, numerous pieces of Acts of Parliament were passed which introduced and facilitated an absolute shift from the pre 1994 era in Public Service labour relations. One of the most important laws that came into force relating to labour relations is the Labour Relations Act No. 66 of 1995. Some of the key provisions in the Labour Relations Act, which are found to be of paramount relevance to the Public Service are found in Chapter II, which deals with Freedom of Association and General Protections as well as Chapter III and Chapter V, which make provision for collective bargaining and workplace forums, respectively. These provisions are important in that negotiations on issues that have an impact on employees are conducted prior to implementation. In that way, employees would be well informed about the consequences of the labour relations policies to be introduced.

It should be noted that although the Labour Relations Act’s provisions are applicable to the Public Service employees, it excludes members of the National Defence Force, National Intelligence Agency, South African Secret Service and South African National Academy of Intelligence. Labour Relations in these organisations are regulated by their respective enabling Acts of Parliament and the accompanying Rules and Regulations as well as the outcome of their collective bargaining processes. All those are negotiated separately from the Public Service Co-ordinating Bargaining Council (PSCBC) and its Sectoral Bargaining Councils established in terms of the Constitution of PSCBC.

There are a number of significant developments in labour relations that were brought about through the structures like the National Economic Development and Labour Council (NEDLAC) which introduced inclusive and transparent decision making processes instead of the past unilateral decision making approach. NEDLAC was established in terms of NEDLAC Act No. 35 of 1994 and has four chambers which are Labour Market, Trade and Industry, Development, and Public Finance and Monetary policy. The Public Service labour partners at NEDLAC are the three main labour federations, namely Congress of South African Trade Unions (COSATU), National Council of Trade Unions (NACTU) and Federation of Unions of South Africa (FEDUSA). The government delegation at NEDLAC comprises Ministers, Directors-General and Senior Officials from government departments.

All laws that have an impact on labour relations in the Public Service would have to be negotiated and agreed upon by parties in NEDLAC before being presented to the Executive in Government and to Parliament. In that way, the entire membership of NEDLAC concerning Public Service matters would have an opportunity to listen to each others’ view and agreeing or disagreeing on the contents of the draft laws before presentation to the Executive and Parliament. Should NEDLAC be precluded from considering the draft law, it may advise Parliament to that effect. As such, if there was no social dialogue at NEDLAC level in respect of the specific draft law, the elected representatives may not consider debating the draft law in the Legislature but refer it back to NEDLAC for contribution.

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1. The Constitution of the Republic of South Africa, 1996, section 23 (2) stipulates rights of employees to form and join trade union and participate in activities and programmes of trade union and to strike. Whereas section 23 (3) provides for the rights of employers to form employers’ organisations and participate in activities and programmes of an employers’ organisation.
3. The constitution of the Republic of South Africa, 1996, section 23 (5) stipulates that it is specified that every trade union, employers’ organisation and employer has the right to engage in collective bargaining which is regulated by national legislation.
5. Republic of South Africa, Labour Relations Act 1995, PSCBC is established in terms of section 35.
The other important institution established post 1994 is the Commission for Conciliation Mediation and Arbitration (CCMA). The CCMA commenced its operations in January 1996, and is established to resolve disputes through conciliation, mediation, and arbitration. The CCMA has jurisdiction over jurisdictional disputes between two or more Public Service Bargaining Councils, including the PSCBC which may be resolved through conciliation as soon as possible. Any party to the jurisdictional dispute may finally request that the dispute be resolved through arbitration if all fails. In cases of ordinary disputes referred to the CCMA which do not fall within the jurisdiction of the PSCBC or any of its Sectoral Bargaining Councils, these should be concluded within 30 days after such referral. The exception would be cases where there is an agreement between the parties to extend the 30 days prescribed period. If the 30 days has lapsed and or the conciliation has failed to lead to the resolution of the dispute, then, the Commissioner assigned the case or another one would have to conduct arbitration. The arbitration procedure may also be resorted to if anyone of the parties so requests during the conciliation process or if the two parties consent to arbitration.

Depending on the nature of the disputes between employees and employers, instead of going to courts for final adjudication of cases by a Magistrate or Judge, usually after lengthy periods of waiting for dates of set down of cases, the CCMA plays a pivotal role in conciliation and or mediation as the main methods used to settle disputes. The CCMA gets parties to face each other in non adversarial manner within 30 days with the aim of amicably resolving disputes. The number of cases which the CCMA has handled since its establishment are over 500 000 throughout the country. Had the parties in these cases decided to take the cases to court for judgements or orders, it is possible that the finalisation of the same could have been delayed due to exchange of pledges and law court rolls, which may also have jeopardised the parties’ rights especially of the indigent employees. It should be noted that an award of the CCMA can be enforced as a court order if an interested party requests that it be made a court order by the labour court.

In respect of labour relations in the Public Service, the CCMA plays a minimal role as the disputes between employees and employing departments are dealt with by the Sectoral Bargaining Councils or Public Service Co-ordinating Bargaining Council. The details of how the PSCBC and its Sectoral Bargaining Council fit in the Public Service labour relations are outlined later in the article.

There are other institutions which were established post 1994 in terms of other laws and which are meant to enhance the labour relations in South Africa. These laws are applicable in both the public and private sectors. Likewise, the institutions established as a result of these laws are constituted by amongst others, people from both these sectors. Some of the applicable laws are briefly described as follows:
Table 1:

<table>
<thead>
<tr>
<th>Act of Parliament</th>
<th>Institution Established</th>
<th>Intention of the Institution and application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupational Health and Safety</td>
<td>Advisory Council for Occupational Health and Safety</td>
<td>Advises the Minister of Labour on policy matters in respect of occupational health and safety in workplaces. The Act applies in all sectors</td>
</tr>
<tr>
<td>Employment Equity Act No. 55 of 1998</td>
<td>Commission for Employment Equity</td>
<td>Monitors the employers’ compliance as well as their efforts through plans to eliminate unfair discrimination and the promotion of equality in the workplace in order to achieve a diverse workforce that is representative of the countries’ population. The Act applies in all sectors</td>
</tr>
<tr>
<td>Compensation for Occupational Injuries Act No. 61 of 1997</td>
<td>Compensation Board</td>
<td>Advises the Minister of Labour on policy matters with reference to compensation for disablement caused by occupational injuries and diseases</td>
</tr>
<tr>
<td>Basic Conditions of Employment Act No. 75 of 1997</td>
<td>Employment Commission</td>
<td>Established with the intent to advance economic development and social justice by regulating the right to fair labour practices in different sectors. It also advises the Minister of Labour on any matters pertaining to conditions and trends in collective bargaining. Applicable in all sectors</td>
</tr>
</tbody>
</table>

In addition to all the laws discussed above, there are specific labour laws, rules and regulations which were promulgated post 1994 for application particularly in the Public Service. One of these laws that is of significant importance to more than 1.2 million Public Service employees, is the Public Service Act. The other laws that are applicable to the Public Service include:

Table 2:

<table>
<thead>
<tr>
<th>Act of Parliament</th>
<th>Purpose and scope of application</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Employment of Educators Act No. 76 of 1998</td>
<td>The Act applies to educators and regulates the employment relationship between them and the employing departments</td>
</tr>
<tr>
<td>The South African Police Act No. 68 of 1995</td>
<td>The Act applies to police officers and regulates the employment relationship between them and the employing departments</td>
</tr>
<tr>
<td>The Correctional Service Act No. 111 of 1998</td>
<td>Regulates the employment relationship between officials and the employing correctional service department</td>
</tr>
</tbody>
</table>

Through all these laws, the employees represented by their labour unions in the Public Service are enabled to participate in the development of policies and rules that are of mutual interest and which would affect them in their employment relationship. It should be noted that members of the Senior Management Service (SMS) at levels 13 and above are excluded from the bargaining chambers at all levels except in cases where the employer consents with their inclusion.

Depending on the nature of the issues in the policy or law being developed, the employees’ involvement commences at the departmental chamber until the Sectoral Bargaining Council or PSCBC in respect of for instance, the conditions of service, and wages. Through negotiations at the PSCBC, as well as the Sector Councils, General Public Service Sectoral Bargaining Councils, Education Labour Relations Council, Safety and Security Sectoral Bargaining Council, and the Public Health and Social Development Sectoral Bargaining Council have made strides in the development of policies for Public Service employees on the annual wages negotiations and conditions of service for employees in specific public sectors.

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12 Republic of South Africa. Through the Labour Relations Act No. 66 of 1995, in section 37, the PSCBC designated GPSSBC as a bargaining council in 1999 by Collective Agreement.
13 Republic of South Africa. The ELRC is a statutory council which was initially established by the Education Labour Relations Act of 1993 but now draws authority from the Labour Relations Act of 1995.
14 Republic of South Africa. SSSBC was established in terms of section 37 of the Labour Relations Act and designated by the PSCBC.
15 Republic of South Africa. Through the Labour Relations Act No. 66 of 1995, in section 37, the PHSDSBC was designated as a bargaining council in 1999 by the Public Service Co-ordinating Bargaining Council.
There are levels of discontent in respect of application of these laws and policies remains high and have led to grievances at personal level to complaints and disputes of interests as well as strikes\(^{18}\) in the past. The nature of the majority of grievances handled by the PSC, for instance demonstrates that there is continuing discontent with performance assessment processes, remuneration and related matters\(^{19}\), amongst others. Furthermore, although disciplinary procedure has been streamlined to ensure that there is uniform standard in handling such matters, the PSC established\(^{20}\) that there are huge differences on how cases are handled in departments. Key to some of the recurring discontents amongst employees in the Public Service is the lack of clarity on the roles played by the Labour Relations Practitioners\(^{21}\) and Human Resources Officers\(^{22}\).

In conclusion, it is important to note that South Africa as a young democracy has certainly made undeniable strides in the promotion of sound labour relations in the public and private sectors. This is evidenced by the appreciation and embrace by all role players in this area, to the notion that sound labour relations practices is key to labour peace.

The common thread in all the Sectoral Bargaining Councils lie in the fact that they (Sectoral Bargaining Councils) have fine-tuned dispute resolution procedures and have professional panel members to preside over disputes lodged by employees. However, there are a few concerns which still need to be addressed namely\(^{16}\), a need to review approaches to dispute resolution mechanisms, and procedures for reviews of outcomes. This is because when a panellist had erroneously arrived at an incorrect conclusion, in most instances, the employer is reluctant to take the matter on review. In light of this, labour in most cases takes advantage by making incorrect conclusions on a similar matter as precedence would have already been set. The PSC\(^{17}\) has noted a few cases where aggrieved employees made reference to awards of panellist which on scrutiny are found to be erroneously.

Within departments, labour is afforded an opportunity of not only being involved in chamber negotiations but representatives of labour in all decision making processes. The implication of all these policy framework strides completed through social dialogue does not necessarily mean that all is well in the Public Service labour relations.

\(^{16}\) Republic of South Africa. A paper presented at the First South African labour relations conference in the Public Service A critique of dispute resolution mechanisms in Public Service bargaining councils, with emphasis on employer – by Adv Dawie Bosch.

\(^{17}\) Unreported grievances where PSC found misinterpretation prescribed by panelist which departments never challenged.

\(^{18}\) Republic of South Africa. Public Service national strikes on wages in 2007 and 2010. Another article in this magazine covers this topic extensively.

\(^{19}\) Grievance processing is covered in Managing Grievances in the Public Service article in this magazine and as such it will not be discussed in detail here.

\(^{20}\) The article on Importance of Managing Discipline in the Public Service deals with this subject extensively in this magazine.

\(^{21}\) An article in this magazine focusing on the Importance of Labour Relations Practitioners towards the contribution of Labour Peace explains fully the challenges faced in this regard.

\(^{22}\) Clarity is provided in the article on the Strategic Importance of Human Resource to Labour Relations in this magazine.
“Collective bargaining is the most fundamental component of the labour relations system to ensure the maintenance of labour peace and to strengthen relations between the parties”
The Importance of Collective Bargaining in the Public Service

“...collective bargaining can be a useful instrument to attain the goals of transformation. The Constitution creates a fertile ground for collective bargaining in the public sector to thrive. The challenge is on the state and other role players to utilise collective bargaining in a manner which facilitates the transformative ideals of the Constitution”
Introduction

Section 25 (5) of the Constitution of South Africa brought about the most salient change of the collective bargaining regime and confers on every trade union, employers’ organisation and employer the right to engage in collective bargaining. The Labour Relations Act No. 66 of 1995 (LRA), as amended aims to give effect to these rights and promotes collective bargaining at sectoral level. Section 35 and 36 of the LRA established the Public Service Co-ordinating Bargaining Council (PSCBC) as a mandatory bargaining council for the public service and Section 37 made provision for the designation of sector bargaining councils. The PSCBC provide a platform for the parties, the state as employer and the Public Service trade unions, representing approximately 1.2 million employees, to engage over matters of mutual interest such as salaries and conditions of employment. The LRA therefore, places an obligation on the state to engage in collective bargaining.

Collective Bargaining in the Public Service

Collective bargaining is the most fundamental component of the labour relations system to ensure the maintenance of labour peace and to strengthen relations between the parties. It also creates a framework for the prevention and resolution of disputes. One other importance of collective bargaining stems from the belief that the settlement of disputes by negotiations is highly desirable particularly as it avoids the disruptions caused by economic power play23.

In the Public Service, collective bargaining occurs at central Public Service Co-ordinating Bargaining Council (PSCBC), Education Labour Relations Council (ELRC), General Public Service Sectoral Bargaining Council (GPSSBC), Safety and Security Sectoral Bargaining Council (SSSBC) and Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) and Provincial Chamber level. Within these structures of social dialogue and through a common vision the State as represented by the Department of Public Service and Administration (DPSA) and organised labour jointly determine the conditions of employment and rules that govern the employment relationship.

Ngcukaitobi identified two critical roles that collective bargaining fulfills in the public sector that are crucial in the context of developing our state:

• The first one is that collective bargaining serves as an important constraint to the exercise of public power by the state.

• Secondly, and perhaps more importantly, collective bargaining can be a useful instrument to attain the goals of transformation. The Constitution creates a fertile ground for collective bargaining in the public sector to thrive. The challenge is on the state and other role players to utilise collective bargaining in a manner which facilitates the transformative ideals of the Constitution24.

In the PSCBC employees are represented by 8 unions with diverse interests except for those affiliated to the Congress of South African Trade Unions (COSATU) who jointly consolidate their demands and table for negotiations in Council. Failure to negotiate or reach consensus on pertinent issues would place a strain on the relationship between the parties, and mostly result in power play. In the context of mutual interest disputes, the alternative for labour is to seek conciliation and if it fails the trade unions can give notice to strike in terms of the LRA provisions (except for the essential and maintenance services who are precluded from participating in a strike action). Padayachee clearly stated that strike action and lock outs result in trade union members’ salary being docked for “no work, no pay” in terms of the LRA. Thereafter, the trade unions would have to still return to the negotiations whilst the employer on

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the other hand, could unilaterally implement “no work, no pay”. However, the unions could interdict the employer to reverse the implementation. As is practice, the employer may end up signing an agreement with those unions willing to settle and implement the agreement. The implications for collective bargaining in the Public Service would be severe and the relationship between the COSATU, its affiliates and the Government could be terminated. This would have consequences for the ruling party, i.e. the African National Congress (ANC).

It is noteworthy to highlight that collective bargaining processes have delivered meaningful outcomes including decentralisation of managerial power and ensuring uniformity in the formulation and implementation of policies in the Public Service. Numerous collective agreements on socio-economic interests and other matters of mutual interest were concluded which bind the employer and employees thus limiting managerial prerogative as they can only be effected in a manner which has specifically been agreed between the parties. Section 5(4) of the Public Service Act gives emphasis to this and provides certain limitations as far as decision making in the Public Service is concerned.

The parties to the Councils have contributed effectively towards the transformation and restructuring in the Public Service through social dialogue and concluded sustainable collective agreements to address past discriminatory practices and inequalities of the previous regime. Agreements concluded at central level (PSCBC) cover a wide range of issues from socio-economic aspects such as job creation and health issues like policies on HIV/AIDS, pay scales, agency shop, agreements over conditions of service matters including macro benefits such as pensions, medical aid, leave and other agreements regulating the transformation and restructuring of the Public Service, allowances, grievance and disciplinary procedures and strategic issues such as training and development as well as the occupational specific dispensations (OSDs) which aims to improve the Public Service ability to attract and retain skilled employees by putting occupational classifications, promotions and grading systems in place.

**Conclusion**

Recent agreements reached by the parties including the Birchwood and the Summit Declarations indicates commitment by the parties to take collective bargaining to a higher level and comprehensively look at ways to strengthen the Public Service to meet developmental challenges. Enforcement mechanisms on the implementation of collective agreement through improved inspection can never be over emphasised.

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27 PSCBC Resolution 2 of 2009 Adoption of declaration on occupation specific dispensation as agreed to at workshop held on 11 June 2009 at Birchwood Hotel in Boksburg.
28 PSCBC Resolution 6 of 2010 Adoption of declaration on Public Service Summit as agreed to at the Public Service Summit held on 11-13 March 2010 at Inkosi Albert Luthuli Convention Centre in Durban.
PUBLIC SERVICE STRIKE

WE DEMAND 8.5%
The Importance of Bargaining and Reflections on the Public Service Strike – A perspective from SADTU

By Mr Mugwena John Maluleke, General Secretary South African Democratic Teachers Union

The South African Democratic Teachers Union (SADTU) is committed to the creation of stable collective bargaining institutions and procedures. SADTU was one of the founder members of the Education Labour Relations Council (ELRC) and the Public Service Co-ordinated Bargaining Council (PSCBC) and remain the largest union in the PSCBC. Indeed, the evidence points to stable labour relations in the education sector. ‘Wild cat’ strikes whilst highly publicised are isolated and highly localised in character. The total number of strikes in the sector is paltry compared to other sectors. Where unions do feature prominently is in terms of total work days lost, a result of very large and long national strikes which occur every few years. This is a function of the large concentration of employees in education and the Public Service, centralised bargaining and the failure to conclude negotiations timeously resulting in prolonged strikes. This is the phenomenon to be addressed in this article by providing a preliminary analysis of the 2010 Public Service strike.

Context

The strike was not just about remuneration, but raised issues about service delivery in the Public Service. Even as unions defend living standards of our members, they have to constantly remind them of their role in providing quality services for the poor and the working class. The employers, Ministers, etc. do not use Public Services: they rely on private health, education and security. This is a problem, since they have no immediate personal interest in improving the services. The strike highlighted the massive inequalities in the sector and in the country, now officially the most unequal society in the world. These contradictions are sharpened by the daily news of corruption, tenderpreneurs, conspicuous and wasteful spending. When Ministers say there is no money for Public Service workers, no one believes them.

Housing was a major issue in this strike. Most Public Service workers earn too much to qualify for an RDP house, but do not earn enough to enter the housing market and obtain a high enough bond. Hence, the demand for an increase in the housing allowance which has not been reviewed for several years. Unions were very mindful that we were negotiating in the wake of a major global recession with severe consequences for jobs and government revenues. Union demands were not outrageous – initially for 11%, which the unions reduced to 8.6% as a bottom line. Remember this is at a time when settlements in the private sector were running at 8-10% and above. The final straw for workers was when the State granted these higher settlements to employees in the Parastatals, whilst refusing to do so for public servants.

Bargaining in the Public Service

The strike was only a last option for unions, and many probably did not see it coming. The unions began the process of negotiations in October 2009. As a patriotic Congress of South African Trade Unions (COSATU) union, SADTU delayed any industrial action until after the World Cup. Even then SADTU tried to apply limited pressure through a one day stoppage and marches. When the State failed to respond, workers met this show of arrogance with strike action. A pattern is emerging in recent Public Service strikes. SADTU starts with a long build up of excruciatingly slow negotiations, ending in a deadlock and outright conflict and a lengthy strike which usually results in prolonged strikes. This is the phenomenon to be addressed in this article by providing a preliminary analysis of the 2010 Public Service strike.
mandate and have to report back to principals. The problem here is that the principals consist of a Ministerial Committee which is difficult to convene and fails to prioritise the settlement of the dispute.

The Strike

This was probably the largest labour strike in South African history in terms of days lost. It achieved an unprecedented level of unity across several unions representing all the 1.3 million workers in the sector irrespective of federation, race, political affiliation or differing sectoral interests (i.e. between professional and general workers). This was no small achievement. The unions were able to mobilize considerable support from unions in the private sector with the threat of a one day general strike by COSATU if the state had not increased its offer. Similarly, unions received support from the international labour federations, faith based organisations and the public. For the first time, hospitals were closed and police and security forces were keen to join the action. The fact that there are still no minimum service level agreements in place – as required by law – is an indictment on the employer who refused to sign off on agreements reached – an attempt to deny the right to strike to every worker in the health and security sectors. This needs to be fast tracked to make sure that genuinely essential services are safeguarded for the poor and working class which relies on these services. The strike was characterised by high levels of mobilisation and militancy, despite violence from the side of police and attempts by the State to criminalise strikers through the use of special courts. When some strikers employed violent methods, union leadership moved quickly to control the situation.

Whilst Public Service strikes tend to be bitter – partly a function of the structural limitations on bargaining in the sector – the hostility from Ministers and the government was palpable. There is no doubt that the employer’s handling of the dispute added to tensions: misinformation published in the media, provocative and untrue statements from Ministers back-fired and probably lengthened the dispute and entrenched attitudes. No strike is political. Implicitly they call into question existing social relations. A public sector strike pits workers against the government as employer. When that government has patently failed to address the basic needs of workers and the poor, the strike is political.

The negotiations were compromised by the media which undermined worker control in disseminating information through structural report back. The media had information before workers could receive such from their leaders and this caused tensions between members and their leaders. Labour peace can be maintained if leaders consistently report to workers about what is possible and not possible to achieve and not the media. Negotiations through the media poison the environment and kill that trust which is necessary in negotiations.

The Gains

Although SADTU members rejected the offer, there were real gains against the employers’ original offer of 5.2%. These include:

- An increased offer of 7.5%
- Additional R300 on the housing allowance
- Agreement to bring forward the current payment date of July 1 to May 1 in 2011 and April 1 in 2012
- Agreement to introduce a new housing scheme by 1 April 2011
- Commitment to equalisation of the medical aid subsidy by December 1, 2010. The unions are also pushing for greater worker control over the government medical aid scheme (GEMS).

Despite the gains, SADTU membership rejected the settlement, with the result that it took some time to put together a majority of Public Service unions to accept the final settlement. This must also be a matter of concern. A very large sum of public funds is expended, but still no one is happy, and little has been achieved in terms of strengthening bargaining processes and improving relations between parties. These negative factors I believe result from the systemic problems outlined above. It is therefore incumbent upon all the parties to start debating these issues and to develop strategies to address what are very serious challenges facing collective bargaining in the Public Service.
Taking a closer look at the Grievance Procedures in the Public Service
Introduction

The Constitution of the Republic of South Africa, 1996 is widely regarded as one of the most progressive constitutions in the world. Section 196(4)(f)(ii) of the Constitution, mandates the Public Service Commission (PSC), to investigate grievances of employees in the Public Service and recommend appropriate remedies. However, the Constitution does not provide the mechanisms which should be followed for the PSC to deal with grievances. Section 35 of the Public Service Act, 1994 (as amended) provides a legislative framework in terms of which the grievances of employees in the Public Service should be considered. It provides for an aggrieved employee to lodge his/her grievance regarding an official act or omission by the employer, with the Executive Authority (EA) of the Department. The aggrieved employee may request that his/her grievance be referred to the PSC, if he/she is dissatisfied with the decision of the EA.

Section 11 of the Public Service Commission Act, 1997, read with section 35(5) of the Public Service Act, 1994 (as amended), provides for the PSC to make Rules for inter alia, the investigation of grievances of employees in the Public Service. In order to give effect to this provision, and to promote sound labour relations within the Public Service, the Grievance Rules for the Public Service were published in Government Gazette No 25209 of 25 July 2003 (the Grievance Rules). The Grievance Rules are in line with fair labour principles such as consistency, transparency and the resolution of grievances as close to the point of origin as possible. However, these Grievance Rules are not the only grievance procedure in the Public Service. Other sectors within the Public Service, such as the Correctional Services, Defence and Military Veterans, as well as Education, have their own grievance procedures. The different grievance procedures in the Public Service are discussed below:

The Grievance Rules, 2003

The Grievance Rules, 2003, are applicable to all employees appointed in terms of the Public Service Act, 1994 (as amended). The key underlying principles of the Grievance Rules are to promote the speedy, impartial and equitable handling of grievances, sound labour relations, and the resolution of grievances at the lowest possible level in a department. The employer must ensure that the grievance is dealt with in a fair, impartial and objective manner and that the principles of natural justice are observed. No employee may be victimised or prejudiced, directly or indirectly as a result of lodging a grievance. The Grievance Rules, 2003 further provide for compulsory time frames to be adhered to, unless both parties agree to the extension of these time limits. According to these Rules, a grievance must be lodged with the employer within 90 days from the date on which the employee became aware of the official act or omission which adversely affects him/her. Furthermore, the department, including the EA, has 30 days to deal with the grievance, which period may be extended by mutual agreement in writing. Should the department fail to respond to the aggrieved’s grievance within the prescribed 30 days, the aggrieved may lodge his/her grievance –

(a) with the PSC directly; or
(b) in the case of an alleged unfair labour practice, with the Public Service Co-ordinating Bargaining Council (PSCBC) or the relevant Sectoral Council (whichever is applicable) in terms of the resolution procedure.
In order to facilitate the resolution of grievances, the designated employee, who is responsible for the resolution of grievances in the department, must liaise with the relevant structures of authority in the department on the resolution of a grievance. Although the designated employee is responsible for the resolution of grievances, a grievance may be resolved by any person in the department who has the requisite authority to do so.

A grievance must be lodged by an employee on the prescribed form annexed to the Grievance Rules, 2003. If a grievance is not resolved internally to the satisfaction of the aggrieved employee, he/she must confirm this in writing. If a grievance cannot be resolved at the level of the department, the EA must inform the aggrieved employee accordingly. An aggrieved employee may demand that his or her grievance be referred to the PSC within 10 days after he/she received the EA’s decision. The EA must then in terms of section 35(1) of the Public Service Act, 1994 (as amended) forward the grievance and all relevant documentation to the PSC for consideration. Upon receipt of the grievance and all relevant documentation, the PSC must within 30 days, consider the grievance and inform the EA of its recommendation and the reasons for its decision in writing. Upon receipt of the PSC’s recommendation, the EA must, within five days, inform the employee and the PSC of his/her decision in writing.

Rules for dealing with grievances of members of the Senior Management Service, including Heads of Department

In addition to the Grievance Rules, 2003, in September 2010, the PSC issued Rules for dealing specifically with the grievances of members of the Senior Management Service (SMS), including Heads of Department (HoDs), and these were published in Government Gazette No 33540. The purpose and application of the Grievance Rules for SMS members is similar to the 2003 Grievance Rules, and they provide for sound labour principles to be followed in the consideration of grievances of SMS members. The following provisions of these Grievance Rules are highlighted:

- A member must use the prescribed grievance form to lodge a grievance with the designated employee. If a grievance has been referred to the EA for a decision, the EA must inform the member of his/her decision in writing by completing Part C of the prescribed grievance form. A grievance of a SMS member should be resolved within a period of 45 days from the date that it was lodged. However, the period may be extended by mutual agreement in writing between the employer and the SMS member. If the member remains dissatisfied after having been informed of the decision of the EA, he/she may demand that his/her grievance be referred to the PSC within 10 days after receipt of such decision. Where the member requests the referral of his/her grievance to the PSC, he/she must give an explanation in writing for his/her dissatisfaction with the EA’s decision by completing Part C of the prescribed grievance form.

- If the grievance constitutes an alleged unfair labour practice as defined in the Labour Relations Act, 1995, the member must, after the internal departmental grievance procedure has been exhausted, and he/she remains dissatisfied, inform the EA in writing that he/she wishes to utilise the dispute resolution mechanisms provided for in the constitution of the PSCBC or the relevant sectoral council or the Commission for Conciliation Mediation and Arbitration (CCMA), whichever is applicable. The department must inform the PSC accordingly.

- If the department fails to respond to the grievance within the prescribed time frame of 45 days, the aggrieved may, after having directed an enquiry in writing to the designated employee, and not being provided with a response within 5 days, lodge his/her grievance with the PSC directly. In the case of an alleged unfair labour practice, the aggrieved may opt to lodge his/her grievance with the PSCBC or relevant Sectoral Council or CCMA.

The Grievance Rules for SMS members also provide for the Head of Department to lodge a grievance with either the relevant EA or the PSC directly. In both instances, the grievance of a Head of Department should be investigated within a period of 45 days, which period may be extended by mutual agreement in writing. Grievances of Heads of Department relating to the outcome of their performance evaluations are dealt with in terms of the dispute resolution mechanism provided for in the Performance Agreement, before they can be referred to the PSC. In terms of section 35(4)(b) of the Public Service Act, 1994 (as amended), a Head of Department may not lodge a dispute on the same matter that was referred to the PSC, with the PSCBC or relevant sectoral council or CCMA.

Department of Correctional Services: Grievance Procedure Manual

The Grievance Procedure Manual of the Department of Correctional Services (DCS) is a product of collective bargaining within the department. It sets out an accessible grievance procedure to provide employees with an opportunity to air their grievances. The Grievance Procedure Manual provides for individuals as well as groups of employees to lodge a grievance with the department.

Grievances of employees must be lodged in writing on the prescribed grievance form. The form provides for each level of authority to acknowledge receipt and indicate the date on which the grievance was finalised. In terms of the procedure, an employee must raise a grievance verbally or...
in writing with the first level of authority/direct supervisor: The supervisor must endeavour to resolve the grievance within two working days. In the event that the grievance is against the immediate supervisor, the aggrieved may approach the second level of authority for its resolution. The grievance goes through stages two to five, all of which provide for attempts to resolve the grievance. Stage five provides for grievances concerning matters where the decision-making competence/delegation level resides at Head Office. The grievance can then be escalated to stage 6 where the relevant level of authority must endeavour to settle the grievance within ten days. Stage 7 provides for an instance where the grievance remains unresolved, in which case the aggrieved employee may pursue any lawful course of action (external remedies).

**Department of Defence: Individual Grievances Regulations**

The Minister of Defence and Military Veterans promulgated the Individual Grievances Regulations in Government Gazette No 33334 on 30 June 2010, which provide for a single grievance procedure within the Department of Defence that accommodates both uniform members and Public Service employees. The procedure provides that a member or employee should lodge his/her grievance through the chain of command within 90 working days after occurrence of the act or omission which gave rise to the grievance. The procedure provides for the capturing of the grievance circumstances of the grievance. As part of its tracking system, the procedure provides for the capturing of the grievance on the Action Request System used for the management of grievances in the department. If a grievance is not lodged within 90 days after the employee became aware of the official act or omission, he/she may apply for condonation with the Grievance Board.

In terms of the Individual Grievances Regulations, the Chief of a service or division must establish a Grievance Committee to deal with all grievances that are received. The Grievance Committee considers the grievances and provides the officer in charge of the employee of its decision. If the aggrieved employee is not satisfied with the decision of the Grievance Committee, he/she may request that the grievance be referred to the Grievance Board. The Regulations further provide that an employee must exhaust the internal remedies, before taking action to refer his/her grievance.

In terms of the provisions of clause 83 of the Interim Instruction issued by the Department of Defence, an employee in the service of the Department, who wishes to refer his/her grievance to the PSC, must inform the Secretariat of the Grievance Board in writing accordingly, within 10 days of receipt of the final decision of the Grievance Board.

**South African Police Service Grievance Procedure**

Similar to the above service departments, the South African Police Service (SAPS) has their own grievance procedure, agreed upon in the Safety and Security Sectoral Bargaining Council on 20 May 2005. The Grievance Procedure is included as Annexure E in the Labour Relations Manual of the SAPS. The grievance procedures are also based on the principles of fair labour practice and provide that a grievance should be resolved as speedily and close to the point of origin as possible. In terms of the grievance procedures, an aggrieved employee should lodge a grievance in writing on the prescribed form, within 120 days after becoming aware of the official act or omission. However, provision is made for condonation by the National Commissioner in the case

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37 The Department of Defence and Military Veterans: Individual Grievances Regulations. Published in Government Gazette No 33334 on 30 June 2010.
38 The Department of Defence and Military Veterans: Individual Grievances Regulations. Published in Government Gazette No 33334 on 30 June 2010.
39 The Department of Defence and Military Veterans: Individual Grievances Regulations. Published in Government Gazette No 33334 on 30 June 2010.
40 Ibid.
41 Ibid.
42 Ibid.
43 The Department of Defence and Military Veterans: Interim Instruction Individual grievances procedure in the DOD: Clause 83.
where a grievance is lodged after the expiry of 120 days, in exceptional circumstances.

The grievance procedures provide for specific timeframes in terms of which the different levels need to investigate the grievance. On the first level, the supervisor should interview the aggrieved in an attempt to try and resolve the matter within a period of 3 working days. If the matter remains unresolved, it is escalated to the grievance officer, who should attempt to resolve the matter within a period of 7 working days. The third step includes a joint grievance resolution team who should attempt to resolve the matter within a period of 10 working days. If the matter remains unresolved, the joint grievance resolution team should refer the grievance, in consultation with the aggrieved employee, to a mediator for resolution. Mediation is regarded as the most appropriate step in the grievance resolution process. Upon conclusion of the mediation, the mediator shall issue a certificate to the relevant parties. The aggrieved employee may refer a dispute to the Safety and Security Sectoral Bargaining Council in terms of the Constitution of the Council, within 30 days of the certificate being issued. The SAPS also has grievance management guidelines which provides a step-by-step process that should be followed in the resolution of grievances.

**Grievance procedure for Educators***

The grievance procedure for educators (Resolution 13 of 1996) is a product of a collective agreement and is included as a separate Chapter in the Personnel Administration Measures (PAM)45. The objective of the grievance procedure is to resolve individual grievances speedily and as close to the point of origin as possible. The procedure is intended to avoid a grievance becoming a dispute. The first step that should be followed in attempting to resolve a grievance is conducting an oral interview with the aggrieved educator by the head of a school or college, or the supervisor. If the matter remains unresolved, the joint grievance resolution team should refer the grievance, in consultation with the aggrieved employee, to a mediator for resolution. The aggrieved employee may refer a dispute to the Safety and Security Sectoral Bargaining Council in terms of the Constitution of the Council, within 30 days of the certificate being issued. The SAPS also has grievance management guidelines which provides a step-by-step process that should be followed in the resolution of grievances.

**Grievance procedure for Educators***

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44 The Grievance procedure for Educators (Resolution 13 of 1996).
45 The Grievance procedure for Educators (Resolution 13 of 1996).
The grievance procedure for educators provides for specific timeframes for the handling of grievances of educators. Once a grievance has been lodged, the Head of the School/College, or supervisor should conduct a meeting within 3 working days, in order to try and resolve the grievance. The outcome of the meeting should be conveyed to the relevant office of the Provincial Department of Education. An aggrieved educator may refer his/her grievance directly to the Regional/District level in respect of a School/College or Department, if the grievance concerns the head or supervisor.

If an aggrieved educator remains dissatisfied after having received the decision of the Head or Supervisor, he/she may refer the matter in writing, to the Head of the region/district, and ultimately, the Head of Department or his/her delegate. The Head of Department or his/her delegate should attempt to resolve the grievance within a period of 5 working days. The time frame for investigating the grievance of an aggrieved educator may be extended upon agreement. In the case where a grievance cannot be resolved through the Grievance Procedure, the aggrieved employee may register a formal dispute with the Executive Officer of the Education Labour Relations Council (ELRC) in terms of its Constitution.

Conclusion

The employment of employees brings a human element to the employment relationship, which includes issues such as personal problems, complaints against supervisors or colleagues, and/or dissatisfactions regarding working conditions. The right to speak out against unfair treatment received from supervisors or lodge complaints regarding employment related issues, has become a part of workplace democracy. In order to assist both the employer and the employee in managing this part of the employment relationship, it is imperative that the principles of the grievance procedures in the Public Service as indicated above are applied fairly and consistently by all parties within the work environment.
Desiring Labour Peace:
The role of war
If you ask anyone involved in the field of labour law – whether an Attorney, human resource practitioner, disciplinary hearing chairperson or the accused – what is the most important Latin phrase they know, they would probably say Audi Altaram Partem. This time honoured principle that the other side to any dispute must also be heard before a decision is taken is deemed to be so universally a sign of a just legal system that it is regarded as being part of the natural order of things. How often has one sat listening to someone setting out a grievance or a disciplinary accusation and been convinced of the righteousness of the speaker, only to have a totally new and sometimes changed perspective when one hears the other side out? It happens quite often and is a sign of the wisdom of the rule to always hear the other side.

Many human resource practitioners consider this to be the essence of their job; listening to both labour and the employer and advising either equally about the rights and wrongs of a situation. They are the cotton wool whose job it is to take out unnecessary aggression and positioning between the parties at work and to ensure that, all round, fairness is applied and labour peace ensues.

In terms of the Labour Relations Act, disputes about disciplinary action and unresolved grievances usually end up before an adjudicator as disputes of right. As such, they must be adjudicated. Obviously, it is crucial to observe the audi rule in outside forums too so that any decision taken in a bargaining council is also fair. But it is not only in matters concerning disputes of right where listening to the other side is an important thing to do. Even in negotiations over disputes of interest, (for example, a wage dispute), where there is no right or wrong side per se, and where the dispute cannot be resolved through adjudication, even here, listening to the other side is a critical skill. Good negotiators look behind the positions that their opponents put forward, often with great belligerence. They focus on trying to understand what interests lie behind their opponent’s position. Although not always, it is possible, through asking questions and keeping an open mind, for a negotiator to identify a way to satisfy the latent interests and needs shielded behind a brashly put position and, by addressing these hidden problems, to resolve the real dispute.

In the 1980’s, much of the anger expressed in ‘simple’ wage disputes was really a demand for recognition of trade unions and an end to discrimination in the workplace. Clever capitalists saw very quickly that these political questions were the real inhibitors of profits and not crazy wage demands. In a workplace where I was part of a mediation, what lay behind a go-slow was unhappiness not about overtime rates but a managerial style in assigning overtime that workers saw as belittling and tinged with racism. It is only through listening very carefully to the other side that the real outlines of this dispute become clear and only when the real outlines became clear, was it possible to resolve that dispute.

This is not to say that all disputes can be resolved just as long as the antagonists understand each other. South African workplaces are not Dr. Phil studios. The touchy-feely approach to labour relations ignores the fact that fundamentally opposing interests often collide in workplaces. The resulting disputes will not be any easier to resolve just because the parties hear each other out. A few years ago, Congress of South African Trade Unions (COSATU) took a position against the Growth Employment and Redistribution (GEAR) in an attempt to defeat and marginalise those whom they thought were advancing the ideology and economics underpinning GEAR. No amount of bosberade would change this fact. At plant level, there are times when a boss has heard worker demands for higher wages perfectly well but feels that if labour costs rise to the extent demanded by the union, the return on his investment is not worth it. No amount of listening will change his opposition.

While I am a great believer in hearing the other side, it is in circumstances like these, where there is no bargaining arena, that I would propose the very neglected other Latin phrase that conflict managers are well advised to know and practise: Ig tur qui desiderat pacem, praeparet bellum. If you want peace, prepare for war.

As a consultant, at times, for clients involved in intractable disputes with other parties, I am often moved to point out to my client that there is no reason for their adversary to behave reasonably. This is because, simply put, sometimes my client is a patsy or is otherwise constrained not to be able to fight back. To give an example, a government department was plagued by wildcat strikes led by two very militant
shop stewards who constantly made scurrilous and unfounded personal attacks upon their director. In the meantime they abused subsistence claims, took time off whenever they wanted and were generally a destabilising force in the department where service delivery was palpably suffering.

It was no use, I told those whom I was advising, to marvel at and complain about their bad behaviour all the time. This was a perfectly natural consequence of the impunity that had been granted to the two militant shop stewards. The problem was that the Minister of the Executive Council (MEC) and Head of Department (HoD) were too scared to allow the two militant shop stewards to be suspended and disciplined in those departments. No one would tackle them because national elections were just around the corner and, within the political party destined to win that particular province; the notion was that the two shop stewards knew people who outranked the MEC and HoD. I am not even sure if this was true but it was believed to be true.

There were thus no realistic prospects in altering the shop stewards’ behaviour because any threats the director made were, correctly, seen to be hollow. What suddenly changed things in my client’s favour, quite accidentally, was a service delivery protest in an area connected to those employees’ Key Performance Areas (KPAs). Out of the blue, the director was allowed to prepare for poor work performance war and guess what? Disciplinary peace broke out. The amplification of bad behaviour by impunity is not a one-way street.

The advice is as follows. When it comes to dealing with conflict in the workplace – both rights and interest disputes, by all means should try talking and listening first. Often the kernel of a win-win solution will emerge. But there are some conflicts that are seemingly eternal and fundamental, such as between bosses and workers over economic issues or on matters of principle such as dismissing those who steal from state coffers. In these matters, unless you are taken seriously as someone who can do damage when roused, there is absolutely no reason for your opponent to be reasonable, stick to the rules or seek industrial peace.

As unpalatable as it may sound, preparing for war would include having dismissed employees before for breaching a court interdict, thereby showing that this is a real and likely consequence for a similar conduct. It would include punishing an employer severely for not rooting out sexual harassment in the workplace, inter alia, by throwing resources into a discrimination suit and making sure the newspapers are there to report on it. In a strike situation it means having very good plans from day one for either getting on with work in the absence of strikers or persuading as many workers to join the strike as possible, all within the law, of course. Thinking like this may seem to be the very anathema of labour peace but that is only superficially true. It is only when one’s opponent senses your own very firm and rational opposition to their actions that the motive exists for a settlement to be reached. In a strike, the worst thing of all is to have an opponent who doesn’t know what they are doing and bumbles from one position to another without giving you a sense of the reasons that underpin their moves. If a boss is haphazardly conceding half a percent a week and then suddenly reverting to an original position and sticking there, it ends up ruining both the company and the income of the workers.

To end then, as worthy and naturally just as audi alteram partem is, and all the other the injunctions in textbooks to be nice, sometimes labour peace, social justice and productivity are best advanced by someone who understands and is prepared occasionally to use labour war.
“Custodian of Good Governance”
The Role of Labour Relations Officers in the Public Service
Sound Labour Relations Practice

By Mr Ben Mthembu,
Chairperson,
Public Service Commission

Background

The Public Service Commission (PSC) is mandated by the Constitution to amongst others, investigate and evaluate the applications of personnel and public administration practices in the Public Service, which inter alia, includes practices to enhance labour relations in the Public Service. The advent of the Labour Relations Act, No. 66 of 1995 and other related labour legislation brought about substantial and fundamental changes to labour law. The Act necessitated a paradigm shift in the way that labour relations officers shape relations between management and employees. The current labour dispensation requires proactive conflict management as opposed to the conventional reactive approach to conflict management. The developments in the field of labour relations, which call for workplace democracy, brought about a paradigm shift in the role played by labour relations officers. The current labour relations system in South Africa is dynamic because of the constant environmental changes that affect the various workplaces and impacts on the organisation. Labour relations are not only influenced by the industrial environment and shop-floor relationships, but also by socio-political and economic factors that impact on the activities and attitudes of the various actors in the labour relations field. These environmental changes require all parties in a tripartite employment relationship, employers, employees and the state, to contribute fairly in ensuring sound and healthy employment relations. A greater share of the contribution is expected from labour relations practitioners.

The responsibilities of the labour relations officers

The greater part of the labour relations officers’ time is spent on dealing with interpersonal relations between managers and employees. They are also involved in collective bargaining with unions and management with a view to enhance labour harmony. The following information is an outline of how labour relations is organised:

- In most organisations, the labour relations officer’s function is integrated in the personnel/human resources function. Although the labour relations function relies heavily on the successful implementation of human resources policies, it also engages in the negotiation and reformulation of these aspects to meet changing needs 46.

- The labour relations officers also oversee the facilitation and development of the work relationship within the organisation. They deal with internal (management and employees) and external stakeholders (unions), and also acts as a change agent. As a facilitator the labour relations practitioner’s role includes interfacing with people at various levels. However, this role should not subjugate that of the supervisors47.

- As conflict is an inherent part of the employment relationship, the labour relations officer should be an expert in handling issues such as conflict management and should train others to do the same. Furthermore, they should establish processes and structures aimed at minimising conflict and promoting co-operation and integration. Their task is to train and advise the fellow managers and employees in the use of such procedures and in the implementation of sound and fair practices. The current system requires a pro-active approach in order to deal with labour relations issues effectively48.

- The functions of labour relations officers are of such a nature that they should not be placed in the forefront of negotiations with unions, or to chair disciplinary hearings, or to handle problematic employees, except in a counselling function. Their function is to equip others to deal with these functions, so that they are free to adopt a wider perspective of facilitator, counsellor and adviser.

- The labour relations officer should continually monitor

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the climate within and outside the organisation. The expertise gained from such monitoring, will equip the functionary to plan and strategise with the purpose of preparing all stakeholders, thus avoiding imminent pitfalls and bringing about the necessary changes.49

- Labour relations officers as strategic partners should initiate organisational development and develop relationships by proactively engaging management on labour relations issues, procedures and standards. They should also assume the role of strategists and be constantly monitored and adjusted to ensure productive utilisation of human resources.50

- The labour relations officers should also hold negotiations with managers and employee representatives separately, in order to widen their framework by presenting the perspective of both management and employees.51

**International focus on the role of the labour relations officers**

There has been considerable divergence across nations’ laws, trade union strengths and collective bargaining systems and practices. Human resources, training, and labour relations managers and specialists, are used as a link between management and employees. In the past, these workers have been associated with performing the administrative function of an organisation, such as handling employee benefits issues or recruiting, interviewing, and hiring new personnel in accordance with policies and requirements that have been established in conjunction with top management. Today’s human resources workers juggle these tasks and, increasingly, consult top executives regarding strategic planning. They have moved from behind-the-scenes work to leading the company in suggesting and changing policies.

In addition, labour relations officers and their support staff are supposed to implement industrial labour relations programmes. The position in the United States of America (USA), for instance, is that when a collective bargaining agreement is up for negotiation, it is the duty of labour relations specialists to prepare information for management to use during negotiation, which requires familiarity with economic and wage data as well as extensive knowledge of labour law and collective bargaining trends. The labour relations staff interprets and administers the contract with respect to grievances, wages and salaries, employee welfare, health care, pensions, union and management practices, and other contractual stipulations. As some employees may not be unionised, labour relations personnel should work more with such employees who are colloquially referred to as “yellow dogs.”52 Specialists involved in dispute resolution are expected to be highly knowledgeable and experienced, and often report to the manager of labour relations.

**Observations and recommendations**

In the public sector, the labour relations officers are involved in functions that are, at the most, the domain of managers. In line with the theoretical view that labour relations officers should be seen more as specialists, rendering expert advice, and looking at the best practices identified through this project, a job description has been developed to assist departments in developing their own models. There is a lack of role and responsibility clarification between line managers and those of labour relations officers, and how the interfaces between the two should be managed. In some departments managers do not accept responsibility for discipline, in others there is no clarity as to who should accept responsibility for training. An accountability matrix to ensure that role confusion is avoided and accountabilities are clearly defined has been developed. A need for a representative from the labour relations component to attend senior management meetings and/or strategic management sessions was identified to improve communication.

**Conclusion**

The fact that there has been several legislative amendments in the labour relations environment is testimony to the fact that there is still room for improvement in the South African labour relations system. A further reason for this assertion is that even though the South African labour relations system is structured in such a way that enables the social partners to engage in continuous dialogue in order to enhance good labour relations, such structures are not always successful. The system of consultation is also encouraged in the Labour Relations Act, 1995, which provides for the establishment of workplace forums, whose purpose would be to promote the interests of all employees in an organisation, irrespective of whether they are unionised or not; enhance efficiency in the workplace; and to consult and participate in joint decision-making with the employer.

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Consistency of Sanctions meted out in the Public Service
Introduction

Generally, the management of discipline is seldom regarded as a pleasant human resource responsibility as this inevitably creates tensions in the relationship between the employer and employee. In order to reduce such workplace tensions and to avoid labour discord and its negative implications within the workplace, it is imperative that the disciplinary process be dealt with in a fair and consistent manner, in line with the Constitutional provisions. The determining factor in assessing whether or not disciplinary processes have been managed consistently are the sanctions imposed for similar forms of misconduct committed by a number of employees in the same department. Whilst mitigating and aggravating circumstances are considered by presiding officers during disciplinary hearings, the sanctions that are imposed for similar acts of misconduct should be reasonably consistent. The outcome of the disciplinary process may also be subjected to litigation which departments may find difficult to defend in the event that its disciplinary processes are fraught with varying procedures and inconsistencies of sanction imposed for similar cases. This in itself could lead to managers and supervisors having a sense of disempowerment to deal with cases of misconduct for fear of lawsuits that may ensue.

As the Public Service Commission (PSC) has been aware of the discrepancies in management of discipline in the Public Service, it was also concerned that sanctions imposed may not be consistent within and between departments. Given the implications associated with inconsistencies of sanctions imposed on employees following disciplinary processes, such as litigation and labour discord, the PSC therefore, deemed it appropriate to conduct an evaluation with a view to establish whether or not sanctions imposed for similar acts of misconduct are consistent within and between departments in the Public Service. The PSC study examined the extent of uniformity in sanctions imposed within departments on employees who had committed similar forms of misconduct, as well as across the Public Service and recommended actions that should be taken to improve the consistency of sanctions on misconduct in the Public Service.

In the study, the PSC reviewed the existing legislative framework governing the management of discipline in the Public Service to determine whether there are any provisions regarding consistency in the disciplinary processes. The investigation was conducted in 15 national and provincial departments that reported a high incidence of grievances relating to disciplinary related matters to the PSC. The PSC extracted cases that were similar in nature from each department and obtained the necessary information on these cases. Based on the information extracted from the sampled departments, an analysis was made of the extent to which there was consistency in the sanctions imposed for similar cases of misconduct.

The misconduct cases which were considered from the sampled departments related to cases dealt with during 1 April 2006 to 31 March 2007 financial year. The review also focussed on an assessment of case law emanating from decisions of the CCMA and the Labour Court on disciplinary sanctions imposed on employees with a view to determine whether or not inconsistency of sanctions on misconduct was a subject of contention and how this was considered by the Commission for Conciliation, Mediation, and Arbitration (CCMA) and the Labour Court respectively. In conclusion the review also focussed on the nature of sanctions on misconduct that could be imposed for various acts of misconduct cases in the Public Service.

Key findings on the evaluation

As there is one employer for the Public Service employees, it is expected that similar norms and standards should apply to ensure consistency in the management of the career incidents of all employees. The PSC found that the sanctions imposed for similar transgressions were wide-ranging. As such the analysis was done in accordance with the type of transgression, as well as an appropriate comparison of the resultant sanctions imposed per department to assess if there was fairness in the management of discipline.
The following table outlines the widespread assortment of sanctions imposed on similar transgressions, as obtained from the sampled departments’ records. Whilst noting that the sanctions differ, regard should be had for the mitigating and extenuating circumstances which may have influenced the presiding officers to arrive at such inconstant sanctions.

Table 3:

<table>
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<tr>
<th>Nature of Transgression</th>
<th>Sanctions Imposed</th>
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| **16 cases of inappropriate or unacceptable behaviour** | • 5 written warnings were issued  
• 2 written warnings were issued coupled with counselling  
• 2 verbal warnings were issued  
• 2 suspension without pay for 2 months was imposed  
• 4 final written warnings were issued  
• 1 employee was dismissed |
| **30 cases of gross dereliction of duty**       | • 9 written warnings were imposed  
• 1 final written warning coupled with counselling was imposed  
• 1 written warning was issued coupled with an order to reimburse the department for the losses incurred in one case  
• Demotion was deemed to be an appropriate sanction in 1 case  
• Demotion combined a final written warning was imposed in 1 case  
• 1 employee was transferred as a sanction in one case |
| **44 cases of fraud**                          | • Dismissal in 19 instances  
• 1 case suspended dismissal, for a 12 month period  
• 15 final written warning issued  
• 5 cases written warnings issued  
• verbal warning imposed in one case  
• demotion in 1 imposed  
• 2 final written warning coupled with two month's suspension issued |
| **42 cases of unauthorised absence**           | • Dismissal of employees in 19 cases  
• 1 suspended dismissal, for a 12 month period  
• 15 final written warning issued  
• written warnings in five cases  
• a verbal warning in 1 case  
• demotion in 1 case  
• 2 final written warnings coupled with two months' suspension |
| **5 assault cases**                            | • A final written warning was imposed in one case  
• A final written warning, coupled with counselling, was imposed in one instance  
• A final written warning with one month’s suspension without pay was imposed in one case  
• A final written warning with two month’s suspension without pay was imposed in one case  
• Three month’s suspension without pay was imposed in one case |
| **4 cases of contravention of policies or prescripts reported** | All 5 cases were from the Department of Justice and Constitutional Development and sanctions imposed were consistent as in all, written warnings were imposed |
| **12 abuse of alcohol related cases**          | • A written warning was imposed in one case  
• A final written warning was imposed in three instances  
• One month's suspension without pay was imposed in one case  
• A two month’s suspension without pay was issued in four cases  
• A three month’s suspension without pay was issued in one case  
• One employee was referred to the EAP for counselling |
| **4 financial misconduct cases**               | • A final written warning was imposed in one case  
• 2 written warnings, coupled with a one month’s suspension without pay  
• 2 Dismissals sanctions were imposed |
<table>
<thead>
<tr>
<th>Nature of Transgression</th>
<th>Sanctions Imposed</th>
</tr>
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</table>
| 23 misuse of state property cases | - 5 Corrective counselling were imposed as sanctions  
- 4 written warning were issued  
- 4 final written warning were issued  
- A final written warning coupled with an order to reimburse the department to cover the financial losses incurred, was imposed in one case.  
- 1 month’s suspension without pay was imposed in one case.  
- In 4 cases, 2 months’ suspension without pay was imposed.  
- A final written warning coupled with a one month’s suspension, was imposed in one case  
- 3 dismissal of employees were imposed as sanctions |
| 1 case of performance of remunerative work outside hours without permission | A written warning sanction was imposed which based on the circumstances submitted to the presiding officer seems appropriate |
| 17 cases of insubordination | - Written warning was imposed in five cases  
- Final written warning was imposed in ten cases  
- A final written warning with two week’s suspension without pay was issued in one case  
- A final written warning with one month’s suspension without pay was imposed in one case |
| 6 cases of corruption | - 4 dismissal imposed  
- 2 final written warning issued |

“...slight variations in sanctions can be expected, and do not necessarily point to inconsistency per se”
It is evident from the above that the sampled departments selected lenient sanctions, tending towards the issuing of a warning for most of the acts of misconduct. Dismissals took place within the context of aggravating circumstances as many employees had committed similar offences under related circumstances.

With regard to gross dereliction of duty, the sanctions imposed in the 30 cases of gross dereliction varied from dismissal as the harshest sanction to a verbal warning. It is noted that counselling was not considered as an appropriate sanction for this type of misconduct. Gross dereliction of duty may lead to poor performance which should be managed on its own. Considering the high number of gross dereliction of duty cases, employees especially first time offenders should be counselled at an early stage as such gross dereliction may result in the ultimate sanction of dismissal.

Mitigating and aggravating circumstances usually inform the appropriate sanction. As a result, slight variations in sanctions can be expected, and do not necessarily point to inconsistency per se. Given this consideration, the slight variations are not reason for concern as the general trend was to sanction the misbehaviour by means of warnings as a distinct category of sanctioning. This conclusion also holds true for the cases where dismissal was deemed to be a fitting sanction, based on the gravity of the dereliction and its effect. On the other hand, transfer as a sanction was regarded as problematic by departments as it results in transferring the problem instead of decisively dealing with it.

In respect of 19 out of 44 cases of fraud, it is evident from the analysis that departments generally followed the same approach, namely dismissal, as a suitable sanction for the transgression. However, in the remaining 25 cases (57%), a more lenient approach was followed. This leniency was informed by mitigating circumstances which in principle is fair; but the question is whether this is justifiable in the Public Service’s drive to end all forms of fraudulent or corrupt behaviour. This tends to demonstrate a fairly significant variation in participating Departments’ tolerance of such behaviour which cannot, for whatever reason, be condoned. This was true especially for a sanction as lenient as a verbal warning being issued in the case of fraud which in a criminal proceeding could result in a prison term.

Concerning unauthorised absence it is apparent from the foregoing analysis in the table that the ways in which Departments dealt with the cases were noticeably varied, even where the impact of mitigating and aggravating circumstances were considered. This disparity is clearly in need of attention by Departments. It should, however, be noted that unpaid leave for unauthorised absence is not a sanction as the principle of “no work no pay” applies and unpaid leave must be implemented automatically. A more appropriate sanction should therefore have been imposed in such cases.

Assault should be regarded as a serious transgression as it is also a criminal offence. The PSC noted that a final written warning was used in all but one case. However, the fact that final written warnings were combined with other sanctions created a variance in the sanctions for assault. As with fraudulent behaviour; assault should not be condoned at all in the workplace. It can create an unpleasant environment that affects service delivery and impacts negatively on the main business of the employer. There cannot be any justifiable reason to punish this serious transgression leniently.

With regard to the 4 cases of contravention of policies or prescripts which were reported from the Department of Justice and Constitutional Development, the written warnings sanctions imposed seemed to be consistent.

As with fraudulent behaviour and assault, abuse of alcohol related transgressions can never be condoned, and there can be no justifiable reason to punish this transgression leniently. The PSC also noted that there was only one case where counselling was included in the sanctions as this type of transgression may point to the existence of personal problems in need of urgent attention. The sanctions imposed also varied from one department to another; again reflecting inconsistency in the manner in which the outcome of the disciplinary process is dealt with on such serious transgressions.

The financial misconduct transgression cannot be condoned anywhere as it falls in the same category of transgressions such as fraud, assault and being intoxicated at the workplace. As such, the variation of sanctions such as final written warning, written warning and dismissal indicated above in the table, is unacceptable and in need of attention in the Public Service.

The PSC is of the view that misuse of state property must not be tolerated. However, a significant variation in the sanctions imposed for this nature of transgression was observed. In instances where the sanction of dismissal was imposed also varied from one department to another; again reflecting inconsistency in the manner in which the outcome of the disciplinary process is dealt with on such serious transgressions.

In respect of cases relating to performance of remunerative work outside the Public Service without permission category of misconduct, only one case was reported and the accompanying sanction imposed was a written warning. This was based on the circumstances submitted to the presiding officer that were regarded as appropriate.

With regard to the 17 cases of insubordination, 10 final written warnings were issued, and in 2 cases the final written warnings were combined with other sanctions.
It is disconcerting that in the other 5 cases a written warning was issued. The PSC considered 5 written warnings to be lenient sanctions considering the potential effect of insubordination in the workplace specifically on service delivery. Insubordination cannot be tolerated as it undermines organisational effectiveness. The variation between a written warning and a final written warning as a sanction for insubordination therefore also appears to be indicative of inconsistencies in sanctions.

Although dismissal constituted the highest number of sanctions (4 out of 6), in respect of the six reported cases of corruption, the inconsistency in the application of sanctions in respect of corruption related is notable. As the PSC extensively deals with anti-corruption cases and the rate at which departments manage the same annually, the inconsistency of the sanctions meted out gives message and perception of tolerance to the wider public, especially in view of the government’s commitment to root out all corruption in the Public Service.

Recommendations

It is apparent from the foregoing that there is a huge discrepancy in how discipline is managed especially the sanctions. The findings of the PSC in the study have underscored the need to improve the manner in which discipline is managed and sanctions are imposed in the Public Service. The PSC made the following recommendations on how the management of discipline in the Public Service could be improved:

• Development of a Departmental Manual

Although the provisions of the Disciplinary Code and Procedure seem to be adequate, it has to be recognised that not all users of the Disciplinary Code and Procedure possess the necessary knowledge and skills to interpret and implement it in a proper manner. It was therefore proposed that departments must develop a Departmental Manual to guide users through the steps involved in labour relations in general and the management of discipline in particular.

• Review of Departmental policies and Practices

Departmental policies and procedures on disciplinary processes should be developed and implemented as a matter of urgency. When developing the policies, and in addressing the issue of consistency of sanctions, departments may separately develop a matrix of finalised cases of misconduct on an annual basis. This could serve as a guide on appropriate sanctions which presiding officers, when considering the facts of cases presented during a disciplinary hearing as well as arguments for extenuating and aggravating circumstance, may base his/her decision on.

• Establishment of an inter-departmental database on sanctions

The Department of Public Service and Administration should consider developing and implementing an Inter-Departmental database that would ensure that there is monitoring of sanctions imposed across the Public Service. Departments should have access to this database to allow them to update their internal policies and ensure that there is consistency in sanctions imposed across the Public Service.

• Building capacity

A common theme in this study was the issue concerning departmental capacity to deal with disciplinary cases in a just manner. The problems indicated and experienced around capacity constraints were multifaceted and far-reaching, and are subsequently dealt with below:

• Building line function capacity

Departments generally should refine training content to focus on problems identified through their own monitoring and evaluation. This training should be repeated on a regular basis to ensure good practices and to offset the effects of staff turnover in the knowledge and skills base of departments.

• Building overall knowledge, understanding and skills for the management of discipline

Departmental role players are not adequately versed in the disciplinary procedure, and this spurs inefficiency and improper implementation. Consideration should be given to providing training in respect of the legal and procedural prescripts pertaining to discipline, together with an explanation of substantive issues and the legal dictums that underlie such procedures. At the time, the PSC recommended that the South African Management and Development Institute (SAMDI), which is now known as the Public Administration, Leadership and Management Academy (PALAMA) should develop a module on discipline management to be included in the training to be offered to supervisors and members of the Senior Management Service.

• Provision of Strategic and expert support

The staff support components of departments, in particular Human Resource Management and Labour Relations must support the needs of their internal stakeholders. They need to reposition themselves as facilitators of human resource and labour relations practices rather than solely as protectors of administrative and procedural processes. The PSC is of the view that the staff support components have a key responsibility to ensure that human resource and labour relations
practices are managed in an effective manner that would inhibit the possibility of unfairness and inequity, or litigation arising.

- **Information management and disciplinary oversight**

  Departmental oversight needs to be improved. Monthly discipline reports, including discipline case progress, should form part of the informal departmental reporting on discipline trends. Such monitoring responsibility should be specifically located within the organisation to ensure that the trends and their likely impact are fed into the decision-making processes of the organisation.

**Conclusion**

In conclusion, it is trusted that through the outcome of the study, the PSC has highlighted the need for departments to apply sanctions emanating from the disciplinary processes in a fair, consistent and equitable manner. If due attention to this priority is not given, the Public Service may soon find itself with an increasing number of disputes with its employees which may not be defendable. Having made departments aware of this phenomenon and its consequences, the PSC’s expectation is that the relevant role players involved with management of disciplinary procedure in the Public Service will be mindful of the recommendations made and take the necessary steps to ensure that there was a higher level of fairness consistency in the sanctions imposed for similar transgressions in the Public Service.
“SOUND LABOUR RELATIONS PRACTICE - A KEY TO LABOUR PEACE”
Public Service Negotiators
Cannot Yet See the Trees from the Forest
It is commonly held that Public Service negotiators cannot yet see the trees from the forest. This view suggests that the broader Public Service reform programme is not advanced, as government and trade unions scurry to find settlements in context of crises. The broader pattern of collective bargaining in the Public Service shows a worrying trend of crises driven settlements, which rather than resolve underlying issues, deepen conflict. **Why is this so?** Charles Lindblom in his public policy classic “The Science of Muddling Through” offers an important insight to understand the failures of collective bargaining in the Public Service. Lindblom argues that the reality of public policy decision making is that changes happen incrementally, which he calls focussing on the nearby branches. He contrasts this to decision making that tackles structural change, decisions that tackle the root. The argument developed by Lindblom is certainly more complex, but the distinction between nearby branches and root decisions provides a way to understand the ineffectiveness of Public Service bargaining. Metaphorically speaking, the settlements after strikes in the Public Service (i.e. 1999, 2007, 2010) consist of firm commitments on nearby branches and promises on root change. The settlements reached thus include:

- Nearby branches – a percentage increase that is acceptable to both government and the trade unions, and adjustment to benefits. A review of agreements reached after strikes suggests that settlement levels have been between 1-2% of “final offers” tabled by government and the “final demand” tabled by trade unions.

- Roots – The complex issues around performance, labour rights, aligning bargaining and budgets are then allocated to processes, and not resolved. The agreements reached after strikes (i.e. 2000, 2007 and 2010) were resolved as much through haggling over salary adjustments, as they were on issues related to the timing of bargaining, benefits packages and commitments to social dialogue.

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The outcomes after strike are thus surprising as strikes have happened over a small difference on the side of negotiators. Intuitively, once the difference in positions is around 1-2%, skilled facilitators suggest that this is within “settlement levels”. This was true even in 1999 when government unilaterally implemented wages, when parties were within the 1-2% range. However, what has occurred is a deepening of militancy in the Public Service with a capacity to sustain strike action over three weeks. An important turning point was the unilateral implementation of wages by government, which hardened attitudes and served as a basis for mobilisation. Seven years later, the Public Service unions, undertook an unprecedented strike. Before that moment, Public Service strikes were limited to two, and at most three days. Underpinning this new militancy has been the inability of parties to the Public Service Co-ordinating Bargaining Council (PSCBC) to implement agreements. This has been primarily due to the complexity of reaching agreement on issues, such as on benefits, productivity and essential services. In other words, over the last sixteen years, the “root” issues have continued to fuel adversarial negotiations. At the same time, there has been a significant widening of what constitutes issues of “mutual interest” (i.e. issues that fall within the domain of the bargaining council). Over the last sixteen years, the bargaining council has dealt with issues such as creating a medical aid, jobs descriptions in the Occupational Specific Dispensation (OSD) negotiations, productivity, and even set out processes to determine departmental level structures. This widening of the bargaining agenda has been praised as supporting co-determination. However; this widening mandate has not lived up to its promise of tackling the root problems that face the Public Service reform programme.

The absence of a long term strategy for Public Service reform has had significant implications on service delivery and government’s finances. The OSD agreements are the best illustration of this. The need for introducing revised salary scales in the Public Service, especially for teachers and nurses, had a strong motivation. However; the agreements cost significantly more than government had budgeted for, with the National Treasury having to make significant adjustments to the baseline to its Public Service salary bill. The reason for this is that the chambers reached agreements on their respective areas, and outside of an agreed framework on the content and sequencing of Public Service reform. Ultimately, this has led to the unintended consequence of better packages and a higher salary bill, which combine to reduce the ability of government to attract professionals into the Public Service.

Underpinning adversarial negotiations has been the perception that government has reneged on its promises in several areas. In mobilisation for strikes, perception is as strong as reality. Shop stewards organising workers however have a basis to argue that agreements reached have not been implemented. As an example, the settlement reached in 2010 commits parties to implement agreements reached in 2007 and 2009, indicating serious challenges in the implementation of agreements. In fact, in reviewing the 2010 settlement the agreements reached commit government and trade unions to an accelerated timetable to reach agreements on complex issues of essential services, benefits and complete salary negotiations by 2011. Past experience suggests that each of these deadlines will not be reached, creating conditions on the ground and even at Cabinet for dissatisfaction. Workers will feel betrayed as they have already included estimates of what future commitments would mean for their monthly salary. In the current round of negotiations, there is for instance a commitment to introducing a revised housing benefit by April 2011.

The Cabinet will look at the agreement and justifiably raise concerns over the costs of implementing (for example the housing subsidy in April 2011) and the calculations from the National Treasury will indicate that the agreements are not affordable. The end result is heightened conflict, and conditions for future disruption of Public Service. How then do we go about with the reorientation of Public Service collective bargaining? Firstly, government needs to lead a process of developing a long term plan for the Public Service. The plan would need to outline the detailed steps and sequencing of reforms that will be undertaken. The need for policy development is important, as the current set of policies governing the Public Service were developed to deal with a Public Service reform process related to the advent of democracy. A new policy framework geared towards improving productivity, performance and strengthening the role of the Public Service in the broader labour market is needed.

Secondly, social dialogue processes need to be strengthened. Throughout the period of adversarial negotiations, there have been attempts at social dialogue. Most notably, this has occurred in summits in 2000 and 2010, as well as a series of agreements reached in what are called “Birchwood One” and “Birchwood Two”. The process started with the New Growth Path offers an opening, as it creates space for more formalised social compacts. Whatever, the modalities of social dialogue, it is important that the process be credible, and build on a strong and evidence based set of public policy proposals.

Thirdly, parties to the council need to recognise that the 2010 agreement is crises prone. There is certainly nothing that can be done to change the agreements reached. However; better management of the process needs to be undertaken, with political leaders in unions and government dealing proactively with the implications of the agreements reached.
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