



PUBLIC SERVICE EMPLOYMENT RELATIONS IN SOUTH AFRICA

Abstract

This paper covers the South African case study on Public Sector Employment Relations. It gives the general overview of the legal framework that regulates public service employment relations and demonstrate the growing power of trade unions. It also covers proposed strategies by the public service to reduce strikes specifically in the public educations sector. The paper also interrogates the remuneration trends in the South African public service and gives the holistic overview of the available public service collective bargaining platforms and framework. It also covers an overview of performance management in the South African public service and discusses platforms for dispute resolution.

Introduction

South African Labour Relations has gone through a lot of transition over the years. The labour relations act 66 of 1995 offered protection to all employees including those that were previously not covered.

The act sets out the laws that govern labour in South Africa and is guided by Section 27 of the Constitution, which entrenches the rights of workers and employers to form organisations for collective bargaining. Together with the Basic Conditions of Employment Act, it also ensures social justice by establishing the rights and duties of employers and employees. It

also regulates the organisational rights of trade unions deals with strikes and lockouts, workplace forums and other ways of resolving disputes. It provides a framework for the resolution of labour disputes.

The public service is also regulated by the Public Service Act which also sets out some of the important laws for the employment conditions of the public service in South Africa, particularly with regard to terms of office, disciplinary procedures, retirement and the dismissal of public service members.

Every time we speak of South African Labour relations, one can't resist to mention the apartheid era, just to point out the evolution of the labour relations by comparing the past to the current situation because these current policies are influenced by actions that were designed to address social injustices and inequalities of the apartheid era.

It has always argued that, the South African Labour Relations Act is favouring labour and therefore offer favourable conditions for workers and in the process, empowering the trade unions. It has also been said to have favoured the trade unions and extended favourable rights to trade unions. It is a general knowledge that trade unions played a crucial part in fighting the apartheid era as a result, trade union movement in South Africa is extremely powerful. The South African labour force has a high proportion of unionised employees and strong legislation supporting unionisation. The political alliance between the biggest union confederation (COSATU) and the ruling ANC also demonstrate the power and influence of trade unions in the political landscape of the country and labour policies.

Legal Framework Regulating Public Employment Relations

The South African Constitution supersedes all other acts of the country and all South African statutes must conform to the basic principles contained in the Constitution. The Constitution provides clear guidelines with regards to employment relations. Section 23 of the Constitution speaks to the labour related provisions and it stipulates that, everyone has

the right to fair labour practices, workers have the right to form and join a trade union, to participate in the activities and programmes of a trade union and to strike, every employer has the right to form and join an employers' organisation and to participate in the activities of an employer's organisation. Every trade union and every employer's organisation have the right to determine their own activities, to organise, to bargain collectively and to form and join a federation. Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

The Labour Relations Act is a centrepiece of the labour law in South Africa and all labour laws are subordinate to the LRA. The main purpose of the Labour Relations Act is to advance economic development, social justice, labour peace and a democratisation of the workplace by fulfilling the primary objectives of the Act.

Primary objectives of the Labour Relations Act is to realise and regulate the fundamental rights of workers and employers in the Constitution.

Basic Conditions of Employment Act (BCEA) is to advance economic development and social justice by establishing and enforcing basic conditions of employment. Its primary objective is to give effect to and regulate the right to fair labour practices as contained in Section 23(1) of the Constitution by establishing and enforcing basic conditions of employment and to give effect to obligations incurred by South Africa as member state of the International Labour Organisation

Employment Equity Act is to promote equal opportunity and fair treatment and with the inclusion of the Affirmative Action, also assist to social injustice created by the apartheid. Affirmative Action is a strategy and process aimed at transforming socio-economic environments which have excluded individuals from disadvantaged groups in order for such disadvantaged individuals to gain access to opportunities based on their potential.

The Increasing Power of Public Sector Unions

Labour unions have played an integral role as a voice for social transformation in South Africa. During apartheid, their objectives were distinctly political. Their formal influence grew with the deregulation of black trade unions in the early 1980s.

Post-apartheid labour laws – such as the Basic Conditions of Employment Act of 1997, the Labour Relations Act of 1995 and the Employment Equity Act of 1998 – have been designed to protect workers from historical discrimination. They also empower unions in defence of their members.

Unions have increased their influence in the workplace. Membership statistics also indicate that unions are still considered relevant. It is believable that the benefits of union membership differ by sector. The alliance between the governing African National Congress and the Congress of South African Trade Unions suggests that the public sector and unions share a common interest in enabling and implementing democratic-era policies. This includes enforcing labour laws and fairness towards workers. The benefits of unionisation and collective bargaining are therefore far more pronounced in the public sector. This underlines the government's commitment to implementing its policies among its own employees. Unionised public-sector workers are also far more likely to have secure working conditions than private-sector and non-unionised workers.

South Africa's public sector have suffered a lot of strikes across all sectors. The education sector has been arguably been one that have suffered the most during the industrial actions. As a results there have been propositions that are aimed at reducing strikes in that sector

Strategies to prevent strikes in the Education Sector

In an effort to prevent strikes in the education sector, there have been calls from political parties to declare education an essential service. In 2013, the then ANC secretary-general Gwede Mantashe said the party would leave no stone unturned to make teaching an essential service, education must be a priority. He also stated that, when you disrupt education you are not threatening life and death, but you are disrupting the future prospects

of the country. The proposal was however attacked by teacher unions who described it as unconstitutional.

In December 2017 the DA presented its essential service in education discussion document, which calls for limitations to be placed on the rights of principals to strike.

The Labour Relations Act recognises the constitutional right to strike, but subjects the right to a number of limitations, including the provision that no person may take part in a strike if that person is engaged in an essential service. The International Labour Organisation (ILO) has determined that it is reasonable to limit the right of certain education sector employees to strike and the DA agrees that this limitation is needed.

According to the ILO, the right to strike might be restricted in the public service only for public servants exercising authority in the name of the state, or in essential services.

Compulsory interest arbitration has been mooted before as an answer to South Africa's particularly damaging public-sector strikes and has much in common with declaring these jobs "essential services" where the right to strike is overridden by public interest in uninterrupted service.

Remuneration in the Public Service

On average, public sector workers get paid more than their private sector counterparts. According to research published by the Development Policy Research Unity from the University of Cape Town in 2014, the real monthly wage of an average public sector employee is R11, 668 compared to R7, 822 for an average private sector worker. The report stated that public sector workers are more unionised than private sector workers, which gives them more power to negotiate wages. In addition, public sector wages have less dispersion than private sector wages, indicating a lower level of wage inequality within the public sector. This is because public sector workers are more unionized than private sector workers, which gives them more power to negotiate wages.

These general annual salary adjustments include the cost-of-living adjustment, annual pay progression and grade progression. Employees qualify for pay progression based on satisfactory performance. Grade progression will be awarded to qualifying employees in terms of the specific Occupation Specific Dispensation. The purpose of the annual cost-of-living adjustments is to preserve the buying power of the employees, in order to ensure that their salaries are not eroded by inflation.

Employees in the Public Service qualify for a guaranteed package that includes basic salary, the annual service bonus that equals an employee's one month salary payable in the public service as a 13th cheque and the employer contribution to the Government Employees Pension Fund. All public service employees appointed on permanent basis are required as a condition of service, to become members of the Government Employees Pension Fund.

The State provides medical assistance in a form of subsidies for employees in the public service and as well as to retired employees who belong to registered medical schemes and who are eligible in terms of the policy governing post-retirement medical assistance. A housing allowance is also payable to public service employees.

The combination of salary adjustments, improved benefits and upward progression has resulted in a large increase in remuneration levels in the public service over the past decade.

Over the last decade, negotiated annual cost-of-living adjustments have exceeded Consumer Price Index (CPI) inflation. In some years, this resulted from agreements set well above the prevailing inflation rate.

In order to enable government to recruit and retain professionals, the wage agreement provides amongst others, for the development of occupational specific dispensations for identified categories of staff.

The Occupational Specific Dispensation (OSD) was introduced in 2007 for public sector employees in South Africa which is unique to each identified occupation in the public service. The purpose of the OSD was to improve government's ability to attract and retain skilled

employees through increased remuneration. The OSD was to raise salary packages of designated skilled public servants in line with those in the private sector.

Previously, employees in the public service were remunerated by a single salary structure which did not adequately address the diverse needs of occupational categories in the public service. The OSD was introduced through the adoption of a collective agreement within the framework of the Public Service Coordinating Bargaining Council (PSCBC). PSCBC Resolution 1 of 2007 provided the framework for occupational specific remuneration and career progression dispensations to address unique remuneration structures, consolidation of benefits and allowances into salary, frequency of pay progression, grade progression opportunities, career pathing, and required levels of performance (performance based progression). Since PSCBC Resolution 1 of 2007 was agreed to, several resolutions have been entered into in the various sectoral bargaining councils of the public service.

Equal Pay for Work of Equal Value

Section 6(1) of the Employment Equity Act prohibits unfair discrimination in any employment policy or practice, on one or more of the grounds listed in the section, or on any arbitrary ground. These grounds include, for example, race, gender, age, language and sexual orientation.

The inclusion of section 6(4) in the Employment Equity Amendment Act, 2013 does not change the law in substance but accommodates claims of equal pay for work of equal value in the general prohibition against unfair employment discrimination.

Section 6(4) provides that a difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1) or any other impermissible or arbitrary ground is unfair discrimination.

If it is established that the work concerned is the same, similar or of equal value and that there is in fact a disparity in remuneration, it must be proven that the disparity constitutes unfair.

Collective bargaining

In 1995 a new Labour Relations Act (66 of 1995) was passed. It extended collective bargaining rights to all employees, including civil servants. It reconstituted industrial councils as bargaining councils (BCs) and made provision for public service bargaining councils. The dramatic rise in the number of employees covered by BCs in the public service between 1995 and 2004 was due to the establishment the PSCBC and the four designated Sector Councils.

The PSCBC is an independent forum where the employer (state) and the biggest unions in the Public Service, meet to negotiate and sign collective agreements that regulate the terms and conditions of public servants. The provincial structure of the PSCBC (Provincial Chambers) deals with matters that are affecting the provincial administration, such provincial transversal policies and any matters of mutual interest directly affecting the province. Sector Councils deal with matters that are specific to the relevant sector.

The four sector councils are the Education Labour Relations Council (ELRC) which focuses on the education sector; the Safety & Security Sectoral Bargaining Council (SSSBC) which serves the Police; Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) serving the health sector and social development; and The General Public Service Sector Bargaining Council (GPSSBC) which covers everyone else not covered under any of the above mentioned sector councils.

The public service bargaining structures excludes public servants employed by the municipalities which are covered by South African Local Government Association (SALGA) and members of the South African National Defence Force and employees of the National Intelligence Agency and the South African Secret Service.

Threshold and organisational rights in the Public Service

In order for a trade union to qualify to be admitted to the PSCBC, it must meet a threshold of 50 000 members and be admitted at the sector council. In addition, in order for any union to participate in sectoral collective bargaining, it must meet the sectoral threshold as determined in the constitution of the relevant sector council.

In terms of organisational rights in the workplace, trade unions who are admitted as parties to the PSCBC are granted the organisational rights in section 12, 13, 14 and 15 of the LRA in the relevant workplace. Those trade unions that are not admitted as parties to Council but jointly meet 75% of the Admission threshold, shall be granted the organisational rights in section 12, 13 and 15 of the LRA in the relevant workplace.

Admission of a registered trade union to the PSCBC does not mean that organisational rights at the relevant workplace are automatically considered to such a union. The registered union that seeks to be granted organisational rights, must serve on the employer a notice to exercise one or more of the organisational rights conferred by the LRA in the workplace within the public service. The notice must comply with the provisions of section 21(2) of the LRA.

Performance Management in the Public Service

The method of performance management in the public service is classified into two methods. The first method is tailored for the public servants earning from salary scale level 1 to 12, and the second method is designed for senior management above salary level 12. Historically, one method was used across board for all public servants.

In 1999 the new public service management framework was developed to regulate all departmental activities and was informed by legislation such as the Public Service Act, 1994, the Public Service Regulations, 1999/2001, various White Papers, and by collective agreements concluded by bargaining councils in the public service.

The Public Service Regulations serve as primary guide to departments in developing and implementing their departmental performance management systems. The Regulations require of each executing authority to determine a system for performance management and development for employees in that department who are at salary level 1 to 12. Department of Public Service and Administration (DPSA) also provide guidance through performance management handbook.

In the new framework, senior managers are required to enter into a performance agreement with the employer. One of the purpose for this system was to create linkages between individual and organisational performance to improve service delivery. The regulation also require department to use a single instrument to assess the performance of public servants but departments may customise the instrument to suit their particular need.

Dispute Resolution in the Public Service

The principle of labour relations granting rights to employees to voice their dissatisfaction with their employer and employers have an obligation to ensure that such dissatisfaction is investigated.

If the dissatisfaction is justified, the employer must ensure that appropriate remedies are implemented. The prevailing legislation further confers the right upon employees to have their dissatisfactions considered by independent and impartial bodies, such as the PSCBC and the relevant sectoral council. It is considered a fair labour relations practice that grievances are resolved at the lowest level possible.

As mentioned, in the public service perspective, in an event of a deadlock or dissatisfaction between the employer and the employee in trying to resolve a grievance, the next available platform will be the bargaining council.

This platform is offered by the Public Service Coordinating Bargaining Council or sectoral bargaining councils. The PSCBC has jurisdiction over collective agreements concluded at its

level and sector councils also have jurisdiction over collective agreements concluded by the relevant sector.

The Education Labour Relations Council (ELRC) covers the Department of Education as employer and educators employed in terms of the Educators Act.

The Safety and Security Sectoral Bargaining Council (SSSBC) covers the South African Police Service (SAPS) as employer and employees appointed under the South African Police Service Act.

The Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) covers the Department of Health and Department of Social Development as the employers and all employees employed in the Department of Health and employees employed in the Department of Social Development under the Public Service Act.

The General Public Service Sectoral Bargaining Council (GPSSBC) covers the state as an employer and all employees who do not fall within the scope of ELRC, PHSDBC and SSSBC employed under the public service act.

Conclusive remarks

The public sector is much unionised and union members made almost up to 70% of all public sector's formal workers in 2014.

The rise in public sector unionisation is proportionate with the increase in public sector employment. Public sector trade unions dominate union membership in South Africa.

The increasing power of public sector trade unions has been argued to be the key drive to better remuneration, benefits and stable working conditions in the public service. The alliance between the ruling party ANC and the largest federation of trade unions (COSATU) have rendered more power and influence to trade unions in labour relations specifically in the public service and shows commitment of the ruling party to the welfare of workers. Public sector unionisation seems to be much more effective than the private sector and has

undoubtable yielded more positive results. The Employment Equity Amendment Act, 2013 has accommodated the principle of equal pay for work of equal value.

The public service act is an important legislative framework that provides guidelines for public service employment. In addition the public service has a much matured collective bargaining structure which is fully used for the benefit of public workers. For a long time, public sector has been characterised by strikes particularly during periods of wage negotiations and these strikes have been argued to have brought service delivery to a standstill. Disputes over wages, bonuses and other compensation matters remain the main cause of strikes in the public service.

Reference

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